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Senate

The Senate met at 9:30 a.m. and was called to order by the PRESIDENT pro tempore [Mr. STEVENS].

PRAYER

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

Let us pray.

Creator of all life, Who satisfies the longings of our souls, thank You for Your faithfulness, which is as enduring as the Heavens. Your peace radiates in our hearts on wings of faith, hope, and love.

Bless our Senators. Strengthen them for today's challenges. Energize them so that they are more than a match for these momentous times. May they soar on eagle's wings. May they run and not be weary. May they walk and not faint. When they are lost, provide them with direction. Show them duties left undone. Remind them of promises yet to keep, and reveal to them tasks unattended.

Enrich us all with Your loving presence. We pray this in Your hallowed Name. Amen.

PLEDGE OF ALLEGIANCE

The PRESIDENT pro tempore led the Pledge of Allegiance, as follows:

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

RECOGNITION OF THE MAJORITY LEADER

The PRESIDENT pro tempore. The majority leader is recognized.

SCHEDULE

Mr. FRIST. Mr. President, this morning the Senate will resume consideration of the Energy conference report. There will be 60 minutes of debate prior to the vote on the motion to invoke cloture. Therefore, the first vote of today's session is expected to occur shortly after 10:30.

At this point, I ask unanimous consent that the live quorum that is required under rule XXII be waived.

The PRESIDENT pro tempore. Is there objection?

Without objection, it is so ordered.

NOTICE

If the 108th Congress, 1st Session, adjourns sine die on or before November 22, 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.

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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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Mr. FRIST. Mr. President, I urge my colleagues this morning to vote for cloture. I will say more just before the vote. But I do encourage Members to weigh very carefully the vote that will be taken in about an hour.

This bill is a balanced approach to ensuring this country's energy security through this national energy policy.

If cloture is invoked, we will work with Members to establish a time certain for the vote on passage of this conference report.

In addition, throughout the afternoon we will attempt to clear any additional conference reports that may arise from the House.

I will update everyone on the schedule later today as we watch the progress on the remaining legislative items.

MODIFICATION OF AMENDMENT NO. 2208

Mr. FRIST. Mr. President, I ask unanimous consent that notwithstanding passage of H.J. Res. 78, the previously agreed to amendment No. 2208 be modified with changes that are at the desk.

Mr. REID. Mr. President, we have no objection.

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

The amendment (No. 2208), as modified, is as follows:

On page 2, line 7, strike ''23'' and insert ''24''

On page 2, line 1, strike ''23'' and insert ''24''

RECOGNITION OF THE ACTING MINORITY LEADER

The PRESIDENT pro tempore. The Senator from Nevada is recognized.

Mr. REID. Mr. President, while the majority leader is on the Senate floor, before we begin the final hour of debate on this important issue, I think the last 2 days have been some of the finest hours of the Senate this year. The debate has been constructive on both sides. I think it has been issue-oriented. I have been very impressed with the manner in which the debate has proceeded. The two managers of the bill are, of course, both experienced, and I am confident that the debate for the next hour will be just as constructive.

We have our time lined up. Everyone is here to make their speeches.

I look forward to a vigorous debate and a vote in about an hour.

RESERVATION OF LEADER TIME

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

ENERGY POLICY 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. 6, which the clerk will report.

The legislative clerk read as follows:

Conference report to accompany H.R. 6, an act to enhance energy conservation and research and development, to provide for security and diversity and the energy for the American people, and for other purposes.

The PRESIDENT pro tempore. Under the previous order, there will now be 60 minutes equally divided between the chairman and ranking member of the Energy Committee, and the final 10 minutes will be divided with the first 5 minutes under the control of Senator BINGAMAN and the final 5 minutes under the control of the Senator from New Mexico, Mr. DOMENICI.

Who yields time?

The Senator from Idaho.

Mr. CRAIG. Mr. President, we are in the final hour of debate on probably one of the most important policy issues to come before this Senate in a good number of years. The Senator from Nevada has talked about the quality of the debate and the detail of the debate. Certainly, that is true.

I yield to the chairman of the committee, Senator DOMENICI.

The PRESIDENT pro tempore. Will the Senator yield to the Senator from New Mexico?

Mr. CRAIG. I am happy to yield to the chairman of the Energy and Natural Resources Committee.

Mr. DOMENICI. Mr. President, I want to make sure that we understand the timing. I asked Senator CRAIG if he would come to the Senate floor so I could give him some time. I wonder if 5 minutes would be enough.

I yield 5 minutes to the Senator.

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

Mr. DOMENICI. I thank the Chair.

Mr. CRAIG. Mr. President, what we are attempting to do for the American people is allow them, their country, and the energy sector of our economy to get back into the business of producing energy. We may well be faced with some of the highest natural gas prices that any consumer will have paid in the United States this winter. If we have a cold winter, it will be time for those who are paying exorbitant energy bills to ask a fundamental question: Why? Why is the public policy of this country driving up our energy bills? Why is not there a public policy that begins to put this country back into the business of producing energy?

Our historic wealth, in large part, has been based on an abundance of high-quality, low-cost energy in all kinds of forms.

The Energy Policy Act of 2003 continues that most important economic legacy for this country—to assure that we continue our traditional energy sources but with new technologies and cleaner approaches; that we invest money in new technologies so that the next generation of Americans can have the same abundance of energy that I have had and that my father had before me.

It would be an absolute tragedy if in the fine ticking of all of the issues within this very large bill someone collectively decides to vote against it because, if they do, they ought to go home and try to explain why in February or March of this year their constituents are continuing to pay ever increasingly higher rates, or why there was a blackout in the Northeast this year, or why the brownouts in California a few years ago, and why gas prices at the pump are at an average historic high.

There are sound answers to all of those questions. But, more importantly, the Energy Policy Act of 2003 begins to address resolution of those questions, bringing those prices down overall and creating a greater abundance.

We have also stepped out in a variety of new areas, including new nuclear technologies, new fuels approaches, and new hydrogen technology which our President was very daring to talk about—a new surface transportation fuel future, hydrogen. We have set about the technology and the planning and the design for all of those types of new approaches.

I say to the Senator from Alaska, his State is one of the largest energy producers of all of our States.

This bill clearly gives companies the ability to come in and invest and bring literally trillions of cubic feet of gas to the lower 48 that will offer help in bringing down those high prices.

We created the incentives. We have allowed them to invest in the marketplace and to get a good return on their investment.

This is a truly comprehensive bill. There is no question that we have spent literally the last 5 years in attempting to design an Energy bill that will fill all of the needs of this country, and to restructure and refine the existing energy sector of our country especially in the electrical area.

This has a new electrical title much different from the one before. Compromises were made. I stood in the Senate a year ago and offered an amendment to take the electrical title out because of its controversy and its impact on the Pacific Northwest. Today we have changed that. Today we have said all areas of the country can grow and develop and we will work to build an interconnectivity between those regions of the country that will, hopefully, disallow the kind of problems we had in the Northeast this summer and certainly begin to address the inability of California to produce its energy needs.

All of those issues are bound up in this bill. Yet some of our colleagues have picked a very small piece of this bill, less than one-half of 1 percent of the total impact of this bill, and have said that is the problem, that is the destructive character of the bill. That is why some Members oppose it.

This is a very good piece of work. It brings our country back into energy production. I urge my colleagues to vote for cloture and allow the Senate to move toward final passage for this critical piece of public policy.

The PRESIDENT pro tempore. The Senator from New Mexico.

Mr. BINGAMAN. Mr. President, I yield 4 minutes to the Senator from Vermont.

The PRESIDENT pro tempore. The Senator from Vermont is recognized for 4 minutes.

Mr. JEFFORDS. Mr. President, America needs an energy policy, but not this one. This bill fails to provide a realistic, sustainable energy plan for America's future. Observers have called this Energy bill ''three parts corporate welfare and one part cynical politics.'' They call it a complete waste of energy and say it fails to address the fuel and power needs of the average American. They are absolutely right.

The bill includes environmental rollbacks. It threatens public health. It weakens consumer protections against electricity market manipulation. It gives out billions of dollars in subsidies to fossil fuel and nuclear industries. The rollback of three of our most fundamental environmental laws—the Clean Air Act, the Drinking Water Act, and the Clean Water Act—is terrible environmental policy.

This bill allows more smog pollution. This bill exempts all oil and gas construction activities from the Clean Water Act. The Senate's renewable portfolio standard requiring utilities to generate 10 percent of their power from renewable sources by 2020 was struck from the bill.

What we needed was a bill to decrease our energy dependence on foreign oil, but this bill will not conserve a drop of oil. We need to protect our consumers, our public lands, and our public health. Instead, this bill weakens protections. We need to give a boost to the renewable energy sector, but instead the bill is a kickback to the fossil fuel industry.

We now need to do the right thing and oppose cloture. We need to spend more time developing the right energy policy for America.

I reserve the remainder of my time.

The PRESIDENT pro tempore. Who yields time?

Mr. DOMENICI. I yield 3 minutes to the Senator from Wyoming.

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

Mr. THOMAS. Mr. President, I am excited about the opportunity we have today to finally, after a number of years, come forward with a broad, encompassing policy for energy.

We ought to give a little thought to where we will be in the future as individuals, as families, think about the energy we use, the energy we need, where it will come from. Our demands go up, yet we do not really have a policy.

Nothing is more important to the economy than having accessible energy and jobs. This bill creates a great number of jobs. It is a policy on conservation. It includes the types of equipment we use. It includes renewables, with a good many dollars spent for renewables. We talk of alternative fuels. We talk of hydrogen. We talk about domestic production.

It does not roll back the economy despite what is being said on the floor. It does conserve. We have conservation methods included. What is most important in terms of the environment is a good deal of research for coal development so we can have energy from our largest fossil fuel, coal, and do it in a way that is clean for the air. We will hear that it amounts to politics regarding MTBE, which is a very small aspect of this.

We need to have an energy policy for our country. We must have an energy policy. Now is our opportunity to have an energy policy. Certainly we ought to at least be able to vote to have an up-or-down vote on this issue.

The PRESIDENT pro tempore. Who yields time?

Mr. BINGAMAN. Mr. President, I suggest the absence of a quorum and the time be charged equally.

Ms. LANDRIEU. Reserving the right to object, I would like to speak on the bill.

The PRESIDENT pro tempore. Does the Senator withhold his suggestion of a quorum?

Mr. BINGAMAN. I withhold my request.

Ms. LANDRIEU. I will speak for the bill.

Mr. CRAIG. I yield 5 minutes to the Senator from Louisiana.

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

Ms. LANDRIEU. Mr. President, as a member of the energy committee who has worked very hard with both the distinguished Senators from New Mexico, Mr. BINGAMAN and Mr. DOMENICI, as well as the former chair from Alaska, Senator MURKOWSKI, trying to fashion a bill that balances the great interests of every region of this country, I am proud to come to the Senate and urge my colleagues to vote for this Energy bill.

There are provisions that should be in this bill that are not. There are many aspects of this bill that I would have written differently myself. However, the fact is, as any member on the Energy and Natural Resources Committee can state, we have had hours and hours, maybe hundreds of hours, of hearings on how we create a more reliable electricity structure in this Nation, how we try to use our great natural resources in a better fashion to help create the energy this country needs to be more independent and more economically competitive.

I come from the State of Louisiana, which is a net exporter of energy. We do a lot of energy production in Louisiana, not just in oil and gas but cogeneration. We have municipal as well as private companies, public companies, municipal generators of electricity. We drill for a lot of oil and gas. We are not a mining State in that sense, like the West, but we mine our resources and we do a much better job than we did 10 years ago and a heck of a lot better job than 20 or 30 years ago. Why? Because the United States has some of the toughest, most stringent environmental laws in the world when we take our coal out of the ground or when we drill off our shore. The Shell Oil company told me last year if they put all the oil they spilled off the coast of Louisiana in a container, it would not fill up the bottom fourth of a barrel.

There are people in the Senate who think we cannot mine our resources in a way that protects our environment. Do we have a perfect system? No. Is it one of the best in the world? Absolutely. So this Senator and this Democrat is for using our natural resources in a way that helps meet the energy demands of this Nation.

This country consumes more energy per capita than any nation in the world. As far as I am concerned, we have an obligation to produce it. Some Members think we can consume, consume, consume and not produce anything. One of the most extraordinary aspects about this bill is streamlining of regulations, trying to untie people's lands so we can appropriately extract natural resources, clean our coal, have good technology off our shores, and use that money to invest in our environment.

People say the Senator from Louisiana is on the floor because Louisiana gets money out of this bill. The State gets some help. We deserve some help because for 50 years we have sent over $140 billion of this Nation's treasury off the shores of Louisiana. That is not pocket change.

We have saved the redwood forests, and we have funded the whole land and water conservation funding for the Nation. Now we have an opportunity to take a portion of that money and save the wetlands of America. It is not Louisiana's wetlands. This is the largest delta in the continental United States, and it is in crisis. It is washing away. The chairman from New Mexico came to see it. He does not need to read a book or anything about it; he has seen it.

So, yes, we have some resources, a tiny percentage of the money that comes out of the great natural resources of the Gulf of Mexico, not to give this Senator any special project, because I sure do not have any special sweet deal. The deal I have cut for my State, which the Senator knows, is to save these wetlands, where migratory birds for the whole Nation go, and fisheries off the coast of the Gulf of Mexico, from the east coast to the west coast.

So there are lots of good things in this bill. I know we have problems with MTBE. I know we have problems. I am

very disappointed in the hydrogen section that would have helped us move to hydrogen cars. I am very disappointed. The ranking member fought very hard for renewable portfolio standards, and I am disappointed that his language was stripped out.

But I can tell you, the chairman from New Mexico has fought like a tiger to get a balanced bill. The fact is, we are not divided Democrat against Republican; we are divided regionally.

Mr. President, I ask unanimous consent for 1 more minute.

The PRESIDENT pro tempore. Is there objection?

Without objection, it is so ordered.

Ms. LANDRIEU. Mr. President, I know people have come down here and complained about standard market design. I realize the Senators from the Northeast are concerned about the language that has been put in this bill. But I will tell you, the reason the language has been put in the bill like this is that there are Southerners who are generating a lot of electricity. Why? Because we are drilling, and we are producing, and we are building plants in the South. And I will be darned if our ratepayers have to pick up the tab to ship that electricity to the Northeast. They need to be doing a better job of building plants and laying down pipelines.

I have more pipelines in Louisiana per capita than any State in the Union. If you took an x-ray of the country, you would be shocked. Like a little skeleton, you could see the pipelines under Louisiana. We cannot build any more. And do not believe we are taking the gas from those pipelines. We are sending it all over the country. We are happy to. But we cannot pay for all of it. We have to share the costs in an appropriate way.

So I say to my Democratic colleagues, when they say there is nothing in the bill for Democrats, may I please remind them there is no drilling—30 more seconds—there is no drilling in this bill in ANWR.

Mr. McCAIN. Regular order, Mr. President.

The PRESIDENT pro tempore. Does the Senator yield 30 seconds?

Mr. DOMENICI. Yes. I say to the Senator, we are not using your time.

Ms. LANDRIEU. I thank the Senator from New Mexico.

There is no drilling, in this bill, in ANWR, which I know the President fought very hard for and this Senator thought might be reasonable, but the majority wasn't there.

The PRESIDENT pro tempore. The Senator's time has expired.

Ms. LANDRIEU. Thank you. I urge Democrats and Republicans to support cloture on this bill.

The PRESIDENT pro tempore. The Senator's time has expired.

The Senator from New Mexico.

Mr. DOMENICI. Mr. President, I yield myself 30 seconds.

The PRESIDENT pro tempore. The Senator is recognized.

Mr. DOMENICI. Mr. President, I say to the distinguished Senator from Louisiana, I am very pleased I got to know you in the past year and a half. I do not think we would have had a chance to meet each other but for the energy crisis. I visited your State. And everything you have said today, and on the floor time after time, about what is going to happen in your State because of what is happening to the water line is true. We can kill this bill and kill that. You know how long you have been waiting for it.

Ms. LANDRIEU. Fifty years.

Mr. DOMENICI. And you are going to wait 60 more because there is nobody going to pass another bill like this with these kinds of things in it for a long time. Why do I know that? Because I have been through it. And every time we just about get there, somebody has some objection, and we have a big hole, it all falls in, and nothing gets done.

The PRESIDENT pro tempore. The Senator's time has expired.

Mr. DOMENICI. I say to the Senator, thank you for your effort. I appreciate it.

The PRESIDENT pro tempore. Who yields time?

The Senator from New Mexico.

Mr. BINGAMAN. Mr. President, I yield the Senator from Arizona 6 minutes.

The PRESIDENT pro tempore. The Senator from Arizona.

Mr. McCAIN. Mr. President, I had an opportunity earlier this week to speak about this bill, but I think so much is objectionable in this legislation that I am compelled to expend a little more energy on it.

I have listened to my colleagues' statements, and I have yet to hear any plausible, substantiated argument in support of ethanol. Even my colleagues from corn-producing States who have indicated they support this bill have not been able to identify one benefit ethanol provides the American taxpayers, who pay dearly for it—including the taxpayers in those corn-producing States.

Ethanol is a product that would not exist if Congress did not create an artificial market for it. No one would be willing to buy it. Yet thanks to agricultural subsidies and ethanol producer subsidies, it is now a very big business—tens of billions of dollars that have enriched a handful of corporate interests, primarily one big corporation, Archer Daniels Midland.

Ethanol does nothing to reduce fuel consumption, nothing to increase our energy independence, nothing to improve air quality. Let me repeat: Ethanol does nothing to reduce fuel consumption, nothing to increase our energy independence, nothing to improve air quality.

As far as reducing fuel consumption is concerned, it requires 70 percent more energy to produce a gallon of ethanol than it provides when combusted. There is actually a net energy loss from the use of ethanol. There is nothing about ethanol that will increase our energy independence. More energy is used in the production of ethanol, and it has reduced the amount of gasoline consumed in the United States by 1 percent.

Ethanol does not improve air quality. In fact, doubling the amount of ethanol, as required by this bill, will most certainly degrade air quality. A National Academy of Sciences report in 2000 found that oxygenates, meaning ethanol and MTBE, can lead to higher nitrous oxide emissions, which contribute to higher ozone levels in some areas.

That means in large cities, such as Phoenix, AZ, air quality degradation could be increased under this legislation. The residents of my State already suffer due to the impact of a lingering brown cloud. I dread the effects of this bill—doubling our national use of ethanol—on my town and communities across this Nation.

The American public has to pay a lot of money not only in taxes but at the pump for all these negative impacts on the national economy, the country's energy supply, the environment, and public health. The total cost of ethanol to the consumer is about $3 per gallon, and the highway trust fund is deprived of over $1 billion per year to the ethanol producers.

Plain and simple, the ethanol program is highway robbery perpetrated on the American public by Congress. I maintain you cannot claim to be a fiscal conservative and support the profligate spending and corporate welfare in this bill.

Mr. President, I will talk just for a minute about another problem I had with this bill, the way it was developed. A secretive, exclusive process has led to a 1,200-page monstrosity that is chock full of special interest giveaways and exemptions from environmental and other laws that, frankly, cannot withstand the light of scrutiny.

I mentioned one such provision earlier. It is a glaring example of corporate favors. Section 637 carves out a very special deal for a consortium of energy companies, predominantly foreign owned, called Louisiana Energy Services, which would allow it to construct a uranium enrichment plant in a small town in New Mexico at taxpayers' expense—to the tune of $500 million to $1 billion. This is not your ordinary pork project; it is in a class almost by itself.

Louisiana Energy Services has had some serious difficulties getting a license from the Nuclear Regulatory Commission, and for good reason. One major British partner of this group was fired by the Department of Energy from a $7 billion cleanup contract due to safety and financial failures. Even more disturbing, the major French partner, Urenco, has been associated with leaks of uranium enrichment technology to Iran, Iraq, North Korea, and Pakistan. One high-level U.S. nuclear security administrator stated:

[T]o have this company operate in the U.S. after it was the source of sensitive technology reaching foreign powers does raise serious concerns.

There is significant reason to believe the NRC would not issue a license to this group of companies. And communities in other States did not want the LES facility in their backyard.

This bill gives LES a helping hand in New Mexico. The criteria for NRC licensing and the time period for review have been modified to make it easier and quicker for LES to get a license. Opportunities for challenges on environmental or other grounds would be severely restricted. And if you are wondering how sweet it could possibly get for this company, the uranium waste from the plant would be reclassified as low-level radioactive waste and the cost of disposal would be borne by the Department of Energy—the taxpayers of America.

Furthermore, there isn't any disposal method or site currently available. This provision, which was inserted in conference at the eleventh hour, is the epitome of corporate welfare. Allowing foreign companies with questionable reputations to circumvent long-standing environmental and nuclear regulations is simply wrong.

Let me quote from a few of the many editorials opposing this bill. I have never seen anything quite like this level of agreement in newspapers representing all regions of the country. In fact, I have yet to see a single editorial in favor of this, although I am sure there is one.

The Philadelphia Inquirer:

. . . what most Americans were looking for was an energy bill that protected their interests. . . . Instead they got this unbalanced, shameful mess.

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

Mr. BINGAMAN. I yield the Senator an additional 30 seconds.

Mr. McCAIN. From the Chicago Tribune:

Neither the contents nor the process for cobbling it together suggest this is the type of energy legislation this country needs.

The Denver Post:

. . . the most pernicious pork got added in conference committee. Congress should start over next year.

Mr. President, let's put this up against the backdrop of a $500 billion deficit we are facing this year, with 12 percent growth of the Government. Don't call yourself a fiscal conservative and vote for this bill.

The PRESIDING OFFICER (Mr. CHAFEE). Who yields time?

Mr. CRAIG. How much time remains on each side?

The PRESIDING OFFICER. Fourteen minutes to the Senator from Idaho, and 20½ minutes for the junior Senator from New Mexico.

Mr. CRAIG. Do you want to go to another speaker?

Mr. BINGAMAN. I yield 4 minutes to the Senator from Washington, Ms. CANTWELL.

Ms. CANTWELL. Mr. President, I know we have had a healthy debate on this issue and in a few minutes we will probably have one of the closest votes this body has seen in a while. But I want to make one point clear this morning. This vote is about whose side you are on: Whether you are on the side of ratepayers and consumers in making sure we have a national energy policy that works or whether you are going to give in to the special interests who are at this very moment trying to put last-minute deals on the table, ripening other bills with projects that will convince Members to switch over at the last minute instead of standing up for the public.

When the Vice President started this effort, he said, ''We are going to have a national energy policy,'' quoting from his report that a lot of people took pride in, thinking that somehow this administration was going to play a leadership role in an energy policy for the 21st century.

In that report, the Vice President said:

It envisions a comprehensive long-term strategy that uses leading edge technology to produce an integrated energy, environmental, and economic policy to achieve a 21st century quality of life, enhanced by renewable energy and a clean environment. We must modernize conservation, modernize our infrastructure, increase energy supply, including renewables, accelerate the protection and improvement of our environment, and increase greater energy security.

That is what the Vice President's goal and objectives were. Unfortunately, this bill cannot defy gravity. It is so weighted down with special interest pork subsidies and things that Americans are going to be shocked to see that this bill needs to fail.

We have all heard about the subsidies in the wrong place, $23 billion in incentives, mostly going to the fossil fuel industry. We have heard about the exemptions for Texas. Here it is that we are trying to come up with an electricity title that somehow makes everybody else more responsible and accountable with electricity, but we are going to exempt Texas.

Also, the overturning of various environmental laws—why is it that every other business in America, whether a high-tech firm or a farmer, has to comply with environmental laws, but somehow we are going to let new construction of oil, gas, and coal out of the mandates of the Clean Air Act, the Clean Water Act, the Safe Drinking Water Act, and some of our rules on public lands?

As I said yesterday, one of the biggest tragedies of this bill is the missed opportunity for jobs. We could have gotten language in this bill that would have provided for a natural gas pipeline out of Alaska that would have benefited many in this country as far as job creation is concerned. It would have benefited many of us in the Northwest in getting off our overreliance on hydro energy.

We missed an opportunity in planning for the hydrogen economy; 750,000 jobs could have been created in the next 10 years by having a vision. Not just one line in a State of the Union speech about a hydrogen car, but instead a plan with specifics and incentives so the United States could be a world leader in the hydrogen fuel economy. That is not what is in this bill.

I woke up this morning to read in the Seattle Post-Intelligencer online an article that was entitled ''The Energy Bill, It Would Be A Hoot, If It Wasn't So Sad.''

In that article it says :

Vice President Dick Cheney, whose secretive energy task force crafted much of the energy bill in consultation with industry executives, is coming to our Washington next month for a GOP fundraiser.

I would advise the Vice President not to come and talk about his energy policy in the Northwest.

Curiously, the Senate yesterday debated the energy bill and its subsidies in a virtual media blackout.

The PRESIDING OFFICER. The Senator has used 4 minutes.

Ms. CANTWELL. I ask for an additional 30 seconds.

Mr. BINGAMAN. We yield the Senator an additional 30 seconds.

Ms. CANTWELL. This bill hasn't gotten the attention it deserves. But one thing is clear: Members are going to be held accountable for whose side they are on. The energy policy of this administration has fleeced Northwest ratepayers from essential dollars and now this bill promulgates that policy further by giving in to special interests. This bill should fail.

The PRESIDING OFFICER. The minority leader.

Mr. DASCHLE. Mr. President, I will use my leader time so as not to take away from the time allotted to those who still wish to speak.

America needs a comprehensive national energy plan that increases our energy independence, that creates jobs, that lowers energy prices for consumers, and that is environmentally and fiscally responsible.

We have been trying in the Senate for 3 years to pass such a plan.

Regrettably, this is not that plan.

This plan will move America forward in some ways. But it falls far short of a comprehensive approach to America's energy needs. In fact, it does not even attempt to address some of our most pressing problems. And it is extremely generous to a variety of special interests.

I am greatly disappointed by the number of opportunities we are missing here.

This bill fails to significantly reduce America's growing dependence on foreign oil.

Today, our Nation imports 60 percent of our oil, much of it from some of the most volatile and dangerous areas on Earth. Over the next 10 years, the United States is expected to consumer roughly 1.5 trillion gallons of gasoline.

The Republicans in the House and Senate who wrote this conference report actually rejected measures that

would have reduced our dependence on foreign oil.

They rejected efforts to mandate oil savings.

The authors of this conference report also rejected a common-sense plan to address America's projected natural gas shortage.

They killed tax incentives needed for construction of a pipeline to bring natural gas from Alaska to the lower 48 States.

The provision, which was contained in the Senate passed bill, was dropped in conference. And, when Senator BINGAMAN offered a motion in conference to restore it—in the one meeting of Conferees to discuss substantive issues—that motion was defeated on a straight party line vote, with the seven Republican Senate conferees voting against it.

The Alaska Natural Gas Pipeline would have been the largest construction project ever in this country. It would have brought down 35 trillion cubic feet of known natural gas reserves on the North Slope of Alaska. Right now, we are paying to pump that gas back into the ground because there is no way to get it to the American consumers who need it.

The pipeline would also have created 400,000 good jobs and used an estimated 5 million tons of U.S. steel. It would have reduced our dependence on foreign oil by bringing Alaska gas directly to the Midwest.

This conference report also fails to address the problems that led to the catastrophic energy crisis California experienced, and the blackout that left nearly one-third of the country without electricity this past summer.

In addition, this bill actually repeals existing consumer protections—and does nothing to prevent a repeat of the Enron schemes that cost consumers hundreds of millions of dollars. In fact, this bill could make such schemes more likely by tying the hands of regulators.

This bill fails to include a renewable portfolio standard that would diversify America's sources of electricity. The Senate-passed energy bill includes a requirement that 10 percent of America's electricity come from renewable sources, such as wind and solar. This would increase our energy security and create new jobs and opportunities in America's rural communities.

The people who wrote this bill ignored 53 Senators who said this provision should be in the final bill.

Last year, and again this year, the Senate passed energy bills that reflected the growing scientific and bipartisan consensus that the threat of global climate change is real and, unless we act, will have devastating consequences for our children and grandchildren.

This bill simply ignores that fact.

Many important provisions that the Senate passed with strong bipartisan support are nowhere to be found in this bill.

But there are many provisions that are in this conference report that were not even debated in either the House or the Senate. They were simply added in a back room.

One of the most egregious is the retroactive liability protections for MTBE manufacturers.

Forty-three states have problems with contaminated groundwater as a result of MTBE.

The National Conference of Mayors estimates clean-up costs at $29 billion. This bill dumps those costs on local taxpayers, by granting immunity from liability to the polluters.

In fact, this bill provides retroactive liability protection to MTBE producers dating back to September 5 of this year.

It is no coincidence that this is one day before the State of New Hampshire filed its lawsuit against companies responsible for the contamination of groundwater by MTBE.

The authors of this conference report know that provisions like this could not survive open debate. That is why they chose to write this bill in secret.

This process began in secrecy—with Vice President CHENEY's energy task force. And it ended in secrecy.

Democrats in Congress were shut out. The American people were shut out. That is not the way to debate a matter that is so critical to our Nation's security.

Even with these obstacles, we were able to make some important improvements over the bill we were originally given.

Against great odds, we succeeded in protecting the Arctic National Wildlife Refuge from oil drilling.

We increased efficiency standards for appliances and machinery, and increased investments in research and development of new energy-saving technologies.

This bill also makes an historic commitment to expanding the use of renewable energy sources by nearly tripling the use of ethanol.

This is important to the people of South Dakota and many other farm States. And it is important to our national energy security.

A year and a half ago, President Bush came to South Dakota. We visited an ethanol plant in Wentworth. The President said: ''[ethanol is] important for the agricultural sector of our economy, it's an important part of making sure we become less reliant on foreign sources of energy.''

I agree. I've been fighting for ethanol and other renewable fuels for over 20 years.

Nearly tripling America's use of ethanol will create 214,000 new jobs and produce $5.3 billion in new investments in America.

It will significantly reduce greenhouse gas emissions. And it will save $4 billion in imported oil each year.

Ethanol comes from American farmers and producers, passes through American refiners, and fuels American energy needs. No soldier will have to fight overseas to protect them. And no international cartel can turn off the spigot on us.

I understand and respect my colleagues who oppose this bill. There is much in this conference report that is objectionable.

Despite secrecy, the partisanship and the shortcomings in this bill, I will vote to invoke cloture—reluctantly—because America needs to improve its energy situation, and I think this proposal takes a few small steps forward.

However, the people who wrote this bill must understand that a vote for this bill is not a vote of support for their radical energy agenda that some of it includes.

We can—indeed must—revisit the shortcomings in this bill. We must reexamine the MTBE liability waiver, the effects of this legislation on environmental laws and consumer protections.

I intend to press these issues in the next session of this Congress and for as long as it takes to get it right.

So I will vote for this bill. But I tell my colleagues—especially those who were involved in its drafting—that this bill could have been much better, and the American people deserve better from us in the future.

I yield the floor.

The PRESIDING OFFICER. The Senator from Idaho is recognized.

Mr. CRAIG. Mr. President, I commend to my colleagues the 9th Report on Carcinogens 2000, as it relates to MTBE. This report is a product of the U.S. Department of Health and Human Services, Public Health Service, which says that it is not carcinogenic. It is a true ground water pollutant, but there is no indication of a carcinogenic effect.

Mr. DOMENICI. How much time remains on each side?

The PRESIDING OFFICER. There are 14 minutes for the Senator from New Mexico, and 15½ minutes for the other side.

Mr. BINGAMAN. Mr. President, I yield 4 minutes to the Senator from New York, Mr. SCHUMER.

Mr. SCHUMER. Mr. President, I rise in strong opposition to this legislation, and I have fervent hopes that we will not invoke cloture.

Mr. President, this bill is bad for what is in it and bad for what is not in it. I don't know which is worse. It is bad for what is in it because there are so many provisions that don't make much sense that are done to help one State or another but don't really add up to a national policy.

It is particularly bad for what is in it because the MTBE provision is one of the worst provisions that has come down the legislative pike in decades. To tell homeowners who have lost their homes that they cannot take a shower, cannot drink the water and, through no fault of their own, they are out of luck, that their life savings which they invested in their little homes is gone—

even though the MTBE producers knew the stuff was bad and didn't inform anybody—is an outrage.

Some say the Government authorized MTBE. Then let the Government help the homeowners if you don't want to have the oil companies, the MTBE producers, be sued. But don't leave tens of thousands today, and hundreds of thousands within a few years, of homeowners high and dry. I am not a big fan of lawsuits all the time, as my colleagues know. But if there were ever a case where lawsuits were justified, it is in this case. To cut them off, and to cut them off retroactively, is dastardly.

In addition, there is no energy policy in this bill. We have had the triple storm: we have had 9/11; we have had Enron, we have had the blackout. And we do virtually nothing to deal with the aftermath of all three of those.

There is no conservation in the bill. There is no real dealing with the Enron excesses. When it comes to the blackout, we take a baby step that utilities okayed but not what we have to do. Great nations have failed when faced with a crisis and they refused to grapple with it. That is what is happening here.

This bill, whether it passes or fails, will be deeply regretted 5 years from now for what it does and what it does not do.

Mr. President, when pork is used to grease a policy along, well, that is not good. But when pork is used as a substitute for policy, that can be disastrous. I argue that in this case that is what has happened. I had wished that we had a real energy policy in this bill.

My colleagues are all people of good faith. Both Senators from New Mexico, the Senator from Iowa, and the Senator from Montana have all tried their best. Unfortunately, at a time when America demands a thoughtful and far-reaching energy policy, this proposal, instead, delivers little bags of goodies to some individuals, not others, and says that is a substitute for policy.

I hope the bill is defeated.

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

The Senator from Iowa.

Mr. GRASSLEY. Mr. President, I yield myself 4 minutes out of the time allotted to Senator DOMENICI.

Unlike my colleague and supporter of ethanol, Senator DASCHLE—and he is a big supporter of ethanol—I am not reluctant to vote for cloture because if we don't get cloture on this bill, we will never have the opportunity to get renewable fuels and the environmental impact of those renewable fuels and what it does for American agriculture. This is the best thing for renewable fuels and ethanol that we have had before this Congress in 25 years.

This is an opportunity for people to decide: Are they for the farmers or are they against the farmers? This bill, for the most part, is very good for the green growing regions of the Midwest. The choice is easy. This bill contains those production incentives for ethanol, biodiesel, and other renewable energy sources—the best ever for Senators from other energy-producing regions, such as the gulf States, the Southwest, the Rocky Mountains, and the Appalachians. The bill moves the ball forward for energy production.

The Finance Committee has a history in the area of energy-related tax policy. Almost one decade ago, my committee put its imprint on a comprehensive energy-related tax policy. The bill the committee produced strikes a very good balance between conventional energy, alternative renewable energies, and conservation.

I thank Senator BAUCUS for working with me and every member of this committee on its priorities. I also thank the Democratic staff for its hard work in helping us put together a bipartisan bill that may now be destroyed because of a Democratic filibuster.

First and foremost, we have an expansion of production credit for wind energy. Back in 1992, I was the first to offer this proposal. Now we have an important expansion of this production credit to cover, in addition to wind, biomass, geothermal, and solar energy. As the President has wisely said, as a matter of national security, we need to reduce our dependence on foreign oil. That means all domestic energy sources—green or otherwise—are fair game.

Along those lines, we have a new tax credit for biodiesel fuel that is included in this bill. The conference report contains several provisions that enhance tax incentives for ethanol production because it is a clean-burning fuel that will continue to be a key element in our transportation fuel needs.

We also remove in this bill the prejudice against ethanol for highway trust fund purposes by providing a tax credit for ethanol production. When we complete our work on the highway bill next year, ethanol fuels will pay the full gas tax into the highway trust fund.

This bill also provides an effective small producer tax credit.

With this bill, ethanol will be treated as all other energy incentives. It will be derived from the general fund. Ultimately, all communities, rural and urban, will get more highway money if this bill passes. If you care about highway money for your local roads, you should vote for cloture.

There are a number of other good provisions in this bill that benefit agriculture, clean coal, and new technologies for gas production. The bill, in other words, is balanced with new energy conservation measures, as well as alternative renewable fuels.

We have an opportunity—almost the last opportunity—to do what it takes to get this bill passed. We are responding to national priorities. There is no going back to the House for another chance.

I ask all Senators to think long and hard about what this vote today represents. This is an historical moment. It is as if we are on the last steps of a trail to the top of a big mountain that we have climbed. We can either take the next few steps and enjoy the view or we can jump off the side of the mountain. There is no going back down the trail.

For Senators from my part of the world, the grain growing regions of the Midwest, the choice is easy. This bill contains production incentives for ethanol, biodiesel and other renewable energy sources. We are for farmers they are against farmers. For Senators from other energy-producing regions, like the Gulf States, the Southwest, the Rocky Mountains, and the Appalachians, this bill moves the ball forward on energy production.

The Finance Committee has a distinct history in the area of energy-related tax policy. Almost one decade ago, this committee put its imprint on comprehensive energy-related tax policy. Then, as now, the bill the committee produced strikes a balance between conventional energy sources, alternative energy, and conservation.

I would like to thank Senator BAUCUS for working with me and every member of this committee on their priorities. I would also like to thank the Finance Committee Democratic staff for the hard work they have put in to get us here.

First and foremost, we have an extension and expansion of the production credit for wind energy. Back in 1992, I was the first to offer this proposal to the Senate. Now, we have an important expansion of this production credit to cover biomass, geothermal wells and solar energy.

As the President has wisely said, as a matter of national security, we need to reduce our dependence on foreign oil. That means all domestic energy sources, green and otherwise, are fair game. Along those lines, we have a new tax credit for bio diesel fuels that will be included in this bill.

The conference report contains several provisions that enhance the tax incentives for ethanol production. Ethanol is a clean burning fuel that will continue to be a key element in our transportation fuels policy.

We remove the prejudice against ethanol for highway trust fund purposes by providing a tax credit for ethanol production. When we complete our work on the highway bill next year, ethanol fuels will pay the full gas tax into the highway trust fund. We are most of the way there. This bill also provides an effective small producer tax credit. With this bill, ethanol will be treated as all other energy incentives. It will be derived from the general fund.Ultimately, all communities, rural and urban, will get more highway money if this bill passes. If you care about highway money for your local roads, you should vote for cloture.

There are a number of other very good proposals in the conference report. They benefit agriculture, clean

coal, and new technologies for gas production. The bill is balanced with new energy conservation measures as well.

So, to sum up, we have an opportunity to do what we should do. We are responding to a national priority, energy security, in a balanced and comprehensive way. Let there be no mistake about it, Mr. President. A vote against cloture is a vote to stop this bill. There is no going back to the House for another chance. There is no going back to conference with the House with the leverage the energy-producing States had on this bill. As the lead negotiator on the Senate side for the tax provisions, let me tell you it was not easy. The Ways and Means Committee likes oil—they don't like clean-burning ethanol. It was a difficult conference. We will not get this chance again.

So, for my friends on both sides of the aisle, especially those from the Midwest, this is the time to show your cards. You can show whether you are with farmers or with other interests.

As I said, at the start, we are on the last steps of the trail to the mountain top. There is no looking back now. A vote for cloture completes the journey.

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

Mr. GRASSLEY. We either pass this bill or the good provisions in it for ethanol are lost forever.

The PRESIDING OFFICER. Who yields time?

Mr. BINGAMAN. Mr. President, I yield 5 minutes to the Senator from Illinois, Mr. DURBIN.

The PRESIDING OFFICER. The Senator from Illinois.

Mr. DURBIN. I thank the ranking member for yielding. I spoke on 2 successive days on this bill, and I feel strongly about it. I spent 20 years in Congress supporting ethanol and I believe in it. I think it is important to help our farm economy, reduce pollution, and reduce our dependence on foreign oil. There is no doubt this bill would greatly expand ethanol across America. That is a good thing. It is something I support.

I cannot support this bill. I cannot support this bill because, frankly, it is fundamentally unfair and unjust and it is unbecoming of the Senate to offer this to America as an energy policy.

When it comes to energy, this bill is a full-scale retreat. This bill fails to include any provisions whatsoever to deal with fuel efficiency and fuel economy of the cars and trucks we drive. How can we in good conscience stand before the American people and say this is an Energy bill for our future and not address the No. 1 consumption of energy, oil imported from overseas—the cars and trucks that we drive? Why? Because the special interest groups that oppose fuel efficiency and fuel economy won the battle. They won the argument. The American people were the losers.

There is another aspect to this bill which troubles me. This bill is a full-scale retreat when it comes to environmental protection for America. Think about this for a moment. Every major environmental group in America opposes this Energy bill. What has brought them all together? The fact that in the course of negotiating this bill, those few people sat in that secret room, gave away the Clean Air Act, the Clean Water Act, access to America's public lands, and the natural heritage which we helped to leave to our children. That is what is at stake. To walk away from basic environmental protection in the name of promoting energy is a bad deal for America's future.

To think for a moment that we have reached a point in time where China—this new developing Nation, China—has more and better fuel efficiency standards than the United States of America should be a supreme embarrassment to everyone in this Chamber.

This bill is a gusher of giveaways. We are going to build a nuclear reactor. We are going to start building coal mines in some States. We are going to build all sorts of shopping centers. It goes on and on. I am no babe in the woods. I have served in Congress and on the Appropriations Committee long enough to tell you I have an appetite for pork like every Member of the Senate and the House, but I have to agree with the Senator from New York. If giveaways turn out to be a substitute for energy policy, then we have defrauded the American public. We need to have leadership on this issue, and we do not.

The single worst part of this bill, as far as I am concerned, the most shameless aspect of this bill is found in section 1502. It is the most egregious giveaway I have ever seen in my time on Capitol Hill because in a dark room, the people who wrote this conference report said to the major oil companies and some major chemical companies that they would protect them from liability for the very product which they sold, which has contaminated water supplies across America.

Think about that for a moment. They have said that for families and individuals whose health and homes have been damaged by MTBE as a contaminant, they are going to close the courthouse doors. They are going to lock the doors and say to those families: You are going to have to bear these losses and these medical bills on your own. That is shameless. To think it is included in here should be enough for every Senator to vote against this bill.

To add insult to this injury, there is a $2 billion Federal subsidy for the MTBE producers and industry, not just protecting them in court for their wrongdoing but giving them a lavish Federal subsidy.

What does it come down to? Who are the big winners in this bill? It is obvious: Big oil companies, big energy companies, high rollers on K Street, and the muscle men on Capitol Hill.

Who are the big losers in this bill? Families with kids who have asthma, who will find more air pollution, which will mean that their kids have to stay home from school; families with water supplies contaminated by MTBE, which make their homes uninhabitable and they have no recourse to go to court to hold these oil companies accountable.

Basically, the biggest loser in this bill is Americans who expected more from this Congress, who expected leadership and vision and instead have a very sorry work product which should be defeated.

The PRESIDING OFFICER. The Senator's time has expired. Who yields time?

Mr. BINGAMAN. Mr. President, how much time remains on the two sides?

The PRESIDING OFFICER. The junior Senator from New Mexico has 6½ minutes. The senior Senator from New Mexico has 9 minutes 45 seconds.

Mr. BINGAMAN. I suggest the absence of a quorum and ask that the time be equally divided.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. BINGAMAN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

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

Mr. BINGAMAN. Mr. President, we have come to the point of deciding whether to vote to send this bill to the President for his signature or to effectively set this conference report aside, regroup, and pursue another strategy.

Those of us who are about to vote against cloture do so not because we are against having an Energy bill but because we are against having this Energy bill. A view has been stated over the last few days that this particular conference report, even with its problematic provisions and its excess spending, is the only option available if we wish to deal with energy problems in this Congress.

It is argued that if we do not pass this bill today, then energy is dead as an issue for this Congress. In my view, that is not a logical conclusion to reach. We are not at the end of this Congress. We are reaching the midpoint in this Congress. There is nothing magical about having to pass energy legislation in odd-numbered years.

The Energy Policy Act of 1992, which was the last fairly comprehensive bill passed through this Congress, was put to final passage a few weeks before the Presidential election in that year.

There is a broad consensus in the Senate for enacting forward-looking energy legislation. We know this is true. Three and a half months ago, we passed an Energy bill by a margin of 84 to 14. That bill would have made 35 trillion cubic feet of Alaskan natural gas available to the country, which this conference report would not. That bill would have saved twice as much energy as this conference report is projected to save. That bill gave a real

boost to renewable energy in the production of electricity. It took a modest first step toward dealing with the reality of global warming. It did not undercut the National Environmental Policy Act. It did not roll back the Clean Air Act. It did not exempt anyone from the Clean Water Act. It was $10 billion lighter on the tax side than this legislation before us. It was another $3 billion lighter on the direct spending portion of the bill. It did not unfairly shift all of the costs of building new electric transmission to consumers who do not get the full benefit of that transmission. It did not contain embarrassing tax giveaways such as a proposal to build a mall for a Hooters restaurant. It was a reasonably good bill.

I have served on the Committee on Energy and Natural Resources for 19 years. That is longer than any Member of my party in the Senate. I did not get on that committee to filibuster Energy bills. I went on the committee to pass good energy legislation.

The reason so many of us believe we should not proceed to pass this Energy bill is that many of the provisions that caused the earlier bill I referred to to pass with 84 votes 3½ months ago have been deleted in conference and an array of irrelevant and objectionable provisions have been added. It is almost as if a calculation had been made that as long as we stuck ethanol provisions into the bill and kept provisions out that would open the Arctic National Wildlife Refuge to drilling, then there would be 60 votes for passage of the bill and no one would look too much at the other details and no one would be concerned about the other effects of the legislation.

Well, we are about to test that proposition. I hope it turns out to be wrong. If it turns out to be a miscalculation and cloture cannot be invoked on this bill this morning, then our job on energy will not be done in this Congress. In fact, this may be an opportunity to get things back on a better and a more bipartisan track.

Both sides have made their share of mistakes in assembling massive Energy bills in this Congress and in the last Congress. Yesterday, Senator NICKLES criticized the process Democrats used in the last Congress to move an Energy bill directly to the floor, and many of those criticisms were valid. Throughout this Congress and at each stage, we Democrats have tried to make a constructive contribution to the bill, even in spite of the flawed process that has seemed excessively partisan and closed to us and to the public, but now we are faced with a choice of voting for or against the bill in its totality. Those who oppose cloture, both Democrats and Republicans, choose to do so because in its totality the conference report will not lead us to an energy future that is secure, clean, affordable, and fiscally responsible.

If this conference report is rejected, I for one will continue to push for the enactment of a good, comprehensive energy policy. It may be that having tried twice to do so with thousand-page bills and failed, Congress should look at smaller legislation.

I hope this conference report is rejected and, once the dust settles, we can find a way to move forward with forward-looking legislation.

I yield the floor.

The PRESIDING OFFICER. Who yields time?

The Senator from New Mexico.

Mr. DOMENICI. How much time do I have remaining?

The PRESIDING OFFICER. Nine minutes.

Mr. DOMENICI. I yield 1 minute to Senator BURNS.

The PRESIDING OFFICER. The Senator from Montana.

Mr. BURNS. Mr. President, I thank my good friend from New Mexico for yielding.

I want to say one thing, and that is that the general premise of this bill is in the right direction. The emphasis is on renewables and things we can do that are good for the environment and still produce energy. All this other chaff and dust that has been kicked up around it that gives opponents such a move in the right direction can be dealt with later, but the general premise of the bill is good because a balance is there in the areas in which most of us really believe.

Let us not take our eye off the ball. Let us move it on down the field under a premise of developing a policy and a way to not only deal with the environment but also produce energy.

I tell my colleagues, we can deal with those things that are objectionable at a later time, but we must move in this kind of a direction.

I yield the floor.

The PRESIDING OFFICER. The Senator from New Mexico.

Mr. DOMENICI. Has Senator Burn's minute expired?

The PRESIDING OFFICER. Yes.

Mr. DOMENICI. Mr. President, first of all, there are a lot of people to thank for getting us where we are. We are a long way from where we started. I want to thank them. In particular, on the Democratic side I thank the distinguished Senator from Louisiana—from the very beginning; thank you very much for all your help and all the others who put a lot of work into this.

I regret very much the statements that this bill was done in privacy and secrecy, in some way different in terms of a conference than most conferences around here. But I would like to tell the Senate, energy is a big hole in the Congress. Energy policy is a big hole, and we keep dropping problems in it but we never solve them.

Everyone talks about conservation and renewables, but we happen to be talking about those and production. As soon as you start talking about production, somebody produces and they are certainly not nonprofit corporations. So as soon as you say ''produce and we'll give you an incentive,'' you are ''giving money to big companies.'' You are giving it to companies who will do the job and wouldn't otherwise do it.

I want to repeat, for everybody, the history. Last year we could not write a bill in committee. Think of that. My good friend, Senator BINGAMAN, talks about how poorly we conducted ourselves. They couldn't write a bill in committee. So we wrote it on the Senate floor. Do you all remember that? We were down here, humiliated that we had to write an Energy bill on the Senate floor because we couldn't write it in committee.

Then what happened? We went to conference with the House. And, boy, if it was ever a storybook conference, it was wide open. And it took month after month, and guess what happened, Senator BURNS—zero. Nothing was done. So there is another one, the big hole sucked it up. But we did it right. We had a conference. We had it open.

This Senator decided that to do it that way would yield nothing. For the first time I decided that we should write the bill differently and we should circulate it differently. Most of this bill was put on the Internet. In fact, that is the first time in history that a conference report was on the Internet. Anybody who wanted to read this bill had weeks and weeks to read all but the last 15 percent. It was on the Internet. It was delivered to every single office. If you didn't read it, that is not my fault. Then for the last part we gave the opposition 48 hours' notice on the Internet to everybody.

Do you know, this bill was more discussed by the press, piece by piece, than any conference report in the history of America? You will never find a conference report that is reported piecemeal in the media of America.

So where was the clandestine bill? Everybody knew about it. The problem is, just as before, the Democrats didn't like it. Yet they offered amendments. For not knowing anything about it, the distinguished Democrat leader offered 21 amendments, or at least he had them ready. We discussed them. The fact they didn't win them, does that mean the bill is no good? What would you expect when you go to conference? I heard somebody say we should have passed the 15 or 20 percent mandates for renewables. Yes, we should have. We did in our committee. But what do you know about it, the House said no. Not only ''no,'' but ''absolutely no.'' So what do we do, throw the bill out? Of course not.

We have the most powerful renewable provisions in history.

I want to tell everybody the true facts. We have worked harder for the farmers of America than anybody in history. The farmers who are looking to see who is for the farmers, once and for all, you can look to the Republicans, not the Democrats; for the Democrats are leading a parade to kill the most important provision ever thought up for the farmers. The Republicans are here, trying to get it done.

Senator GRASSLEY stood in a corner with his arms out, put on the armor and said, ''It will be this way or we don't have a bill.'' We got it. And guess what. We are just about to throw it away.

If I were the farmers of America, I would ask: Who threw it away? And they are going to all know, the people who killed this bill threw it away. And guess what. Over the last 3 or 4 days, an array of people who build wind energy and solar energy in America walked up to our office. Incidentally, Senator GRASSLEY, before they opened their mouth about the bill, they thanked you because they said all significant wind energy will stop if this bill is not adopted. They didn't say ''tone down; we will come down at half mast.'' They say it stops, because wind energy is predicated upon the credits in this bill, the most significant credits in history; solar energy, the most significant credits in history. Renewables will go faster and farther with this bill than they ever have.

But I don't believe you can leave here today having voted, especially if you vote to kill this bill, and walk out and tell people: Oh, don't worry, we will take care of the farmers next week. Next week is not going to come because I am aware of what it is. You will not get this ethanol bill through the House again. So it is gone and there are some people walking around liking that. Some people have a smile on their face. But I tell you there is no way to get this ethanol bill through the House. I can't imagine another format where Senator GRASSLEY can do what he did and we get this issue out of conference and here.

Then we have all the other things in this bill that we thought were interesting and good for America. They are all falling by the wayside because, for the first time, people have brought an issue called MTBE to the floor and talked about it. The United States House said we ought to hold harmless the product called MTBE—just the product, not people who spill it, not people who cheat with it, not people who, instead of putting it in cars pour it on somebody's lawn—we didn't protect those. We just said the product is OKed by the Environmental Protection Agency, approved by the U.S. Government, and whether I liked it or not, the House said let's hold them harmless for the product itself.

Frankly, I am just beginning to read some stories about the lawsuits on MTBE. In fact, if we had another day at it, I would give you some that would shock you as to what is going on in the United States with these MTBE lawsuits. I can tell you there is one in one State—we got a message on it. Somebody is walking around trying to drum up the lawsuits. It happens to be the chairperson of the bar association of the State. She went to one city that wrote us a letter and said: We told her we are not interested. As far as we know there is no problem in our city with MTBE. Go someplace else and look for your lawsuits. Precisely what I said yesterday—precisely.

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

Mr. DOMENICI. In addition, if you like blackouts, then you vote to kill this bill because this bill provides a clear, absolute remedy for blackouts.

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

Mr. DOMENICI. I thank the Chair. I think the majority leader is here. I yield at this time.

The PRESIDING OFFICER. The majority leader is recognized.

Mr. FRIST. Mr. Leader, on leader time I just have very brief closing comments.

I thank the chairman and the ranking member. They have done a superb job.

Several issues have come up. I want to make it clear that this vote is the vote on the Energy bill and on the energy provisions. People have envisioned that there will be other votes, other opportunities; that if this bill has not passed, we can address some of these issues later in some other form.

First, some have made a procedural argument that if cloture is not invoked this morning, we can simply recommit the bill to conference and strip out a provision or two provisions and then bring it back to the Senate.

Everybody needs to understand that is not an option. The other body, the House, has already approved the conference report and therefore the conference committee has been dissolved. It has been dissolved. There is no motion to recommit available. So this is the vote. If you are for a comprehensive Energy bill, you need to vote for cloture. This is the vote.

Second, there has been some speculation, people have mentioned on the floor, if we do not pass this conference report we will pull out this provision or that provision and enact them separately. I wanted to dispel that idea as well. We are not going to pull apart pieces of this conference report and pass them separately. We are not going to do it. We are either going to pass this Energy bill now or the individual provisions that many Senators favor are not going to become law. It is as simple as that. I just use the example of ethanol because, as everybody knows, I joined the Democratic leader in offering the ethanol amendment on the Senate floor earlier this summer.

I have to say it very clearly that this Energy conference report is the vehicle for ethanol. We are not going to enact that as a stand-alone. We are not going to attach ethanol to another vehicle. To the Senators who favor this strong ethanol provision that we have in this conference report—this is the vote. You vote for cloture if you want to see it actually enacted into law. It is important for people to understand.

In closing, this is a good bill. It is a balanced bill. It will make America more secure. It will make America more energy independent, and, as we all have talked about, it will create jobs. We should pass it now. We should send it to the President. The first step right now with this vote is to invoke cloture.

I yield the floor.

CLOTURE MOTION

The PRESIDING OFFICER. By unanimous consent, pursuant to rule XXII, the Chair lays before the Senate the pending cloture motion, which the clerk will report.

The legislative 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 to the conference report H.R. 6, the energy policy bill to enhance energy conservation and research and development, to provide for security and diversity in the energy supply for the American people, and for other purposes.

Bill Frist, Pete Domenici, John Cornyn, Mike Crapo, Larry Craig, Ben Nighthorse Campbell, Michael B. Enzi, Mike DeWine, Christopher Bond, Robert F. Bennett, Trent Lott, Pat Roberts, Jim Bunning, Mitch McConnell, Richard G. Lugar, Norm Coleman, Conrad Burns.

The PRESIDING OFFICER. By unanimous consent, the quorum call is waived.

The question is, Is it the sense of the Senate that debate on the conference report to accompany H.R. 6 shall be brought to a close?

The yeas and nays are required. The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. REID. I announce that the Senator from North Carolina (Mr. EDWARDS), the Senator from South Carolina (Mr. HOLLINGS), and the Senator from Massachusetts (Mr. KERRY) are necessarily absent.

I further announce that, if present and voting, the Senator from Massachusetts (Mr. KERRY) would vote ''nay.''

The yeas and nays resulted—yeas 57, nays 40, as follows:

[Rollcall Vote No. 456 Leg.]

YEAS—57

Alexander	Dayton	Lott
Allard	DeWine	Lugar
Allen	Dole	McConnell
Baucus	Domenici	Miller
Bennett	Dorgan	Murkowski
Bond	Ensign	Nelson (NE)
Breaux	Enzi	Nickles
Brownback	Fitzgerald	Pryor
Bunning	Graham (SC)	Roberts
Burns	Grassley	Santorum
Campbell	Hagel	Sessions
Chambliss	Harkin	Shelby
Cochran	Hatch	Smith
Coleman	Hutchison	Specter
Conrad	Inhofe	Stevens
Cornyn	Johnson	Talent
Craig	Kyl	Thomas
Crapo	Landrieu	Voinovich
Daschle	Lincoln	Warner

NAYS—40

Akaka	Cantwell	Dodd
Bayh	Carper	Durbin
Biden	Chafee	Feingold
Bingaman	Clinton	Feinstein
Boxer	Collins	Frist
Byrd	Corzine	Graham (FL)

Gregg	Lieberman	Sarbanes
Inouye	McCain	Schumer
Jeffords	Mikulski	Snowe
Kennedy	Murray	Stabenow
Kohl	Nelson (FL)	Sununu
Lautenberg	Reed	Wyden
Leahy	Reid	
Levin	Rockefeller	

NOT VOTING—3

Edwards	Hollings	Kerry

The PRESIDING OFFICER (Mr. ENZI). On this vote, the yeas are 57, the nays are 40. Three-fifths of the Senators duly chosen and sworn not having voted in the affirmative, the motion is rejected.

Mr. FRIST. Mr. President, I enter a motion to reconsider the vote by which cloture was not invoked.

The PRESIDING OFFICER. The motion is entered.

Mr. FRIST. Mr. President, the vote, prior to switching my vote for procedural reasons, was 58 to 39; thus, two votes short for invoking cloture. As I said just prior to the vote, America needs a comprehensive national energy policy, and we need it now. Congress has been debating this energy issue for a long time, for nearly 3 years. It is now time for us to stop talking and to deliver to the American people.

I truly believe the bill before us, that the chairman and the other members on the Energy Committee have worked so hard to produce, is a fair bill. It is a balanced bill. It addresses everything from future blackouts to the whole discussion on development of a wide range of reliable energy resources. Now is the time for us to act.

I am very disappointed that we are, at this point, two votes short; that we are facing another filibuster on a very important policy for the American people. I do want to let colleagues know that this will not be the last vote that we have on this bill. We are going to keep voting until we pass it so we get it to the President's desk. We will have at least one more vote before we leave the early part of next week on stopping this filibuster. I don't know when that vote will be, but we will have at least one more vote. I hope we will respond at that time by giving the American people the energy security, the economic security, and the job security that they deserve.

INTELLIGENCE AUTHORIZATION ACT FOR FISCAL YEAR 2004—CONFERENCE REPORT

Mr. FRIST. Mr. President, I now move to proceed to the consideration of H.R. 2417, the Intelligence authorization conference report. Before the Chair puts the question, this conference report has been cleared on both sides, and I hope that we can finish action on it very quickly.

The PRESIDING OFFICER. The question is on agreeing to the motion to proceed.

The Senator from Nevada.

Mr. REID. Mr. President, in response to the leader's statement, we also believe in energy independence and the security of the Nation.

The PRESIDING OFFICER. It is not a debatable motion.

Mr. REID. Fine. I will withhold.

The PRESIDING OFFICER. The question is on agreeing to the motion to proceed.

The motion was agreed to.

The PRESIDING OFFICER. The report will be stated.

The legislative clerk read as follows:

The Committee of Conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 2417) to authorize appropriations for fiscal year 2004 for intelligence and intelligence-related activities of the United States Government, the Community Management Account, and the Central Intelligence Agency Retirement and Disability System, and for other purposes, having met, have agreed that the House recede from its disagreement to the amendment of the Senate, and agree to the same with an amendment and the Senate agree to the same, signed by a majority of the conferees on the part of both Houses.

The Senate proceeded to consider the conference report.

(The conference report is printed in the House proceedings of the RECORD of November 19, 2003.)

Mr. FRIST. Mr. President, I am happy to yield to the distinguished assistant Democratic leader for a question.

ENERGY POLICY ACT

Mr. REID. Mr. President, I say through the Chair to my colleagues, we also believe in energy independence. We also believe in the security of this Nation. This was a bipartisan vote that just took place. I think we would all be well advised, this late in the session, to recognize that we should take this bill back to the committee, conference, if necessary, but I suspect it would be better off going back to committee and coming up with a different piece of legislation. People over here want badly to have a bill. The 58 votes we have are firm votes. It would not be advisable to have a vote, say, on Monday or Sunday. Cloture is not going to be invoked.

But let's assume it were for purposes of this argument. Then we have the situation where there are hours following that debate, and I just think we should recognize where we are. The reality is, it is late in the session. We need to go to some other matters. With this vote, we did the Senate a favor, as everyone knows. There are points of order, rule XXVIII. This bill was going nowhere. We just did it quickly rather than prolong it. It doesn't help the Senate to prolong the inevitable. The inevitable is this bill is history. It is not going to go anyplace.

We really did the Senate a favor. Cloture was not invoked. There are points of order against this bill, as we all know. There would be bipartisan votes on those matters. I think we should go on to something else. This was a very good debate. I think we should look back at this as something that is good for the Senate in the sense that the tone was good, and look forward to the very important issues we have facing us, difficult issues. We have the omnibus bill. We have the important Medicare bill. I hope that we would not prolong things on this much longer because this bill, in its present form, is just not going anyplace.

The PRESIDING OFFICER. The majority leader.

Mr. FRIST. Again, to clarify for our colleagues, two votes short, as I implied in my statement. This policy is too important to the American people for us to desert. So we are going to come back. We are going to come back with another opportunity, after I talk to the Democratic leadership. And we will do that at the appropriate time.

For the information of our colleagues, we will be going to other issues—right now, the Intelligence authorization conference report. It is likely today we will be doing Healthy Forests shortly. We have a lot of business today. Medicare will be addressed shortly. The two Houses will be addressing that today.

It may well be that we will begin to address issues such as Medicare later today and continue debate on energy today and look at both issues over the course of tomorrow.

Again, in the intervening time, we will be addressing issues such as Intelligence, Healthy Forests, and other conference reports as they come to the floor.

The PRESIDING OFFICER. The Democratic leader is recognized.

Mr. DASCHLE. Mr. President, I, too, wish to have an opportunity to comment briefly on the vote we have just taken.

Mr. President, for Senators like me, who support enactment of a comprehensive energy bill, the Senate's failure this morning to break this filibuster was as unnecessary as it is unfortunate.

It is a classic example of insisting on provisions that were simply too much for the traffic to bear.

The Senate's lead negotiator, Senator DOMENICI, was, I believe, prepared to work in good faith with his House counterparts to craft a comprehensive energy bill that could attract broad bipartisan support in this body.

Regrettably, his best intentions were undercut by the cynical manipulations of the House Republican leadership during the conference proceedings, which cut Senator BINGAMAN out of the conference process and produced a product that was a far cry from the bipartisan energy bill that passed the Senate in July.

I am convinced that a true conference would have produced a much more balanced energy bill than that before us today.

Make no mistake, however, the overriding reason for the failure of this bill today was not what I consider to be its disturbing lack of balance between production and conservation or between promotion of fossil fuels and renewable energy sources. It was the House Republican leadership's insistence on inclusion of retroactive liability protections for MTBE shielding MTBE producers from legal exposure.

The provision was not contained in either the House or Senate-passed energy bills. In an effort to aid a major special interest, the House Republicans wrote the provision so that it would specifically invalidate the State of New Hampshire's lawsuit against the MTBE industry.

So it is no surprise that New Hampshire's two Republican Senators chose to filibuster this bill.

The drive to placate a narrow special interest not only came at the expense of the public, it trumped the Republican Party's own legislative strategy.

I personally—on numerous occasions—warned Chairman DOMENICI, Chairman TAUZIN, and others responsible for the closely held Republican energy bill conference deliberations that inclusion of this provision threatened enactment of this legislation.

This scenario has, unfortunately, come to pass, ironically because the inclusion of MTBE liability waiver was the straw that broke the camel's back for many Republicans.

While the drumbeat of recriminations about who bears responsibility for this setback had begun even before the vote, the question I am concerned about is what we can do to enact a comprehensive energy bill quickly.

My first preference would be to adopt something close to the bipartisan energy bill that passed the Senate by overwhelming bipartisan votes in the current and past Congresses under the leadership of both parties. But experience tells us that won't happen.

While I fully appreciate that the current bill without MTBE liability relief would still be objectionable to many Senators, there should be no doubt that if this provision was not included, the bill would pass the Senate today and be enacted into law.

Therefore, Mr. President, I call on the White House, and the House and Senate Republican leadership, to join with me to immediately strip out the offending safe harbor language now in the bill.

Further, as a demonstration of good will, I propose that safe harbor language be eliminated for ethanol as well as MTBE.

Once these changes are made, the comprehensive energy bill could be brought back to the Senate and the House, either as a new conference report or as part of the Omnibus Appropriations bill now being readied for final passage in both Chambers.

This simple action would have this energy bill, as imperfect as it is, ready for the President's signature yet this session.

I yield the floor.

Mr. INOUYE. Mr. President, after much deliberation, I have decided to oppose the conference report to H.R. 6, the Energy Policy Act.

The conference report before us today is a serious departure from the comprehensive and balanced approach to energy policy passed by the U.S. Senate earlier this year by an overwhelming bipartisan vote of 84 to 14. The Senate bill carefully weighed many competing interests and struck a fair and even-handed balance that would have strengthened our national security, safeguarded consumers, and protected the environment.

The conference report has tipped the studied balance of the Senate bill drastically in favor of short-term business interests. Regrettably, I am not surprised by the sweeping changes made to the Senate bill because the conference report was prepared by the Republican leadership behind closed doors, without the participation of their Democratic counterparts. Under these circumstances, one cannot be surprised that balance was lost, and a flawed conference report emerged.

Upon review of the bill, I was initially pleased to note its positive aspects. My completed review of the conference report, however, revealed that these few beneficial provisions were far outweighed by the many items injurious to the American people as a whole. The conference report erodes the careful web of environmental protections that safeguard the public health and our natural resources. It promotes a static energy industry by failing both to encourage the development of alternate fuel sources and energy efficient technologies, and does nothing to police the energy industry to prevent a recurrence of the Enron debacle. For example, the conference report does not include the broad, effective prohibitions against price gouging schemes used by Enron and other energy trading firms, included in the Senate version of the Energy bill.

As science has helped to illuminate the negative impacts of environmental pollutants on public health, Congress has responded by enacting a series of statutory protections designed to safeguard the American people by restricting the levels of pollutants that enter our environment. The conference report substantially undermines these protections.

For example, the report would exempt three major metropolitan areas from meeting the Clean Air Act's ozone-smog standard. While industry in these areas may enjoy a respite as a result of the conference report, people with asthma and other respiratory diseases will not. Moreover, it should be noted that this particular provision appeared for the first time in the conference report, and was never debated by the Senate or the House. Without such debate, my colleagues and I are unable to judge whether there are any mitigating factors that might justify a rollback of the Clean Air Act in these three cases.

Of direct concern to my home state of Hawaii is the treatment of methyl tertiary butyl ether, MTBE, and producers of this common gasoline additive. As a fuel additive, MTBE helps gasoline to burn more cleanly, but outside of our gas tanks, MTBE is a proven cancer causing agent that has contaminated groundwater supplies across the country. In Hawaii alone, there are approximately 500 known contamination sites, and in a state completely dependent on its isolated groundwater, this is an alarming statistic. Under this conference report, the State and its counties would have no legal recourse against the producers of MTBE for the expensive process of environmental cleanup, including the remediation and clean up of contaminated soil, water supplies and wells.

The conference report also exempts all construction activities at oil and gas drilling sites from coverage under the Clean Water Act. It goes further and completely removes hydraulic fracturing—an underground oil and gas recovery method from coverage under the Safe Drinking Water Act. Domestic oil and gas production contributes significantly to the short-term security of our national energy infrastructure, but I do not believe that our security interests outweigh our health interests. Nor do I believe that conventional fuel sources can ever provide a long-term solution to our energy security.

As a further blow to ongoing efforts to reduce our nation's dependence on conventional fuels, the Republican conferees dropped Senate-passed provisions that would have encouraged further research, development, and demonstrations of hydrogen fuel resources, for which Hawaii is rapidly developing a keen expertise. The measure also eliminated the broadly-supported goals for introduction of hydrogen fuel cell vehicles.

I support strong renewable portfolio standards, RPS, that provide incentives for producing renewable energy in this country. These measures—such as RPS for electricity, requirements for measures to reduce dependence on foreign oil, climate change policy, and technology—have been dropped from the conference report.

The conference report further dilutes efforts to reduce our dependence on fossil fuels by weakening Corporate Average Fuel Efficiency, CAFÉ standards. I believe that strong CAFÉ standards drive the development and implementation of fuel efficient technologies for use in cars and trucks, and history has proven the strength of this approach. With the volatility of international fossil fuel sources, and the decline of our worldwide stock of this resource, strong CAFÉ standards are more important than ever. By introducing a variety of new and difficult criteria for the administrative development of CAFÉ standards, it will prove difficult or impossible for any President to strengthen the current set of standards before being halted by industry lawsuits.

As a Senator from an island state, I am also concerned about provisions that seek to weaken the laws that protect our coastlines such as the Coastal Zone Management Act, CZMA. For example, the conference report shortens

the time within which states can appeal state consistency review determinations made by the Secretary of Commerce, thus limiting the rights of states under the CZMA.

The conference report also jeopardizes federal conservation lands by allowing the Secretary of Energy to determine the siting of transmission lines through certain national forests and national monuments—even over the objections of the Federal agency charged with maintaining and preserving these natural treasures.

Mr. President, I must also express my serious concern with regard to the provisions of H.R. 6 as they relate to the development of energy resources on Indian lands and the impact of these provisions on the United States trust responsibility for Indian lands and resources. To allow this bill to be passed without amendment, would, in my view, alter the bedrock principles upon which relations between the United States and the Indian nations are founded.

The United States trust responsibility is perhaps the most fundamental principle of Federal Indian law. It was first enunciated in 1832 by United States Supreme Court Chief Justice Marshall. It is the polestar which has guided the course of dealings between the Indian tribes and the United States over the last two centuries.

The United States trust responsibility for Indian lands and resources is derived from treaties and agreements between the Indian nations and the United States, statutes, executive orders, court rulings, and regulations. The Congress has legislated on this basis. The Federal courts have ruled on that basis, and the Executive branch has premised policy on this basis and promulgated regulations based upon this fundamental principle of Federal-Indian law.

The Federal Government's trust responsibility for Indian lands and resources is based on the fact that the United States holds legal title to lands that are held in trust for Indian tribal governments. As the principal agent of the United States as trustee for Indian lands and resources, under current law, the Secretary of the Interior must authorize and approve any activities affecting Indian lands and trust assets.

However, recently the United States Supreme Court ruled in the United States v. Navajo Nation case that tribal governments may not hold the Secretary of the Interior accountable for mismanaging trust assets except if there is a specific authorization contained in a Federal statute. As a result of this ruling, tribal governments are looking to the Congress to protect longstanding principles of established trust law and to clarify with certainty the meaning of the trust responsibility after the Court's pronouncement in the Navajo Nation case.

The Indian provisions of H.R. 6 unfortunately fail to provide a means for tribal governments to call upon the United States, as trustee for Indian lands and resources, to assist them in remedying any damages incurred to tribal lands, nor do they establish express statutory standards for the administration of the U.S. trust responsibility.

The bill requires that any tribe attempting to avail itself of the powers to regulate and develop its own energy resources must waive its rights to seek any recourse against the Secretary of the Interior. This requirement signals a dramatic departure from existing law, and tribal governments across the country have expressed serious concern that this bill will erode the United States' trust responsibility, especially in the aftermath of the Supreme Court's ruling in the Navajo Nation case.

As tribal governments seek to further their rights to self-determination in new areas, such as the leases, agreements, and rights-of-way affecting tribal lands that are addressed in this bill, there must also be an evolution of the duties that the trustee for Indian lands and resources—the United States—undertakes on behalf of tribes desiring to develop energy resources.

My view is that there is a well-founded and long-established partnership between Indian tribal governments and their trustee—and that it is this relationship which assures that if there is any harm or damage done to tribal lands and resources caused by other parties, the tribes will have the full force of the United States government to assist them in securing redress for such harm.

With this end in mind, I respectfully suggested that those standards applicable under the Indian Self-Determination Act be incorporated into this bill, such as the annual trust asset evaluation that is authorized in that act to be conducted by the Secretary of the Interior as a condition of the Secretary's approval of a tribal government's right to enter into leases, business agreements, and rights-of-way without the Secretary's approval.

Unfortunately, this language was not adopted, and instead the bill provides that the Secretary will have the discretion to determine the manner in which trust resources will be managed, and what, if any, ongoing oversight there will be as tribal governments move into an arena that is associated with serious financial and environmental risks.

In addition, in the wake of the Supreme Court's ruling in the Navajo Nation case, the absence of expressly-stated statutory standards for the administration of the government's trust responsibilities as they relate to the development of energy resources on Indian lands is, I believe, a further derogation of the trust relationship that cannot be overstated.

In another section of the bill, state and tribal governments are effectively excluded from the process by which conditions for the operation of hydropower projects are established, and as a result, the protection of fish and wildlife resources is left up to those for whom the financial incentives to reduce costs at the expense of the survival of fish and wildlife resources are great.

There are many in Indian country who share these concerns, and would perhaps express them more strongly than I have been able to do. We do not have a record of which we can be proud when it comes to our dealings with the first citizens of this land, and I fear that this measure will not mark a new, more constructive direction in Federal-Indian relations.

Mr. President, two men involved in the process of bringing this conference report to the floor for a vote—Senator PETE DOMENICI and Senator TED STEVENS—are very dear to me and I have the honor of working with them on a daily basis. I hope they will understand that, as much as I would like to support them and their interests, I must oppose this conference report.

ETHANOL SUBSIDY

Mr. BAUCUS. Mr. President, for several years now I have worked with the highway community to hold the Highway Trust Fund harmless with respect to the ethanol subsidy. While it is good agriculture and energy policy to encourage alternative fuels, it should not be the Highway Trust Fund, and therefore the Nation's transportation system, that bears the burden of the ethanol subsidy.

A few years ago I introduced a bill that transferred revenue from the general fund to the Trust Fund so it could be the general fund that would bear the responsibility rather than the Trust Fund.

This Congress, Senator GRASSLEY and I introduced a bill, S. 1548, that replaced the ethanol exemption with a credit and that transferred the 2.5 cents, currently retained by the general fund to the Highway Trust Fund. Although other provisions in S. 1548 are now contained in the energy bill conference agreement, including the new ethanol credit, the provisions most important to me did not make it in.

I appreciate your commitment and that of Speaker HASTERT and Ways and Means Chairman THOMAS to ensure that the provisions in S. 1548, regarding the Highway Trust Fund will be enacted no later than February 29, 2004 which is the day that the TEA 21 extension expires.

In fact, Speaker HASTERT sent out a press release today that confirms his commitment to enacting these important provisions from S. 1548.

I thank Senator FRIST for working with me to ensure that the Highway Trust Fund will receive all the taxes due to it and that our Nation's transportation program will thrive.

Mr. FRIST. Mr. President, I extend my gratitude to Senator BAUCUS for working together with the Vice President, the Speaker of the House and myself to reach a compromise on the ethanol issue in the energy bill conference

agreement. We understand this is a very important issue to him and to the country and his efforts on this matter have been crucial to developing a strong energy policy.

As per the agreement, I would like to reiterate our commitment regarding the portions of the ethanol issue which are not currently in the conference agreement. In the next highway bill, we will make certain that the 2.5 cents that currently goes into the General Fund, as well as the proceeds from repealing the 5.2 cents from the ethanol tax exemption, are credited to the Highway Trust Fund. Moreover, it would be my desire to hold the Highway Trust Fund harmless with respect to this late date of enactment.

Once again, I thank Mr. BAUCUS for working closely with us to resolve this very important issue. We look forward to enacting these provisions.

Mr. COCHRAN. Mr. President, there are several provisions in this conference report that amend the Commodity Exchange Act, which is administered by the Commodity Futures Trading Commission.

I appreciate the Energy Committee's consultation with the Agriculture Committee with respect to the amendments to the Commodity Exchange Act.

The most important change to the act is to the CFTC's antifraud authority in section 4b, which is found in section 33 of the conference report. Section 4b is the CFTC's main antifraud weapon. In November, 2000, the U.S. Court of Appeals for the Seventh Circuit ruled in *Commodity Trend Service, Inc.*, v. *CFTC*, 233 F.3d 981, 992 (7th Cir. 2000) that the CFTC could only use section 4b in intermediated transactions, thus prompting this clarification. We are amending section 4b to provide the CFTC with clear antifraud authority over non-intermediated futures transactions. Newly revised subsection 4b(a)(2) prohibits fraud in transactions with another person that are within the CFTC's jurisdiction. This new language will make it clear that the CFTC has the authority to bring antifraud actions in off-exchange principal-to-principal futures transactions, including retail foreign currency transactions and exempt commodity transactions in energy and metals. In addition, the new section 4b also clarifies that this fraud authority applies to transactions conducted on derivatives transaction execution facilities as well. The amendments to section 4b(a) of the CEA regarding transactions currently prohibited under subparagraph (iv) are not intended to affect in any way the CFTC's historic ability to prosecute cases of indirect bucketing of orders executed on designated contract markets. *See, e.g., Reddy* v. *CFTC*, 191 F.3d 109 (2nd Cir. 1999); *In re DeFrancesco, et al.*, CFTC Docket No. 02–09 (CFTC May 22, 2003) (Order Making Findings and Imposing Remedial Sanctions as to Respondent Brian Thornton).

The next important changes, or clarifications, come in section 9 of the Commodity Exchange Act that deals with CFTC's false reporting authority. These clarifications are also found in section 332 of the conference report.

In the last 12 months the CFTC has received approximately $100 million in settlements from energy trading firms accused of filing knowingly inaccurate reports. Despite these successes, the amendment to section 9(a)(2) has been included in the legislation in response to a recent U.S. Federal District Court decision in the criminal case of *U.S.* v. *Valencia*, No. H–03–024 (S.D. Tex.). In this case, the U.S. attorney brought a criminal case against an energy trader for filing false reports regarding fictitious natural gas transactions in an attempt to manipulate natural gas price indexes. The Court, recognizing that the U.S. attorney had to show intent for knowingly inaccurate reports, dismissed some of the false reporting counts because there arguably was no intent requirement for false or misleading reports. The CFTC consistently has maintained that an intent to file a false report is necessary for there to be a violation of section 9(a)(2). Accordingly, to address the concerns of the Court in Valencia, section 9(a)(2) will be revised by inserting the word knowingly in front of both false and misleading so it is clear that the CFTC and the U.S. attorneys must show intent.

The legislation also includes an amendment clarifying Congress' intent that section 9 provides a civil enforcement remedy to the CFTC, in addition to criminal prohibitions. This amendment merely clarifies and confirms the CFTC's longstanding use of section 9, as the CFTC has brought over 60 enforcement actions charging violations of its provisions, including but not limited to false reporting charges under subsection (a)(2).

These amendments will permit the CFTC and U.S. Attorneys to continue to bring false reporting cases in the energy arena for acts or omissions that occurred prior to enactment. The bill expressly provides that these amendments simply restate, without substantive change, existing burden of proof provisions and existing CFTC civil enforcement authority, and do not alter any existing burden of proof or grant any new statutory authority.

The last amendment I will mention is a set of savings clauses for the Natural Gas Act and the Federal Power Act. These savings clauses are intended to help clarify the dividing line between the jurisdiction of the CFTC and the Federal Energy Regulatory Commission. The two savings clauses, which are virtually identical, can be found in section 332 and section 1281 of the conference report.

The savings clauses have two purposes. The first purpose is to make it clear that nothing in the Natural Gas Act or the Federal Power Act affects the exclusive jurisdiction of the CFTC with respect to accounts, agreements and transactions involving commodity futures and options. The CFTC, not FERC, has exclusive jurisdiction over commodity futures and options. This exclusive jurisdiction extends to futures and options on natural gas, electricity and other energy commodities, regardless of whether the futures or options contract goes to delivery, is cash settled or offset in some other fashion.

The second purpose of the savings clauses is to clarify that FERC should follow the existing Commodity Exchange Act statutory scheme for requesting futures and options trading data from futures exchanges through the CFTC. Section 8 of the Act recognizes the highly sensitive nature of futures and options trading data and specifically restricts its public disclosure except in very limited circumstances. The regulatory scheme of the act ensures the confidentiality of futures and options trading data and is one of the reasons that investors have such confidence in the U.S. futures markets. FERC can and should be able to obtain futures and options trading data by directing its request to the CFTC not to a futures exchange such as the New York Mercantile Exchange. The CFTC has a long history of sharing futures and options trading data with other Federal and State regulators that agree to abide by the public disclosure restrictions found in section 8. The savings clauses assure that requests for futures and options trading data will be processed in the same way and be subject to the same protections.

I believe the clarifications to the Commodity Exchange Act included in the conference report will only strengthen what is already a strong and sensible regulatory program administered by the Commodity Futures Trading Commission, and I support passage of the conference report to accompany H.R. 6, the Energy Policy Act.

Mr. CAMPBELL. Mr. President, I rise today in strong support of the energy bill conference report and urge its quick passage. I am deeply troubled by the misinformation being cast about by opponents of this bill on the Senate floor and in the press. I would like to take just a moment and distinguish some of the fact from fiction.

First, opponents of the bill have been criticizing the energy bill's electricity provisions. They have made sensationalistic allegations about Enron and the August blackout, among others, and conclude that this bill does nothing to improve our Nation's electricity grid. If opponents of this bill were to take the time to read the bill they have been so fervently criticizing, they would have reached far different conclusions.

Opponents have been desperately trying to color a good piece of legislation with known bad guys. I don't know how many times I have heard Enron thrown around, but never have those folks mentioned that this bill includes significant market transparency, consumer protection, and improved enforcement provisions. The fact: this bill improves matters.

Second, critics have criticized this bill for shielding MTBE producers from product liability lawsuits. Many of those Senators represent States that have sued MTBE producers for contaminating groundwater. On one hand, I appreciate why they object to that provision. My State of Colorado too is searching for ways to meet funding shortfalls, and groundwater out West is always a premium. However, MTBE isn't in groundwater because someone put it there. MTBE is in groundwater because the underground storage tanks made to hold gasoline with MTBE leaked.

Another fact: Congress mandated MTBE's use, requiring the oxygenate be added to gasoline to meet Clean Air Act requirements.

My friends on the other side should focus on fairness, and not just the deep pockets their trial lawyer friends are after. Fairness is the special interest opponents of the bill are so adamant on vilifying.

Opponents of the energy bill conference report have made outlandish claims that this bill does nothing for renewable energy. Again, such statements beg the question; have they bothered to read the bill? The fact of the matter is that this bill includes significant financial incentives for wind, biomass, and solar energy, and has the full support of the Solar Energy Industries Association. Further, the bill requires that 7.5 percent of electricity purchased by the Federal Government come from renewable energy.

Opponents have criticized the Indian energy title of the bill as offensive to the environment. They claim that if Indians opt-in to the voluntary provisions, then those tribes can skirt NEPA. Without touching the prejudicial nature of that statement—the assumption that Indians would violate the environment—I seriously doubt that opponents know why NEPA might apply at all. Under current law, if a tribe wanted to build an energy production facility on their own land with their own money, NEPA would not apply. NEPA only applies on Federal land or when there is some Federal action. Although some critics may like to think otherwise, Indian land is treated as their own land. In the example above, there is no Federal action.

However, if the Nation's most disenfranchised and poverty stricken group seeks third-party funding to develop their own resources, then the Secretary of Interior must review the proposed project. This paternalistic Secretarial review, a historical construct in the law, is tantamount to Federal action triggering NEPA. Indians believe that their lands should be treated like other private land under the law.

Opponents of this bill are playing a cruel joke on Indians. On one hand, they argue that Indians should be free to exercise their right to self-determination. Yet, on the other hand they tell the poorest of the poor that they must do so without any third-party financing. It seems that opponents of this bill believe that, for Indians, self-determination may only be exercised through posing for tourist photos and making handcrafts.

The Indian Energy title in the bill under discussion provides Indians with a completely voluntary tool that could help them to develop their own resources. This title could be a significant empowerment vehicle providing much needed jobs and economic development.

Last, my friends on the other side have made several statements criticizing this bill's process. In part, I have to agree with them. Similar to the failed energy bill of the democratically controlled 107th Congress that never benefited from being drafted in the Energy and Natural Resources Committee, the current energy bill has reached the floor in an imperfect way.

However, the fact of the matter is that the energy bill of the 108th Congress is a far reaching piece of legislation that is good for the country, good for my State of Colorado, which still relies heavily on the agricultural industries, and good for workers. It is important to note that all manner of farm groups support this bill, including the American Farm Bureau, the American Corn Growers, the National Farmers Union, and the National Cattleman's Beef Association. Furthermore, this bill is supported by a host of labor organizations; the Brotherhood of Locomotive Engineers, the United Mine Workers, and the United Transportation Union, to name just a few.

Mr. President, the comprehensive energy bill before the Senate is a critical piece of legislation for the country. Its writers had the unenviable task to ask the questions that most in the Nation are never required to consider—where does our energy come from, and how can we meet future demand? This bill provides important answers and plans for the future. I urge its passage.

Mr. NELSON of Florida. Mr. President, I rise to oppose the energy bill. I wanted to support this bill, but the many environmentally questionable provisions and the large price tag prevent me from doing so.

This bill is not an energy policy bill. It is a special interest bill. We are at war in two countries, and we receive more than 50 percent of our oil from sources beyond our shores. But this bill does not provide a way for us to break free from the security threat that poses. It lacks clear vision for how this country moves away from our dependence on foreign oil and dirty fuel and towards new, cleaner sources of energy.

There are no oil saving provisions or climate change provisions. I do support the incentives for nuclear energy, wind energy, solar energy and other renewable energy sources. I also support the provisions for tax credits for the sale of hybrid and alternative fuel vehicles. The repeal of the Public Utility Holding Company Act and reform of the Public Utility Regulatory Act's mandatory purchase obligation are positive changes. But I can't get past the MTBE liability waiver, the coastal zone management changes, and the huge tax credits for the oil and gas industry. Half of the tax benefits—approximately $11.9 billion of the $22.9 billion—in tax provisions will go to the oil and gas industries, some $72 billion in authorized spending, a 50 percent increase over the price tag going into conference. And this price tag is not offset anywhere in this budget.

With regard to MTBE, my State of Florida has more MTBE spills than any other State in the country—more than 20,000—and those communities in Florida may be held responsible for the cleanup of those sites if the liability waiver in this bill passes. And the ratepayer in these communities, instead of the producers of MTBE, will have to pay the price for the cleanup.

In fact, a lawsuit filed by Escambia County Utilities Authority would be nullified by this bill. And at least 11 other water systems serving 629,000 people will be prevented from seeking redress from the refiners of MTBE who caused the contamination.

My staff talked to the Executive Director of the Escambia County Utilities Authority, Steve Sorrell, and he told my staff that if Escambia's suit cannot go forward the County will be on the hook for an expensive cleanup and the ratepayer will have to pay the price. So if this energy bill passes, the main cause of action in Escambia County FL's suit will be taken away and the ratepayers, the citizens of Escambia County, not the producers or oil refiners, who knew this substance was a health and environmental hazard when it was introduced, will pay the price.

Some have said that we shouldn't hold the producers responsible for the contamination, they just produced the MTBE. They didn't know it was a health risk or environmental hazard.

But the successful lawsuits have uncovered that the refiners did know it was a health and environmental risk and why not let the courts decide whether they are at fault instead of the U.S. Congress. In a document dated April 3, 1984 an MTBE producer employee said:

> We have ethical and environmental concerns that are not too well defined at this point; e.g., 1. possible leakage of [storage] tanks into underground water systems of a gasoline component that is soluble in water to a much greater extent [than other chemicals], 2. potential necessity of treating water bottoms as a ''hazardous waste,'' [and] 3. delivery of a fuel to our customers that potentially provides poorer fuel economy . . .

Another memo by an energy company engineer in 1984 is even more egregious.

This memo says:

> Based on higher mobility and taste/odor characteristics of MTBE, Exxon's experiences with contaminations in Maryland and our knowledge of Shell's experience with

MTBE contamination incidents is estimated to increase three times following the widespread introduction of MTBE into Exxon gasoline . . .

Later the memo notes:

Any increase in potential groundwater contamination will also increase risk exposure to major incidents.

These memos were written more than 5 years before the Clean Air Act amendments passed that ushered in the widespread use of MTBE in gasoline. These documents were uncovered in lawsuits in California in which manufacturers and distributors of MTBE, the very entities immunized from product liability suits in this bill, were found guilty of irresponsibly manufacturing and distributing a product they knew would contaminate water. The jury found by ''clear and convincing evidence'' that these companies acted with ''malice'' by failing to warn customers of the almost certain environmental dangers of MTBE water contamination.

The coastal provisions of this bill are also troubling. Under section 321, of the Oil and Gas title, the Secretary of the Interior will be given broad new authority to grant leases, easements or right-of-ways on the Outer Continental Shelf in moratorium areas. Interestingly, this provision left the Senate prohibiting these oil and gas activities in the moratorium areas, but came back allowing those projects to go forward in moratorium areas—without input from the Department of Commerce as required under the Outer Continental Shelf Lands Act. Section 325 restricts the appeals process for coastal states appealing an oil or gas exploration or development plan to the Department of Commerce. The timeline put in place by this provision is even shorter than that requested by the Bush administration. Section 330 circumvents the Coastal Zone Management Act and deems the Federal Energy Regulatory Commission record the record for a Coastal Zone Management Act appeal—limiting a State's input into the process. For these reasons, I cannot support the bill.

Mr. ENZI. Mr. President, there is an old adage we have heard many times that says that the journey of a thousand miles begins with a single step. Today we are taking another one of those steps in a long journey that will hopefully lead to an increase in our energy independence, more reliable sources of energy, and more stable prices that are not so subject to fluctuations in the energy market.

The bill we have before us is something that will truly affect every American, no matter their age, where they work, where they live, or what activities they pursue in life. One of the many things that bonds us as Americans is our love of so many things that makes us consumers of energy. No matter who you are, you are a strong and vital part of that market.

If you drive a car, you won't get very far without a full tank of gas.

If you use a computer, you have to tie it to some source of electricity to get the power you need to access the Internet or the information stored on your hard drive.

If you live in a mobile home, or in a cabin in the woods and cook your food over an open fire, you are still an energy consumer who is using a resource to make your dinner.

Every lifestyle has its own energy needs and we have been incredibly blessed to have had access to an abundance of energy for many, many years.

In fact, we had such relatively easy access to energy we started to take it for granted. That led to calls for conservation and more wise use of our resources when energy costs first started to rise. That was the start of our journey to create an energy policy—one that has seen us through these past years. Unfortunately, it has taken quite a long time to agree on an update to our policy, one that takes into consideration the changes we have seen in our society and in the availability of energy both here and abroad.

Our dependence on foreign sources of energy continues to be a national concern, one that had me and many others calling for the creation of a national energy policy, which we have done since 1973 when OPEC and the Saudi Arabians first pulled the plug on our supply of crude oil.

The irony was the fact that we had an abundance of oil here in the United States at the time. In fact, we still have a huge supply of oil in the country today, but that oil has not been made available for exploration. Because we hadn't taken the steps to develop it, we allowed a foreign government to disrupt and control part of our daily lives. We became vulnerable to their manipulations and it took us months to recover. In some ways, we are continuing to recover from those days of the long gas lines, high prices and short supplies that we saw in the 1970s.

Things were bad enough back then when we didn't have an energy policy. Still, they could have been much worse. I shudder to think what might have happened if we'd had a situation like 9/11 occur at the heart of that crisis. If the terrorists had struck when we were economically crippled and energy supplies were low, what effect could they have had on our national security?

That kind of scenario is exactly the kind of thing that a national energy policy like the one we are taking up today is supposed to avoid.

It has taken us quite a while to get where we are, but we finally have something before us that will provide us with a plan, a blueprint for the future that will also address our needs in the present. It is time now for us to take it off the planning board and put it into action. After all, 30 years ought to be enough time to put the basics of a plan together, and that is how long we have had since the energy crisis of the 1970s to work out a plan like this. Now we have before us the beginning of what will be a long and continuing effort to stabilize our energy markets and protect our national security.

This bill isn't perfect, but it is a good start. It is more than a beginning, but it is not the final answer. It is a temporary remedy that will start producing results immediately while it lets us continue working on a more permanent solution. In other words, it is a chance to grab the brass ring and get another ride on the energy merry-go-round, while providing for the ride we are currently on.

I am pleased that this bill includes a number of important provisions that support and promote clean coal development. Coal is an important product of Wyoming, and one of the most important ways we can reduce our dependence on foreign energy is to find ways to diversify our energy supplies and better utilize our Nation's abundant coal supplies—especially clean burning coal like what we mine in Wyoming.

In addition to our coal supplies, in recent years our new energy development has focused on the increased use of natural gas. I support natural gas development and I hope that our gas industry continues to grow and flourish. IO am also keenly aware of the fact that there isn't enough natural gas or infrastructure available to supply all of the world's energy needs so we are going to have to continue relying on coal for some of our energy uses.

That does not mean we have to continue doing business as usual and continue to push our aging coal-fired power plants well beyond their originally designed lifetimes. We have the technology and the ability to design and build cleaner and more efficient power plants that utilize new clean coal technology, but we won't be able to do that if we cripple our economy and prohibit new development.

This won't surprise anyone, but none of us are going to be enthusiastic about everything in this bill. Again, it is not a perfect bill, but it is a good start on a policy. It does not have everything I want in it, but it does have more than enough to make it worth our support. There is a provision that would have greatly helped Wyoming get the more than $400 million that it is owed by the Federal Government through the Abandoned Mine Lands Trust Fund, but that provision was not included in this bill. We have received assurances from the Finance and Energy Committees that they would take up this matter early next year, and we are grateful for their commitments. However, I would have preferred that the provision had been included in this bill and we didn't have to take up any of the committee's time next year. Still, again, on balance, and taking the whole bill into consideration, it is a good bill and it deserves our support.

I know I am not the only one who feels that one provision or another

could have been added or left out and it would have made for a better bill. Like me, almost every State can point at something that they wish could have been included but was not. It is a reason to be disappointed, but it's not a reason to ignore the task at hand, which is to continue the process and develop a national energy policy.

There are just too many positive things that the bill would do for the country in the long and short term. To begin with, the bill would create nearly 1 million jobs and implement mandatory electricity reliability standards that we believe may prevent future massive blackouts as was experienced in August by the Northeast.

It would encourage the Federal Government to increase energy efficiency in Federal installations.

It would increase assistance for lower income families by raising the base authorization of LIHEAP to $3.4 billion. The bill also includes incentives to increase solar, wind, geothermal and other biomass technologies.

It encourages modernizing and streamlining our Nation's hydropower laws.

It provides incentives for responsible oil and gas development and royalty relief for marginal wells. In other words, it helps keep wells that are slow, but long-term energy suppliers going so we don't always have to rely on short-term, get-rich-quick wells for all of our energy needs.

It provides incentives to encourage consumers to purchase more hybrid and alternative fuel vehicles and authorizes two new programs that would improve the efficiency and quality of our Nation's fleet of school buses.

There are a number of other provisions included in this bill that will contribute to our Nation's energy security and I hope my colleagues will take the time to look at what is in this bill for what it really is: A desperately needed and all-important first step toward a policy that will increase our energy independence, ensure we have a more reliable supply of energy available, and a more stable energy market for consumers to purchase from with prices that are not so subject to as much fluctuation and change.

Mr. BURNS. Mr. President, I would like to commend the chairman of the Energy Committee for his leadership on this challenging bill both on the Senate floor and through the conference. This is the first comprehensive energy legislation this country has seen in more than a decade, and it is a huge step forward for America. This energy bill is about looking forward to our future, and creating the energy and the jobs that will keep this country best in the world.

This is a large and complicated bill. It addresses everything from energy efficiency and conservation, to research and development for new technologies, and policies to encourage a wide variety of energy sources nationwide. People will always find something to criticize in a sweeping piece of legislation, but we need to focus on the huge accomplishments this bill will achieve.

We will advance cutting-edge technologies such as hydrogen fuel cells and improve clean technologies already in place like nuclear power, hydropower, wind, and solar energy. At the same time we will shore up our own domestic production of the resources we use most, including clean coal, oil, and natural gas. We will begin to use 5 billion gallons of ethanol and biodiesel annually as a result of this bill, and that is a very good thing for farmers and consumers across America. Real reforms in the electricity title will result in more reliable service and more investment in the backbone of our electricity infrastructure.

I would especially like to acknowledge Senator DOMENICI's wise counsel in regard to an amendment I had intended to propose to enhance the economic growth of western States. My amendment would have provided for the study and creation of National Interest Electric Transmission Corridors by the Secretary of Energy, based on national security and energy policy grounds. Pursuant to those designations, the permitting and siting of needed electric transmission lines would be provided for. While most of this additional capacity would probably be achieved by broadening existing rights-of-way, there would no doubt be some need for additional rights of way. Upon the advice of the chairman and his assurance that he would pursue these concepts, I declined to offer that amendment on the Senate floor.

I am very encouraged that the chairman has been successful in having the concept of National Interest Electric Transmission Corridors included in the bill, for any area experiencing electric energy transmission constraints or congestion. Transmission capacity in these western States is one of the significant issues regarding their future economic expansion. Furthermore, if we could unlock the tremendous coal, wind and other resources of these States through mine-mouth electric generation and provide for the transmission of that electricity to load centers it would take significant pressure off our increasing reliance on natural gas as a power source. This is one of the keys to a balanced energy portfolio and lessened reliance on foreign energy sources.

My home State of Montana can make a significant contribution to our Nation's energy independence, provided we can develop the needed transmission infrastructure to move electricity to market if we generate it from our coal and wind resources. This is very important for both the generating States and the end-user markets and is simply good national energy policy and good national security policy.

This energy bill isn't perfect, but it helps us transition into tomorrow's economy without sacrificing our quality of life today. It is a good balance, and a good compromise between the countless demands that have been made by those with opposing viewpoints. No one can win every battle, but without this energy legislation the entire country loses. I am disappointed there are Members in this body who would rather complain about this bill than enact it. We shouldn't let partisanship get in the way of progress, and this bill is progress. No one got all they wanted, but every State in the Union will benefit, and every American will be better off if we ensure this country's energy security by passing this legislation.

Mr. HATCH. Mr. President, I rise today to express my strong support for H.R. 6, the Energy Policy Act. It has been a long, long time since we could claim to have a national energy policy, and I am very proud to say that we are about to deliver an energy plan to the American people that is comprehensive and forward looking. It is a balanced bill that promotes greater energy independence and cleaner air.

It is no simple task to construct complex legislation of such a broad scope. A good deal of the credit for the fact that we have a conference report today goes to the heroic leadership of Chairman DOMENICI and Chairman GRASSLEY, and the respective Democratic ranking members Senator BINGAMAN and Senator BAUCUS. I congratulate our colleagues for their leadership.

And when it comes to leadership, we all know that it was President George W. Bush who first put us on the path to a national energy plan. One of the President's earliest acts was to establish the National Energy Policy Development Group, which produced the National Energy Policy Report, an early template for the legislation we have before us today.

We don't have to convince the American people that we need this energy bill. They already know. They are the ones who paid more than $2 per gallon to fill their cars this summer. They are the ones who sat in blackouts for days. And, they are the ones who have watched their natural gas bills go through the roof.

I am pleased to report to the American people that the Energy Policy Act addresses each of those problems—and more.

My State of Utah is an energy resource State. Utah has long helped to fuel our Nation's growth, whether it be by supplying the uranium that fueled our early nuclear industry, the oil and natural gas for our vehicles and homes, or the clean coal which powers our coal-fired electricity plants. Utah has also been a leader in producing renewable electricity with our large hydropower facilities and our significant geothermal plants. Thanks to environmental protections, labor laws, and health and safety regulations, our Nation is cleaner and stronger than ever before. And I am glad these protections are in place. However, the many layers

of these rules and regulations do make energy production more expensive. In Utah, where we have many millions of acres of beautiful public lands, we have the extra difficulty of developing energy while trying to preserve significant portions of scenic areas. In my State we want all the protections our laws provide, but we recognize the need for assistance from the Federal Government to keep this activity going in this country. And in doing so, this legislation leaves almost no stone unturned.

The act will help us to leap forward in creating more efficient buildings and homes in this Nation, and it starts at home by addressing congressional and other Federal buildings. The act takes large strides forward in promoting the use of renewable energy in the United States. The bill also covers solar energy, wind energy, hydro power, and geothermal energy, the latter being particularly important in my State of Utah.

I am pleased that the Energy Policy Act includes important provisions to increase the reliability of our electricity system.

We have seen what happens when we lack a reliable affordable electricity supply; our modern society comes to a near standstill. Reliable electricity is one of the most important services we can provide our Nation. Most of the electricity produced in the United States comes from coal-fired power plants. The newer coal plants which are prevalent in the West are very clean and very efficient. This legislation promotes the most advanced technologies in this industry which will lead to further improvements in the reliability of our electricity system and in the quality of our air. The bill also provides programs to improve electricity service to our Native Americans.

Importantly, the Energy Policy Act addresses our need for a more reliable fossil fuel supply. This includes home heating oil, natural gas, and our other basic transportation fuels, petroleum and gasoline.

The transportation sector in the U.S. accounts for nearly two-thirds of all oil consumption, and we are almost entirely dependent on petroleum for our transportation needs. Is it any wonder, that 50 percent of our urban smog is caused by mobile sources? If we want to clean our air and address our Nation's energy dependency, we must focus on the transportation sector. And we must focus first on those technologies and alternative fuels that are already available and abundant domestically.

To that end, 14 cosponsors and I introduced S. 505, the Clean Efficient Automobiles Resulting from Advanced Car Technologies Act of 2003, or the CLEAR Act. The CLEAR Act is the most comprehensive and effective plan we have seen in this country to accelerate the transformation of the automotive marketplace toward the widespread use of fuel cell vehicles. And it would do so without any new Federal mandates. Rather, it would offer powerful market incentives to promote the advances in technology, in our infrastructure, and in the alternative fuels that are necessary if fuel cells are to ever reach the mass market. As a result our Nation benefits from cleaner air and greater energy independence.

I am very pleased to report that a large portion of the CLEAR Act was included in the Energy Policy Act. And for that I give my heartfelt thanks to Finance Committee Chairman GRASSLEY and Senator BAUCUS.

First, the bill offers CLEAR Act credits to consumers who purchase alternative fuel and advanced technology vehicles, such as hybrid-electric vehicles. These credits would lower the price gap between these cleaner and more efficient vehicles and conventionally-fueled vehicles of the same type. This is a direct attack on our Nation's huge appetite for petroleum as a transportation fuel, and I am confident that the CLEAR Act credits will accelerate our shift toward a more efficient and cleaner transportation future.

When I introduced the CLEAR Act, it contained a significant tax credit for the installation costs of retail and residential refueling stations. I was disappointed that this provision was weakened in conference and replaced with a provision that extends and expands an existing tax deduction for infrastructure. However, I am pleased that an infrastructure incentive did survive in the Energy Policy Act.

As originally introduced, the CLEAR Act also provided a very important tax credit of 50 cents per gasoline-gallon equivalent for the purchase of alternative fuel at retail. This would have brought the price of these cleaner fuels much closer in line with conventional automotive fuels and contributed significantly to the diversity of our fuel supply.

This was a very important component of the CLEAR Act that did not survive the conference process. It was important because of the combination of this incentive, the infrastructure incentive, and the alternative fuel vehicle credit working together was meant to have a larger effect on the market than could have been accomplished by providing these incentives alone at different times. For instance, the fuel credit would have combined with the vehicle credit for an added incentive to consumers to buy cleaner cars. The fuel credit also would have combined with the infrastructure credit for a very powerful incentive to install new fueling stations. The presence of more fueling stations also opens the way for the purchase of more clean vehicles, and so on. Because all three incentives are not in the final bill, we will not achieve the synergy that would otherwise have been possible, and the potential benefits of the CLEAR Act may not be fully realized.

In spite of this disappointment, I am very pleased that such a large portion of the CLEAR Act was included in the energy bill. I can see the day when alternative vehicle fuels, fuel cells, and other advanced car technologies will be common. And considering the environmental and security costs associated with our petroleum-based transportation system, that day cannot come too soon.

As I have outlined in my statement, the Energy Policy Act will go a long way to bringing our nation into the future. It will increase our energy security and clean our air. I urge my colleagues to support these goals and throw their support behind it.

Mr. CONRAD. Mr. President, I come to the floor today to support the energy bill conference report.

I have long believed we need a comprehensive national energy policy. The reality is that our economy depends on affordable energy. We often take it for granted, but just imagine how different our daily lives would be if we did not have plentiful, affordable oil, natural gas, and electricity. We depend on energy in almost everything we do in our lives, from turning on the light in the morning, to driving our cars to work, to cooking our dinner, to watching TV at the end of the day.

And energy is absolutely critical to the functioning of our economy. Our manufacturing sector uses vast amounts of energy to produce the whole range of products we take for granted in stores all across the country. Our services sector—and particularly our high tech sector—rely on electricity. Our agriculture economy uses enormous energy inputs for planting, harvesting and processing its bountiful production. And without energy, we could not transport these goods and services to consumers.

It is virtually impossible to understate the importance of energy to our daily lives and to our economy. Yet our energy policy is seriously lacking.

As the blackout in the northeast demonstrated last summer, our national electricity infrastructure is decades old and dangerously overloaded. Quite simply, we have under-invested in making sure that the national electricity grid can keep up with demand for electricity. Since 1992, demand for electricity has been growing at 2–3 percent per year while transmission capacity has been growing at only .7 percent per year. At the same time, deregulation of the electricity industry has led to a hodgepodge of control over transmission capacity, without clear rules and responsibility for maintaining the reliability of the system. We need new rules to improve the reliability of the grid and new incentives to increase transmission capacity if we're to avoid future meltdowns.

And, we remain overly dependent on foreign oil. Oil imports now account for nearly 60 percent of consumption, and the projection is for that percentage to continue increasing inexorably. That puts our economy at risk, because it is vulnerable to price spikes caused by

OPEC or supply disruptions in foreign trouble spots. And it creates national security challenges. We currently rely on the vast oil reserves in the Middle East to meet our import demands, and that makes ensuring the free flow of oil from that unstable, undemocratic part of the world a vital national security interest. So we need an energy policy that will reduce our reliance on imported oil.

For these reasons, I have long believed we need to update our national energy policy. The bill we have before us begins to address these challenges. It will improve the reliability of our electric grid. It provides positive incentives for renewable energy. And it promotes conservation.

Let me be clear, though. This is not a perfect bill. It does not go nearly as far as I would like in addressing the issues I have outlined and other critical elements of a comprehensive national energy policy. It contains several provisions that I do not think should be in an energy bill. But on balance, it is a positive step for North Dakota and the national economy, and it will mean additional jobs in my State.

Let me first talk about the provisions I support that will help ensure our national energy security and benefit North Dakota.

First, the bill strongly promotes the use of ethanol and other bio-fuels. The bill will require 5 billion gallons of ethanol by 2012. And it will create a biodiesel tax credit of $1 per gallon for feedstocks such as canola and 50 cents a gallon for recycled feedstock such as restaurant grease. These are clean and renewable fuels, and these provisions are good for the environment, good for our energy independence, and good for North Dakota farmers.

Second, I am very pleased that the bill contains a provision I fought for to extend the production tax credit for wind for 3 years. North Dakota has the highest potential for wind energy of any State in the Nation. This provision will spur the production of wind energy facilities and equipment in North Dakota. That is good for electricity consumers, good for the environment, good for wind energy equipment manufacturing workers, and good for farmers and others who will benefit from having wind turbines on their land.

Third, the bill contains a 15 percent investment tax credit to support the development of clean coal technology that will benefit North Dakota's lignite coal industry. We have a thriving lignite coal industry in North Dakota, with seven lignite plants that use 30 million tons of lignite each year. And jobs in the lignite industry are among the highest paying jobs in my State.

Fourth, the bill contains incentives for adding pollution control equipment on older coal plants and incentives for building new, more environmentally friendly coal plants. This could be a big help in getting a new lignite plant in western North Dakota while maintaining our pristine environment, something I have been working on for years.

Fifth, the bill contains modest steps to promote energy conservation, including a tax credit of up to $2000 to encourage people to better insulate their homes, and provisions to encourage the purchase and use of more energy efficient appliances.

Sixth, there are provisions to encourage small producers of oil and gas. Many people do not think of North Dakota as an oil and State, but we have significant reserves that can be tapped to help reduce our dependence on foreign oil and address the shortage of domestic natural gas production. The bill includes a tax credit for marginal wells, provisions to speed up permitting on Federal lands, and a section to encourage a particularly important process for natural gas extraction.

Seventh, the bill includes a set of provisions to improve the reliability of the national electric transmission grid, reducing the chances of a massive failure like the one that affected the northeast last summer.

Eighth, the electricity title also ensures that small cooperatives will not be subject to burdensome FERC jurisdiction and contains native load protections for co-operatives, which are a major source of electricity in North Dakota. These provisions ensure that North Dakota rural electric co-ops can continue to provide low-cost power to their consumers.

Finally, the bill expands and extends assistance to low income families in meeting their home heating needs. The Low Income Home Energy Assistance Program, LIHEAP, has provided valuable assistance to thousands of North Dakota families in paying their winter heating bills.

Because of all these important provisions, a number of North Dakota groups support the bill. These include the North Dakota Farmers Union, the North Dakota Farm Bureau, the North Dakota Rural Electric Cooperative Association, the Lignite Energy Council, and the Greater North Dakota Association.

As I said earlier, however, this bill is far from perfect. There are a number of areas where it could and should have been much better.

For example, the conference report does not contain a Renewable Portfolio Standard. The bill that passed the Senate required that 10 percent of electricity be produced from renewable energy sources by 2020. This modest RPS would have helped to clean up our environment and spurred wind energy development. I supported this provision and wish it had been included in the conference report.

More generally, the conference report falls short on promoting the use of renewable fuels and emphasizing conservation. If we are ever to overcome our dependence on foreign oil imports, we will need to be more aggressive on these fronts. The conference report could and should have done more in this area.

I am also disappointed that the bill does not contain tradeable tax credits to encourage cooperatives and municipal utilities to further invest in renewable energy sources. Tradeable credits would have leveled the playing field for these electricity suppliers as we build wind farms and other renewable energy facilities. The conference report could and should have included this provision.

And I do not believe the conference report goes nearly far enough in creating new incentives for expanding transmission capacity to reduce the risk of blackouts. I had hoped the conference report would contain provisions to eliminate the transmission bottleneck that is preventing my state from expanding lignite and wind energy plants to export more electricity to regional markets. Here again, the conference report could and should have done more.

Finally, the bill contains a number of unnecessary provisions that I do not support. The liability waiver for the dangerous fuel additive known as MTBE—or methyl tertiary butyl ether—is troubling. Clean Air Act changes that will allow certain cities to postpone compliance with reductions in ozone damaging pollutants have nothing to do with promoting sound energy policy and should not be in the bill.

I believe we have more work to do to produce a truly comprehensive energy policy that addresses our energy, economic and national security challenges. In particular, I will continue to push for an expansion of transmission capacity to protect against the failure of our electricity grid and allow North Dakota to increase its exports of electricity. It is my hope that we will be able to work on these issues in a bipartisan manner.

Despite its shortcomings, on balance the bill before us takes positive steps to address our Nation's energy needs. It will encourage domestic energy production, promote renewable fuels, and modestly encourage conservation to help reduce our reliance on foreign oil. It will help to reduce the likelihood of major transmission breakdowns.

And it will provide significant benefits to my State of North Dakota. Energy is the second largest sector of the North Dakota economy, and it will benefit very directly from a number of provisions in the bill. And agriculture, the largest sector of the North Dakota economy, will also see important benefits from the various renewable fuel incentives.

For those reasons, I support the conference report.

Mrs. LINCOLN. Mr. President, I rise today to announce my support for the Energy Policy Act of 2003. I want to thank Chairmen GRASSLEY and DOMENICI and Senators BAUCUS and BINGAMAN for working with me to include renewable energy and energy efficiency provisions important to my home State of Arkansas. While some may say this bill is not perfect, it is a step toward reducing our dependence on foreign oil and

increasing the use of renewable resources in this country.

Nine months ago, I stood before this body and spoke on the dangers of continued reliance on foreign sources of energy. Today, I am pleased to stand here in support of a bill that includes several provisions I believe will take our country's energy policy in the right direction. I know this bill is not perfect, and I am disappointed that some of my colleagues who have been leaders on this issue for many, many years were excluded from the drafting of this bill.

But I am pleased that those who did draft this bill made an effort to address energy concerns in every sector of this industry. In Arkansas, we have investor owned utilities and co-operatives. This bill will help both of these providers serve their customers in a more efficient and reliable manner. And while this bill may not go as far as some would like in the direction of renewable energy, there are many provisions in this package which will help the United States begin the long process of eliminating our dependence on foreign oil. I believe the renewable fuel standard, requiring our government to purchase at least 5 percent of its energy from renewable sources, represents a positive step toward this goal. I personally fought to include provisions that will encourage greater use of renewable resources, increased production of efficient appliances, and greater investment in delivering fuels to rural America.

In Arkansas, we recognize the importance of renewable fuels in helping the United States to become more energy-independent. That's why I am excited about the provisions in this bill that will encourage greater use of a valuable new alternative fuel, biodiesel. Biodiesel, which can be made from just about any agricultural oil, including oils from soybeans, cottonseed, or rice, is completely renewable, contains no petroleum, and can be easily blended with petroleum diesel. It can be added directly into the gas tank of a compression-ignition, diesel engine vehicle with no major modifications. Biodiesel is completely biodegradable and non-toxic, contains no sulfur, and it is the first and only alternative fuel to meet EPA's Tier I and II health effects testing standards. Biodiesel also stands ready to help us reach the EPA's new rule to reduce the sulfur content of highway diesel fuel by over 95 percent. These tax credits are necessary as biodiesel is not yet cost-competitive with petroleum diesel.

This legislation will provide tax incentives for the production of biodiesel from agricultural oils, recycled oils, and animal fats and will ensure that biodiesel becomes a central component of this Nation's automobile fuel market. This legislation is identical to language authored by myself and Senator GRASSLEY included in the last Congress's Energy Bill. It is intended to be a starting point for our debate and discussion as we draft an energy bill for consideration in this Congress.

This legislation will provide a partial exemption from the diesel excise tax for diesel blended with biodiesel. Specifically, the bill provides a one-cent reduction for every percent of biodiesel from virgin agricultural oils blended with diesel up to 20 percent.

The legislation will also provide a half-cent reduction for every percent of biodiesel from recycled agricultural oils or animal fats. With today's depressed market for farm commodities, biodiesel will serve as a ready new market for surplus farm products. Investment now in the biodiesel industry will level the playing field and create new opportunities in rural America. This bill also contains a provision I fought for that will provide a tax credit for production of fuels from animal and agricultural waste.

Thanks to new technological developments, we can now produce significant quantities of alternative fuels from agricultural and animal wastes in an environmentally-friendly manner. The production incentives included in this bill will assure implementation and commercialization of this new generation of technology. I am also pleased this bill includes language to encourage additional collection and productive use of methane gas generated by garbage decomposing in America's landfills. Landfill gas is a renewable fuel that can be used directly as an energy source for heating, as a clean burning vehicle fuel, and as a hydrogen source for fuel cells. Furthermore, it can power generators to produce electricity. There are compelling environmental reasons to encourage these projects.

Even the large landfills that are required under the Clean Air Act to collect their gas and control non-methane organic compounds often find it more cost-effective to simply flare or otherwise waste the gas rather than use the methane to produce electricity. Some smaller landfills are not required to collect the gas, and may continue to emit it for decades under the Clean Air Act. Thus, landfill gas projects will not only reduce local and regional air pollution while yielding a renewable source of energy, they will also reduce the country's yearly emissions of greenhouse gases by a very substantial amount at a relatively small cost. I also worked to include a provision that will encourage new waste-to-energy facilities to produce electricity directly from the combustion of our trash. Arkansas stands with other environmentally conscious States in understanding that waste-to-energy technology saves valuable land and significantly reduces the amount of greenhouse gases that would have been released into our atmosphere without its operation. The volume of waste generated in this country could be reduced by greater than 90 percent by utilizing waste-to-energy facilities, and EPA has confirmed that more than 33 million tons of greenhouse gases can be avoided annually by the combustion of municipal solid waste. Municipal solid waste is a sustainable source of clean, renewable energy and I am proud to see this measure enacted into law.

Another provision I am extremely proud of is one that will provide a tax credit for the production of super energy-efficient clothes washers and refrigerators if those appliances exceed new Federal energy efficiency standards. Conservation and efficiency are the most effective and immediate ways to limit our energy consumption and reduce pollution. I am confident this provision will spur manufacturers to develop super-efficient appliances that will be affordable for consumers.

Another provision of which I am particularly proud relates to the clean-up of Southwest Experimental Fast Oxide Reactor, a decommissioned nuclear reactor near the community of Strickler, Arkansas, in the northwest corner of my State. The site is contaminated with residual radiation, liquid sodium, lead, asbestos, mercury, PCBs, and other environmental contaminants and explosive chemicals. I have been fighting to rehabilitate this site since I came to the Senate, and now we know that persistence pays off.

SEFOR was built by the Southwest Atomic Energy Associates, a consortium of investor-owned electric utilities, and the U.S. Atomic Energy Commission for testing liquid metal fast breeder reactor fuel. SEFOR began operations in 1969 and was permanently shut down in 1972. After the reactor's useful life, the ownership of the site was transferred to the University of Arkansas. The Federal Government helped create these contaminants, and therefore should pay to help clean them up. This is great news for northwest Arkansas, because this site has threatened public health and the environment in one of our state's most beautiful areas for too long. I thank the conferees for retaining my provision related to cleaning up this site.

The final provision I would like to praise relates to improving our country's natural gas infrastructure. I am proud that this bill contains provisions to make it easier for natural gas companies to deliver clean-burning natural gas to this Nation's rural homes, by decreasing the depreciation time for natural gas pipelines.

America's demand for energy is expected to grow by 32 percent during the next 20 years and consumer demand for natural gas will grow at almost twice that rate, due to its economic, environmental, and operational benefits. That level of natural gas use is almost 60 percent greater than the highest recorded level. To satisfy this projected demand, we must substantially expand our existing gas infrastructure and this provision will do that. These are provisions in this bill that I am very proud of, but there are also provisions in this bill that I am not proud of. I am very disappointed by the way in which the

issue of MTBE liability is handled in this bill. I am also disappointed by the lack of a renewable portfolio standard in this bill and I will continue to work to see that a RPS is enacted in coming years.

Our current global situation shows us just how important it is that we takes steps to reduce our dependence on foreign oil. I hope that this bill is taken for what it is: not a comprehensive solution, but a certain step in the right direction. Much more work needs to be done if we ever expect this country to lose its dependence on fossil fuel and foreign sources of energy and I urge my colleagues to continue to work hard until we achieve this goal.

Mr. BIDEN. Mr. President, for our national security, for our economic future, for the health of our environment, our country needs an effective, comprehensive national energy policy. We must free ourselves from dependence on foreign sources of energy. We must leave behind costly, inefficient energy practices and invest in cutting-edge technologies that will keep our economy the most productive in the world. And we must protect and heal the natural environment that we will leave to our children and grandchildren.

The legislation before us fails to meet those needs. When I, and 83 other Senators, voted for the Energy Policy Act on July 31, it was very a different piece of legislation. Unfortunately, the bill has been drastically changed since then. Without sufficient discussion and input from our side of the aisle, unacceptable parts were added to this legislation and crucial parts were taken away. We have been left with a bloated symbol of lost opportunity. I cannot support it.

This is not a trivial matter. This bill would set our energy policy for the next 10 years; we must get it right. Consider how things have changed since we last enacted an energy policy in 1992 and what new challenges we will face in the next 10 years.

Cracks in our energy policy, both in infrastructure and regulation, have become evident in the last few years. They have been most clearly shown during the Enron scandal and the August blackout in the Northeast and Midwest. These were clear signals of serious problems in the current system. Sixty million people were affected by the blackout, and it cost New York City alone $1 billion. This should have been a call to action, but it was not. This bill fails to address the weaknesses in our electrical grid that were exposed over the summer.

The Federal Energy Regulation Commission is prohibited in this bill, until 2007, from reforming the national power grid through mandating Regional Transmission Organizations, which would be necessary to ensure that further blackouts don't occur. This legislation also requires those who want to construct a Regional Transmission Organization to foot the full bill themselves, basically guaranteeing that it won't happen. I have received complaints from the Public Service Commission in Delaware on this very provision.

As our colleagues from the West Coast have reminded us so forcefully, Enron-style energy market manipulation was a major force in undermining the energy system in that part of the country. But this bill does not close the loopholes, with cute names like ''Fatboy'' and ''Get Shorty,'' that allowed Enron to inflate their profits, and that directly caused some of the disruptive and costly power shortages.

The bill also rescinds the Public Utility Holding Company Act without providing an adequate replacement. PUHCA has for decades protected energy customers from energy corporations, like Enron, who might undertake predatory actions or make risky acquisitions or mergers. The repeal of this legislation leaves consumers holding the bag if a power company loses money on a non-energy investment. They could just put it on their customers' electric bills.

Not only does this bill not address the problems of the past, it doesn't plan at all for the future. Our reliance on oil and gas today is inescapable, but the need to move toward something better is undeniable. We will invest billions of taxpayer dollars in this bill for a resource that can't possibly sustain us. Our dependence on oil ties us to internal politics of unstable countries around the world. It condemns us to unsustainable levels of pollution. It should not be a very radical idea to suggest that we need to shift the type of energy that we use in this country. We consume almost 25 percent of the world's daily production of oil, though we hold only 3 percent of the world's oil reserves. This is a deficit that we will pay for with lack of control over our own economy and security. We are bound to the price fixing of Middle East suppliers and unrest in South America and the states of the former Soviet Union, and we will continue to be unless we invest in alternate sources of energy and curb the rate at which we consume.

Unfortunately, this bill takes no major steps toward these goals. In fact, the conference refused to include renewable portfolio standards, supported by 52 Senators, which would have required utilities to generate 10 percent of their electricity from renewable energy sources by 2020.

To deal with our dependence on fossil fuels, we must address both supply and demand. But this bill fails to provide us with a sensible energy conservation program. It doesn't address the need to improve fuel efficiency in our cars and trucks. In that regard, we can now count China among the countries with more foresight than this legislation provides on the issue of automobile efficiency. And this bill simply dropped a measure, accepted 99 to 1 by the Senate, that would have instructed the President to reduce our daily oil consumption by a little more than 5 percent by 2013.

Instead of a forward-looking policy on energy, this bill has been turned into a vehicle to undermine our Nation's environmental laws to the benefit of fossil fuel producers. The bill spends $1.8 billion in taxpayer dollars for the purchase of conventional coal-burning technologies, which reduces future demand for ''clean-coal.'' At the same time, subsidies to promote the cleanest coal technologies have been cut by 20 percent.

It rolls back provisions of the Clean Air Act, by allowing communities to bypass compliance deadlines on ozone attainment standards if they can prove that some of the pollution drifts into their area from upwind locations. Unfortunately, almost all communities with poor air quality can meet this test. The result is a significant weakening of the Clean Air Act and a slap in the face to cities, like Wilmington, DE, who have met clean air standards despite dealing with upwind pollution.

This is not only an environmental problem. Currently, 130 million Americans are living in areas that don't comply with the air quality standards, and non-compliance has been linked to an increased occurrence of respiratory problems. A group of health organizations including Physicians for Social Responsibility and the American Lung Association have estimated that this rollback would cause more than 385,000 asthma attacks and nearly 5,000 hospital admissions per year.

The Clean Water Act has likewise been weakened. Oil and gas drilling sites are exempted in this bill from run-off compliance, and hydraulic fracturing, an oil and gas recovery technique, has been completely removed from regulation under the Safe Drinking Water Act.

These are two major changes, but there are other assaults on the environment. For instance, royalties charged to oil and gas recovery units on public land were reduced; offshore oil drilling in the Outer Continental Shelf was authorized; and, a Senate-approved provision, authorizing research on global climate change, was eliminated. This bill prefers ignorance to understanding when it comes to the most important environmental issues that our planet faces today.

And, in perhaps the most transparent concession to special interests, this bill not only waives liability, retroactively to September 5, for those who have produced the toxic substance, MTBE, that is polluting our ground water supply, but it grants its manufacturers $2 billion in transition funds and doesn't ban the additive until 2014, a provision which can be easily waived by the President or any Governor. This leaves those affected communities with a $29 billion clean up tab.

But, that is not the only tab that this bill leaves with the American people. It leaves us to pay $25 billion,

mostly in pork, almost half in backward-looking tax breaks to fossil fuel producers. That is simply too much to be spent on a bad idea. This is not a roadmap, a vision on the horizon, to guide us for the next decade.

This bill fails to give us the comprehensive energy policy our Nation needs in this new century. It does nothing to free us from our dangerous dependence on fossil fuels. It does not set a clear course toward cleaner, more efficient technologies. And it fails to protect our environment. In too many ways it has sacrificed the long-term interests that we all share for short-sighted special interests. We can, we must do better.

Mr. KOHL. Mr. President I regret having to vote against this energy package. The country needs a coherent energy policy to help us tackle the challenges that come with economic growth. Our constituents need to know that when they wake up in the morning, the lights will be on and the energy to power our days will be available.

Our economy needs plentiful, affordable, reliable energy as we struggle to climb out of a devastating period of slow growth and job loss. Unfortunately, this bill does more to meet the needs of special interests than the needs of a growing economy.

We need an energy bill that leads to lower prices, a clean environment, and consumer protection. The bill before us today is a missed opportunity to further any of those goals. It has come up short in its effort to lower natural gas prices for Wisconsin consumers. Natural gas prices have been a roller coaster for the people from my State, and we need a large long term supply to come on line. The North Slope of Alaska was the answer, but this bill has done little to make that supply a reality.

Another problem plaguing consumers in Wisconsin is spikes in gas prices brought on by our overdependence on boutique fuels. Most recently, in southeastern Wisconsin, a fire at a refinery resulted in consumers paying $2 a gallon for gasoline because we could not bring in gasoline from other regions without violating the Clean Air Act. The bill before us could have limited the different blends of gasoline in use around the country, so that if one area had a supply disruption, fuel could be imported from another region. I worked with members of the Wisconsin delegation to include language to solve this problem in the future, but that was not retained in the conference Committee negotiations. Wisconsinites will continue to be held hostage to local refineries during supply disruptions.

I supported provisions in the Senate energy bill that would have created a renewable fuels portfolio standard or RPS. The RPS was going to be an aggressive target that would have created a significant market for renewable energy technologies. While the bill does contain tax provisions to encourage the use of renewable energy, the RPS was a new and exciting effort to wean us of our addiction to fossil fuels. The RPS was dropped in conference, even though it had received several strong votes in the Senate. Many States are creating their own RPS, but a national requirement would have set the renewable energy industry on a path to mainstream success. Instead, we are left with small changes at the margins which will not significantly affect our energy production mix.

High electricity prices over the last few years have made it clear that consumers need better protection from unscrupulous companies. Again the Senate bill contained provisions that would protected consumers from the kind of price gouging schemes created by Enron. My colleagues worked hard to make sure the Federal Energy Regulatory Commission had the teeth and the oversight capability to protect consumers in a world without the Public Utility Holding Company Act. Again the conference turned their back on the Senate provision and embraced House language that defends industry at the expense of State and Federal regulators.

The Congress has squandered another opportunity to craft a far reaching and progressive energy policy for this country. Instead we have chosen to pander to special interests and create a particularly unsavory piece of legislative sausage. The bill before has been laden with three time the tax breaks the President requested, and more than $100 billion in spending. We can do better than this. We should do better than this, which is why I oppose the bill and support the filibuster. Congress owes it to the American people to come back next year and put together a bill that meets the needs of everyone, consumers and industry alike, instead of playing favorites and leaving the taxpayers with the bill.

Mrs. MURRAY. Mr. President, I want to take time to comment on the Energy bill before us today.

It is disappointing that such a massive bill could do so little to promote our energy independence, national security, economy, or environment. It does nothing to protect our rate-payers from the type of energy crisis we faced in the Pacific Northwest and California. Those who claim otherwise are simply masking the real mission of this bill which is a taxpayer giveaway to the big energy companies.

A 1,200-page bill has much to comment on, but I will not take time to detail every concern I have. I want to discuss the electricity title, the lack of a true energy policy, and threats to our environment.

First let me discuss the electricity title of the bill. For those of us from the Pacific Northwest this title was of the utmost concern.

For over 2 years the Pacific Northwest has been struggling against the Federal Energy Regulatory Commission's, FERC, effort to deregulate the transmission system through its promotion of regional transmission organizations, RTOs, and standard market design, SMD, rules.

Two simple points: First, FERC had proposed a solution in search of a problem that doesn't exist in the Pacific Northwest. Second, the one-size-fits-all approach being promoted by FERC would neither work nor be cost-effective in our unique hydropower based system.

With those concerns in mind I have been working with many of my colleagues in the Pacific Northwest and Southeast, who have similar regional concerns, to keep FERC from moving forward with these plans. I am pleased that the bipartisan group has been successful in delaying until 2007 FERC's ability to move forward with SMD.

While the bill delays SMD implementation, it does not permanently stop FERC from ultimately pursuing this power grab, and does nothing to stop RTO development.

In fact, the bill is an outright endorsement of the RTO plan, going so far as to provide incentives to utilities for joining such transmission organizations.

FERC has not demonstrated that such a system in the Pacific Northwest will be an economic benefit to the region and, to date, the majority of Washington State utilities remain opposed to the RTOs. Even with the SMD delay provision, this bill is a threat to the electricity system of the Northwest, and I cannot add my voice to this bill's support of RTOs.

Also of great concern in the electricity title is the bill's failure to deal with market manipulation. The Pacific Northwest and California are still feeling the direct effects of the 2000–2001 energy crisis that we now know was caused, in large measure, by energy companies manipulating prices.

Given the lessons we have learned over the past 3 years, one would have hoped that this Energy bill would aggressively attack these known methods of market manipulation. But that is not the case. This bill only bans one type of manipulation and ignores all the other methodologies we know were used.

By remaining virtually silent on market manipulation, this bill is giving a nod to energy companies to once again employ Fat Boy, Get Shorty, and other infamous price-gouging schemes.

This bill is an open invitation for companies to once again seek to fatten shareholders' wallets at the expense of ratepayers. This is more true now that the bill repeals the Public Utility Company Holding Act, PUHCA, without implementing any countervailing laws to protect against abuse in the industry.

In total, this bill promotes schemes that are counter to Washington's ratepayers and fails to protect them against the manipulative practices that have already raised their rates.

The bill also lacks a comprehensive energy policy.

During the past 3 years of debate on energy I have acknowledged we should recognize the current importance of oil, gas, and coal in our energy production today. But to ensure America's energy security for the future, it must strongly promote energy efficiency, conservation, clean, and renewable energy sources, and should diversify our energy sources.

But rather than aggressively promoting renewable energy and conservation, this bill maintains the status quo. This bill directs billions of taxpayer dollars to traditional energy producers who already have healthy market shares and hardly need Government support.

Of the roughly $23 billion in tax credits in this bill, only $4.9 billion, or 20 percent, would go towards renewable energy or conservation.

I support the production tax credits for wind, solar, geothermal, and biomass renewable energy in this bill, but unfortunately public power is left out of the equation.

Many Washington residents are served by publicly owned utilities and cooperatives and they should receive the same incentives to invest in renewable energy as this bill gives to the for-profit utilities.

Earlier drafts of the tax title included a tradable tax credit for public power investment in renewables. I know that Senate Finance committee members fought for this provision, but unfortunately the President and House objected to the provision.

With so much of Washington and the Pacific Northwest served by public power utilities, it will be much harder to get these type of investments made.

We hear constantly that we need to decrease our reliance on oil from the Middle East and yet this bill does nothing substantive to increase automobile efficiency standards. The United States is the most technologically advanced country in the world. There is no reason we cannot build and produce more fuel-efficient cars.

Without addressing fuel efficiency standards, it is hard to praise this bill for promoting energy efficiency or national security.

In the end, this bill does nothing more than preserve the status quo of energy production in the United States. We are not more secure, we are not more independent, and we have not truly diversified our production sources. All we have done is promote the traditional energy sources of oil, coal, and gas at the expense of our national security and environment.

This bill does serious harm to our environment and our health by effectively turning back the clock on decades-old environmental protections.

First, the bill includes a provision that would amend the Clean Air Act to allow more delays for adhering to the EPA's smog regulations. This provision is not just illogical, it is dangerous.

Second, the bill's provisions for our coastal regions present a threat to an area my State wants protected.

For Washingtonians, the coastal areas are some of the most pristine and cherished natural areas in the State. Under this bill, these areas, along with coastal areas in many other States, would be placed in serious jeopardy.

The bill would grant new authority to the Department of the Interior to authorize energy development projects on the Outer Continental Shelf, OCS, including the transport and storage of oil and gas. At the same time, it would undermine the rights of States to manage their coasts. Under the Coastal Zone Management Act, CZMA, States were given the right to have a say in Federal projects that impacted their coastal regions. This bill would severely compromise these rights.

Third, the bill has alarming environmental implications for drilling and construction projects. It would allow an expedited application process for drilling on Federal lands by requiring the Department of the Interior to automatically approve applications once they have met certain standards, regardless of any outstanding environmental concerns.

It also exempts companies from adhering to the Clean Water Act's runoff regulations for construction and drilling sites. Without adherence to these guidelines, the risk of ground water contamination increases dramatically.

Fourth, I am concerned about a measure to provide legal immunity to chemical companies that produce the gasoline additive MTBE. The toxic substance is known to have caused ground water contamination, and this bill shifts costs for cleanup to taxpayers.

Lastly, this bill contains huge amounts of subsidies for the oil and coal industries. Nearly half of this bill's incentives are given to the oil and coal industries, two of the most environmentally destructive fossil fuels that have contributed to global warming. This is not just irresponsible; it is wrong.

We must actively work to reduce our dependence on foreign oil, but subsidizing the industries and rolling back environmental protections is not a logical methodology.

In contrast, the bill provides less than one-quarter of its incentives to industries that produce renewable energy. The facts are clear. Renewables are simply not the top priority of this piece of legislation.

These are some of the many reasons I cannot support this piece of energy legislation. Not only does it put consumers at risk by repealing necessary protections, but it seriously puts at risk our own health and the health of our environment with the special interest giveaways to the oil, gas, and coal industries.

Finally, let me address the claims about job creation in this bill. For Washington State, a more aggressive promotion of renewable energy could have been a boost to local companies involved in this area of generation, but this bill did not provide that direction.

Proponents have argued that the bill encourages the construction of a natural gas pipeline from Alaska, which would create jobs in Washington State. Unfortunately, the bill does not provide the guarantees needed for what could have been an important project. To construct the pipeline, its builders say they would need some protection against gas prices falling below a certain level. But, this bill provides no mechanism for risk mitigation, so according to its own builders, the pipeline will not be built.

The negative aspects of this bill are overwhelming. It fails to adequately address the real problems that we all face. It threatens the environmental progress we have made in the past and the progress we hope to make in the future. Without measures that substantively promote responsible energy use, increased conservation, energy independence, consumer protection, and environmental safeguards, this bill is simply unacceptable.

I cannot support legislation that puts us all in danger, and that is exactly what this bill does. The people of Washington State deserve better, and the people of America deserve better.

Mr. LEVIN. Mr. President, it is difficult to oppose a bill that has a number of provisions that I not only support, but worked to have included in the bill. However, the process and the product are deeply flawed and I cannot support it.

There are many objectionable provisions that were added to this bill that were not in either the House or Senate versions of this legislation; for instance the retroactive MTBE liability waiver, underground storage tank provisions that would require taxpayers, rather than polluters, to pay $2 billion to clean up leaking underground storage tanks containing gasoline and other toxic chemicals, even at sites where viable responsible parties are identifiable, and the numerable State-specific projects that will cost billions of dollars and were, again, not considered by the House or the Senate.

The Senate passed a comprehensive and balanced Energy bill in July. Then, after weeks of closed-door meetings with virtually no input from Democratic conferees, the Republicans put forward this ''take it or leave it'' Energy bill that is drastically different than the bill that the Senate passed. We have no opportunity to amend this bill, or choose among its good and bad provisions. It is all or nothing.

There are simply too many provisions on the negative side of the ledger. The massive power failure of August 2003, on top of the massive price manipulation perpetrated by Enron and others, provided additional proof, proof that shouldn't have been needed, that the United States' deregulated energy markets are not functioning well. This bill doesn't help that problem. It may make it worse.

The Conference report would repeal the Public Utility Holding Company

Act of 1934, PUHCA, longstanding consumer and investor protection legislation governing energy industry structure and consolidation, 1 year after enactment of this bill. Unfortunately, the bill fails to provide adequate protections to prevent industry market manipulation and consumer abuses. Governor Granholm of Michigan has said that replacing PUHCA with ''weaker anti-fraud and market manipulation rules'' could weaken the States' ability to protect consumers. Further, while the enactment of this legislation's mandatory reliability provisions would be an improvement over the current voluntary system of standards, the bill fails to ensure that regional transmission organizations will have the authority to enforce those standards in order to prevent, or respond effectively to, another blackout. Uncertainty in the power industry threatens our economy and security and creates the loss of investor confidence in U.S. energy markets. If necessary, we should adopt a stand-alone bill that sets mandatory reliability standards, requires utilities to join regional transmission organizations and establishes consistent rules for the enforcement of standards nationwide than pass an Energy bill filled with so many harmful provisions.

In addition, two provisions in this conference report would significantly impede the ability of Federal and State agencies to investigate and prosecute fraud and price manipulation in energy markets. These provisions would make it easier to manipulate energy markets without detection.

Section 1281 of the electricity title states: ''Any request for information to a designated contract market, registered derivatives transaction execution facility, board of trade, exchange, or market involving accounts, agreements, contracts, or transactions in commodities (including natural gas, electricity and other energy commodities) within the exclusive jurisdiction of the Commodity Futures Trading Commission shall be directed to the Commodity Futures Trading Commission.'' Section 332(c) of the oil and gas title contains similar language specifically applicable to investigations by the Federal Energy Regulatory Commission, FERC.

If adopted, this would curtail all State and Federal authority, other than CFTC, to investigate wrongdoing in CFTC-regulated markets. This would impede FERC, Department of Justice, and State investigations of fraud and manipulation in these markets. It would turn the CFTC into an impediment for all other Federal and State investigations into matters within CFTC-regulated markets, which would be an unprecedented intrusion into the enforcement of State and Federal consumer protection laws. Had this approach been in effect in recent years, FERC would not have been able to investigate manipulation of the energy markets, including the fraud and manipulation perpetrated by Enron through EnronOnline.

Section 1282 of the electricity title would impose a higher criminal standard, ''knowingly and willfully,'' for filing false information and for improper round trip trading than exists under current law. The new round trip trading provision is inconsistent with current law and the Cantwell amendment, which prohibited market manipulation in electricity markets, and which recently passed the Senate.

For example, section 4c of the Commodity Exchange Act states it is ''unlawful for any person to enter into . . . a transaction . . . involving the purchase or sale of any commodity for future delivery'' if the transaction ''is, of the character of, or is commonly known to the trade as a 'wash sale' or . . . is a fictitious sale.'' There is no requirement that the violation be ''willful.''

Manipulation is difficult to prove even under current law. By raising the burden of proof, this provision will make it nearly impossible to prove illegal round trip trading or wash sales. Rather than weakening the laws preventing fraud and manipulation in energy markets, the Congress should be strengthening these prohibitions.

There are other provisions that would affect FERC's ability to ensure markets are transparent and fair.

The ''Enron loophole'' was attached during the conference on an omnibus appropriation bill in 2000, and was a factor underlying the massive manipulation of the energy markets in 2000 and 2001. The provisions in this bill, attached under hurried circumstances would widen the loophole and increase the chances of more manipulation and dysfunctional markets. This is the wrong response to the current crisis of confidence and integrity in our energy markets.

I am also disappointed that the conference report on this bill directs the Department of Energy, DOE, to ''as expeditiously as practicable, acquire petroleum in amounts sufficient to fill the Strategic Petroleum Reserve to the [1 billion] barrel capacity,'' but does not include any direction to DOE to fill the SPR in a manner that minimizes the cost to the taxpayer or maximizes the overall supply of oil in the United States. That second direction is critical—otherwise the filling of the SPR could lead to continuing high gas prices.

The Levin-Collins amendment, which was adopted unanimously by the Senate last month, directed DOE to develop procedures to fill the SPR in a manner that minimizes the cost to the taxpayer and maximizes the overall supply of oil in the United States. The Levin-Collins amendment expressed the sense of the Senate that the DOE's current procedures for filling the SPR are too costly for the taxpayers and have not improved our overall energy security.

DOE's internal documents state that filling the SPR without regard to the price and supply of oil in the global markets exacerbates price problems in those markets. By increasing demand for oil at a time when oil is in scarce supply, the SPR program pushes the price of oil up even further. Moreover, when near-term prices are higher than future prices, oil companies will meet the additional demand for crude oil by removing oil from their own inventories rather than purchasing high-priced oil on the spot market. Thus, under these price conditions, which have generally prevailed over the past year and a half, adding oil to the SPR will lead to a corresponding decrease in private sector inventories. Since market prices are so closely tied to inventory levels, filling the SPR under these market conditions both depletes private sector inventories and pushes up prices for America's consumers.

Furthermore, according to the Department of Energy's own analyses, taking costs into consideration—as the DOE did prior to early 2002—can save taxpayers several hundreds of millions of dollars over the span of a few years. Acquiring more oil when prices are low will increase revenues to the Treasury from the sale of high-priced royalty oil that is not needed to fill the SPR. Secondly, allowing oil companies to defer deliveries to the SPR when prices are high in return for the delivery of additional barrels of oil at a later date—as DOE did prior to early 2002—enables the DOE to increase the amount of oil in the SPR without any additional costs.

In summary, the unqualified direction in the bill to DOE to fill the Strategic Petroleum Reserve to 1 billion barrels is likely to increase the cost of crude oil and crude oil products, such as gasoline, home heating oil, and diesel and jet fuel, to American consumers and businesses, as well as to the taxpayer, with uncertain benefits to our national security.

Also, while I support the provision in this legislation that would increase the use of ethanol to 5 billion gallons by 2012 and 3.1 billion gallons by 2005, it needs to be reasonable in a way that ensures the continued viability of the Highway Trust Fund.

Twice the Senate passed legislation that included a Volumetric Ethanol Excise Tax Credit, VTEEC, that would address the shortfall in revenue to the Highway Trust Fund that was caused by the ethanol tax exemption. In addition to taxing ethanol, the VTEEC, as passed by the Senate, would maintain the credit for ethanol production by paying for it from the general treasury, create a biodiesel credit and ensure that all taxes charged on ethanol go to the highway trust fund.

Unfortunately, the arrangement worked out by House and Senate Republicans gives ethanol blenders the new option to receive a 5.2 cent tax credit after paying the federal gas tax or they could continue receiving the current ethanol exemption of 5.2 cents. Since most blenders likely would continue to choose to receive the exemption up front rather than wait for a tax

credit, the highway trust fund would still lose billions of dollars per year. Efforts by Senator BAUCUS to address this problem were approved by the Senate conferees, but was refused by the House. While I support increased ethanol production, it is imperative that increased ethanol production does not diminish the Highway Trust Fund.

Additionally, I am troubled that this legislation exempts producers of MTBE from liability. MTBE, an oxygenate that can and should be replaced by ethanol, is a potentially harmful product and its producers should not be exempt from liability. In Michigan, it has been estimated that MTBE has contaminated ground water around over 700 leaking underground storage tank sites. Further, as many as 22 water supply wells have been deemed unusable due to MTBE contamination. Because of this MTBE liability waiver, the State of Michigan may have to pay over $200 million to clean up those sites. Governor Granholm has strongly protested that we need to hold manufacturers accountable for the damage that MTBE does to public health and the environment, not guard them from liability which then allows them to pass the cleanup costs on to the States.

As I stated earlier, this bill has a number of provisions that I support and that I worked to have included in it. These include tax credits for advanced technology vehicles and joint research and development between the Government and the private sector to promote the expanded use of advanced vehicle technologies. But in the end, the good provisions must be weighed against the large number of bad provisions, and there are too many objectionable provisions for me to support this bill.

The Senate has worked to create a national energy policy for years. In just a few weeks, without bipartisan negotiation, this piece of legislation was created. We should work to complete a long-term, comprehensive energy plan that provides consumers with affordable and reliable energy, increases domestic energy supplies in a responsible manner, invests in energy efficiency and renewable energy sources and protects the environment and public health.

Mr. LIEBERMAN. Mr. President, I rise in the strong opposition to the bill before us, the conference Energy Policy Act of 2003. The bill before us is a pork-laden, budget-busting, fossil-fuel promoting vestige of the past, developed largely in secret by a handful of GOP Members. This legislation is a mere shadow of what it was and could be.

This could have been a proud moment for this Congress and for the Nation. Rather than caving to special interests and wallowing in pork barrel politics, we could have risen to the challenge and met our obligation to help prevent such crises as the Enron energy scandal and the blackout of 2003 from reoccurring. We could have acted to promote our economic prosperity, strengthen our national security, and protect the health and welfare of all Americans through bold, balanced legislation. We could have finally tackled global warming—the greatest environmental challenge of our time. We could have considered a real jobs bill, based on opening new markets and spurring new technologies. We could have set American energy policy on a better, brigther course.

Instead, we are stuck with this—a sewer of an Energy bill. The bill that has emerged from the closed door, Republican-only conference, and which we consider today is a legislative disaster. Sadly, it bears little resemblance to the balanced, bipartisan legislation that passed the Senate last July. The Senate bill, which originally passed this body in the 107th Congress, strengthened our national security, safeguarded consumers, and protected the environment, and was developed in open, meaningful, bipartisan fashion.

Before I move to the substance of the conference bill, I must offer a few harsh words with the process of GOP majority employed to produce it. In all my time in the Senate, I have never witnesses a more unfair and unstatesmanlike spectacle. With the exception of the tax provisions of this bill, in which Senator GRASSLEY seized every possibility to involve his Democratic colleagues, this is a thoroughly partisan product.

Here is the way the conference went: One conference meeting at which Democratic conferences offered opening statements only: complete shut out of Democratic conferences from negotiations over the substance of the bill: a few staff-level meetings for show after policy decisions had already been made and reflected in GOP-only developed text; special-interest lobbyists exerting extraordinary influence over the bill; release of a more than 1,000-page document only 48 hours before the scheduled meeting to adopt it—40 percent or more of which was new text. It is inconceivable to me that legislation of this import was developed this way. Quite simply, this process afforded no real opportunity for Democrats to influence the final product and no opportunity for the American public—whom this body is charged to represent—to view and comment on the final product. I second the comments of many of my Democratic colleagues that we will never be subject to a conference like this again.

In dissecting the pork-laden bill that emerged from the smoke-filled back rooms of the conference committee, let me first highlight one provision of extraordinary importance to the State of Connecticut. Connecticut has worked for decades to ensure that the construction and operation of natural gas pipelines and electric cables across our national treasure, the Long Island Sound, fully comply with State and Federal environmental and energy laws. The bill before us contains a provision to permanently activate the Cross Sound Cable—a provision that did not appear in either the House or the Senate bill and as to which no one received advance notice. The Cross Sound Cable had been temporarily activated by Federal order in emergency response to the summer's massive blackout, but had been prevented from permanent activation by the State of Connecticut until it complies with State laws. So much for States rights and environmental and consumer protection. Shameful.

That is only the tip of the iceberg. Let me review the most egregious offenses buried in this bill.

First, subsidies and giveaways to industries and special interests. My good friend, Senator MCCAIN, has labeled this bill the porkiest of the porkbarrel, budget-busting bills. CBO estimates that the bill will cost more than $30 billion in industry tax incentives and direct spending. Taxpayers for Common Sense has estimated that it will cost in excess of $90 billion. This stunning price tag includes millions of dollars in direct incentive payments to mature energy industries, including payments to undertake equipment upgrades they would have to do anyway. The bill authorizes $1.1 billion for a nuclear reactor in Idaho to demonstrate uneconomic hydrogen production technologies. It has loan guarantees to build coal plants in several States, provided as last-minute sweeteners to secure Senatorial support for the bill. The bill contains interesting new ''green bonds'' for five projects throughout the country, by which projects would get financial benefits for ''green'' construction of primarily shopping centers. One project, in Shreveport, LA includes a new Hooters restaurant. Is this groundbreaking energy legislation? How can we approve legislation gushing money this way given the mushrooming budget deficit? Our neediest citizens will surely pay the cost.

Second, inadequate consumer protections. The bill does not adequately protect consumers against utility mergers and electricity market manipulation. For example, broad, effective prohibitions against price gouging schemes used by Enron and other energy trading firms, which passed the Senate 57 to 40 earlier this month, are excluded from the bill. The legislation repeals the requirements of the Public Utility Holding Company Act, PUHCA, without putting adequate consumer protections in place.

Third, electric transmission line and natural gas pipeline and construction. The bill allows the Secretary of Energy to determine the siting of transmission lines through Federal lands, including national forests and national monuments, except those in the National Park System, over the objection of the responsible Federal agency. The bill overrides State energy and environmental legal authorities to give the Federal Government power to site and construct transmission lines and natural gas pipelines.

Fourth, MTBE liability protection. In a provision added in conference to benefit companies primarily based in Louisiana and Texas, the bill provides retroactive and prospective liability protection for producers of methyl tertiary-butyl ether, MTBE, cutting off the rights of injured Americans across the country and imposing a huge financial burden for cleanup on our States and local communities. Simply unbelievable.

Fifth, environmental protection rollbacks and giveaways. The icing on the cake for this bad bill is the significant environmental protections it strips away for the benefit of energy producers. The bill also contains new provisions to make our air much dirtier. The conference bill would exempt metropolitan areas from meeting the Clean Air Act's ozone-smog standard. This issue was never considered by the Senate or the House and was inserted into the conference report during ''conference committee'' meetings. A new report from Clean the Air reveals that the ill-conceived Energy bill would have severe public health consequences around the country, especially for children. Delays in implementing the Clean Air Act could lead to nearly 5000 hospitalizations due to respiratory illness and more than 380,000 asthma attacks and 570,000 missed school days each year. The bill exempts all construction activities at oil and gas drilling sites from coverage under the Clean Water Act and removes hydraulic fracturing, an underground oil and gas recovery method, from coverage under the Safe Drinking Water Act. The conference bill expedites energy exploration and development at the expense of current National Environmental Policy Act, NEPA, requirements. Environmental review is waived for all types of energy development projects and facilities on Indian land.

I want to be fair. The conference bill does contain provisions that make limited progress—baby steps only—toward achieving energy goals. And the bill recognizes the political reality that the Senate has spoken forcefully to the fact that it will not permit the Bush administration to drill in another of our Nation's treasures, the Arctic National Wildlife Refuge. You can search the bill to find requirements for renewable fuels, (increase in sales of renewable fuels, including ethanol, from 2 billion gallons to 5 billion gallons by 2012); Federal energy efficiency standards for energy use and appliances; increase in Federal Government purchase of renewable energy, 7.5 percent of electricity from sources such as wind, solar, geothermal, and biomass; funding for energy research and development, including related to hydrogen fuels; and limited tax incentives for alternative vehicles, renewable energy sources, and energy efficiency. That is why some of my colleagues claim this bill articulates an energy program for the 21st century. Hogwash. These weak provisions do not even register on the scale against the predominant special interest, fossilized provisions of the conference bill.

What is this bill missing? Frankly, the list is staggering. I have time to highlight five key areas:

First, renewable portfolio standards. Our Senate-passed bill required utilities to generate 10 percent of their electricity from renewable energy facilities by 2020. Such a provision would spur new technology development and work to wean the country off foreign oil dependence and the drilling-first-and-only mindset that has predominated American energy policy for generations. In addition, the majority touts this bill as a great jobs creation bill; according to studies of the Tellus Institute and Union for Concerned Scientists, the renewable industry would create new, sophisticated job opportunities for hundreds of thousands of Americans.

Second, climate change. Greenhouse gas emissions from the burning of fossil fuels threaten not only our environment, but also our economy and our public health. Should we continue unabated our current rate of polluting, we threaten to disrupt the delicate ecological balance on which our livelihoods and lives depend. This bill is so short-sighted that it contains no provisions of any kind to address climate change.

Third, fuel economy improvements. No credible Energy bill can lack means to improve fuel economy for automobiles and trucks. This is key to reducing our dependence on foreign oil because the transportation sector is the single largest user of petroleum.

Fourth, oil savings provision and specific hydrogen standards. Amendments agreed to by the Senate last summer contained provisions with specific deadlines—real teeth—to reduce our dependence on foreign oil and to move us to the hydrogen fuel program of the future. Neither appears in this bill.

Fifth, Alaska natural gas pipeline. I strongly support the construction of this pipeline, which will bring millions of gallons of natural gas to the lower 48 States and create almost half of the new jobs, 400,000, touted under this bill. The conference bill, however, fails to provide the necessary incentives to enable construction of the Alaska natural gas pipeline, which would prevent the U.S. from becoming more dependent on natural gas imports.

This abominable bill must not be made law. Any Senator serious about advancing America's energy and environmental policies and curtailing Government waste is compelled to vote against the Energy bill before us. We can and must do better. Americans deserve a real Energy bill, one that we can be proud of. This is not it. Let us reject this legislation and return to the drawing board, recommitting ourselves to producing a balanced, innovative, and responsible energy policy for the 21st century.

Ms. SNOWE. Mr. President, as I rise to speak to the issue of the conference report to H.R. 6, the Energy Policy Act of 2003, I want to first recognize the efforts of Energy Committee Chairman DOMENICI and Finance Committee Chairman GRASSLEY for the extraordinary time and effort they have devoted to developing a national energy policy for a 21st century America. Theirs was an arduous task in addressing not only political differences with the bill but also regional ones as well. So I thank them for their work.

This has certainly been a long road. Congress has been debating and voting on a number of energy issues over the past two Congresses, one when under Democratic control and one under Republican leadership. There have been a myriad of issues to consider as we have attempted to shape appropriate policy, and to help increase the public's awareness of the benefits to our health and national security in shifting from foreign fossil fuel imports toward renewable, efficient, and alternative energy sources and manufacturing technologies. Yes, it has been a long, hard road but this conference report simply does not put us on the right road to accomplish these goals for the good of the Nation. We have yet to find that new direction, but we must keep seeking it.

As Theodore Roosevelt once said, ''Conservation is a great moral issue, for it involves the patriotic duty of ensuring the safety and continuance of the nation.'' The conferees had the opportunity to raise the bar for the Nation's future domestic energy systems through new energy policies, through the creation of tax incentives for available and developing technologies, and most of all for incentivizing the entrepreneurial spirit of the American people. But, this goal, in my opinion, has not been reached in the Energy conference report before us.

Since we started to develop new strategies for the Nation's energy policy for the 21st century, we have had to undergo a fundamental reassessment of our energy infrastructure in the aftermath of the horrific events of 9/11 and the ongoing turmoil in the Middle East. We realize now more than ever that we must reduce our vulnerabilities to terrorism with more secure, localized, and reliably distributed energy delivery systems rather than relying solely on our current centralized infrastructure of pipelines, refineries, powerplants, patchwork of electricity grids, and oil tankers berthed in our harbors. The United States simply cannot afford to continue to spend at least $57 billion a year buying oil from the Middle East and continue its upward trend of fossil fuel usage.

The entire world—particularly the developing and fast-growing nations of China, India, and Brazil—desperately needs access to clean, low-cost, energy-efficient and renewable resources. The key is to make the best alternate energy systems that are competitive with today's nonrenewable sources of energy

so that they can be developed and used both at home and sold abroad.

Since 2000, I have been proud to have been a member of the Finance Committee where I worked to develop responsible tax incentives to increase the efficiencies of the electricity we produce, the vehicles we drive, the appliances we use, the homes in which we live, and, in turn, enhance the competitiveness of our domestic manufacturers. Our task is to incentivize, through the Tax Code, our U.S. manufacturers to develop and employ the most promising and cost-effective technologies to the U.S. and global marketplace with all due speed.

Unfortunately, the conference report increases oil and gas tax credits to $11.9 billion while conservation and energy efficiency incentives were decreased to $1.5 billion. An equitable balance has not been achieved nor is it a step forward.

We need to expand the mix of the country's energy sources with the realization that power from nuclear and fossil fuels will continue to be a large part of the energy basket in the next decades—but, at the same time, we must encourage safer, cleaner and decentralized sources as well. The conference report before us simply does not progress far enough in this direction, instead maintaining more of a ''business as usual'' approach to the Nation's energy future.

One of my greatest disappointments is the absence of provisions from the Feinstein-Snowe SUV loophole legislation that would have phased-in changes in CAFÉ standards requirements in four, attainable stages that would have brought the standards for SUVs in line with passenger cars within the next 8 years. Closing this loophole alone would save our nation approximately 1 million barrels of oil, or fully 10 percent of the oil our vehicles consume on a daily basis.

Right now, all our vehicles combined consume 40 percent of our oil, while coughing up 20 percent of U.S. carbon dioxide emissions—the major greenhouse gas linked to global climate change. To put this in perspective, the amount of carbon dioxide emissions just from U.S. vehicles alone is the equivalent of the fourth highest carbon dioxide emitting country in the world. Given these stunning numbers, I cannot fathom why we continue to allow SUVs to spew three times more pollution into the air than our passenger cars.

Like Senator FEINSTEIN and I, other nations have realized the value of these changes. Even China—a developing country—has great concerns about its increased reliance on foreign oil, so much so that Chinese officials say they have to save energy—and how are they prepared to accomplish this? By implementing more stringent CAFÉ standards for new vehicles—including those manufactured in the United States—in their country than we currently have in the United States or in this conference report. How ironic that China is more progressive than the United States in their attempts to save energy and decrease dependency in oil imports at the same time that the United States overall fuel economy has actually fallen to its lowest level since 1980.

According to a November 18 New York Times article, vehicles made by Western automakers that do not meet the standards the Chinese Government has drafted may have to be modified to get better gas mileage before the first phase of the new rules becomes effective in July of 2005. I ask unanimous consent to print the November 18 article in the RECORD.

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

CHINA SET TO ACT ON FUEL ECONOMY; TOUGHER STANDARDS THAN IN U.S.

(By Keith Bradsher)

GUANGZHOU, CHINA, Nov. 17—The Chinese government is preparing to impose minimum fuel economy standards on new cars for the first time, and the rules will be significantly more stringent than those in the United States, according to Chinese experts involved in drafting them.

The new standards are intended both to save energy and to force automakers to introduce the latest hybrid engines and other technology in China, in hopes of easing the nation's swiftly rising dependence on oil imports from volatile countries in the Middle East.

They are the latest and most ambitious in a series of steps to regulate China's rapidly growing auto industry, after moves earlier this year to require that air bags be provided for both front-seat occupants in most new vehicles and that new family vehicles sold in major cities meet air pollution standards nearly as strict as those in Western Europe and the United States.

Some popular vehicles now built in China by Western automakers, including the Chevrolet Blazer, do not measure up to the standards the government has drafted, and may have to be modified to get better gas mileage before the first phase of the new rules becomes effective in July 2005.

The Chinese initiative comes at a time when Congress is close to completing work on a major energy bill that would make no significant changes in America's fuel economy rules for vehicles. The Chinese standards, in general, call for new cars, vans and sport utility vehicles to get as much as two miles a gallon of fuel more in 2005 than the average required in the United States, and about five miles more in 2008.

This country's economy is booming, and a growing upper class in big cities like this one is rapidly buying all the accouterments of a prosperous Western life, including cars. As China burns more fossil fuels, both in factories and in a rapidly growing fleet of motor vehicles, its contribution to global warming is also rising faster than any other country's.

But Zhang Jianwei, the vice president and top technical official of the Chinese agency that writes vehicle standards, said in a telephone interview on Monday that energy security was the paramount concern in drafting the new automotive fuel economy rules, and that global warming has received little attention.

''China has become an important importer of oil so it has to have regulations to save energy,'' said Mr. Zhang, who is also deputy secretary of the 39-member interagency committee that approved the rules at a meeting this month.

China was a net oil exporter until a decade ago, but its output has not kept up with soaring demand. It now depends on imports of oil for one-third of its needs, mainly from Saudi Arabia and Angola. Before the war, Iraq was also an important supplier. By comparison, the United States now imports about 55 percent of the oil it uses.

The International Energy Agency predicts that by 2030, the volume of China's oil imports will equal American imports now. Chinese strategists have expressed growing worry about depending on a lifeline of oil tankers stretching across the Indian Ocean, through the Strait of Malacca, a waterway plagued by piracy, and across the South China Sea, protected mainly by the United States Navy.

Various Chinese government agencies still have three months to review the legal language in the fuel economy rules, giving automakers some time to lobby against them; as yet, there has been no mention of the approval of the new rules in the government-controlled Chinese media.

But Mr. Zhang said that the rules in draft form were the product of a very strong consensus among government agencies and that ''the technical content won't be changed.''

Two executives at Volkswagen, the largest foreign automaker in China, said that representatives of their company and of domestic Chinese automakers attended what they described as the final interagency meeting to approve the rules. Under pressure from the government, these auto industry representatives agreed to the new rules despite misgivings, the executives said. ''They had no choice but to agree,'' one of the Volkswagen executives added.

The executive said that Volkswagen's vehicles would meet the first phase of the standards in 2005, while declining to comment on compliance with the second, more rigorous phase, which is to take effect in July 2008.

The new standards are based on a vehicle's weight—lighter vehicles must go the farthest on a gallon—and on the type of transmission, with manual-shift cars required to go farther than those with less efficient automatic transmissions.

In a major departure from American practice, all new sport utility vehicles and minivans in China would be required to meet the same standards as automatic-shift cars of the same weight. In the United States, standards for sport utilities and minivans are much lower than for cars.

The Chinese rules do not cover pickups or commercial trucks. According to General Motors market research, there is little demand for pickup trucks in China except from businesses, because the affluent urban consumer who can afford a new vehicle regards pickup trucks as unsophisticated and too reminiscent of the horse-drawn carts still used in some rural areas.

Typically, heavy vehicles are much harder on fuel than light ones, but the new Chinese standards permit the heavy vehicles to get only slightly worse gas mileage. As a result, they provide an incentive for manufacturers to offer smaller, lighter vehicles, which will be easier to design.

The new standards would require all small cars sold in China to achieve slightly better gas mileage than the average new small car sold in the United States now gets, according to calculations by An Feng, a consultant who advised the government on the rules. But officials in Beijing would require much better minimum gas mileage for minivans and, especially, S.U.V.'s than the average vehicle of either type now gets in the United States.

American regulations call for each automaker to produce a fleet of passenger cars

with an average fuel economy of 27.5 miles a gallon under a combination of city and highway driving with no traffic; window-sticker values for gas mileage, which include the effects of traffic, are about 15 percent lower. Light trucks, including vans, S.U.V.'s and pickups, are allowed an average of 20.7 miles a gallon without traffic.

But the Bush administration has raised the comparable American standard to 22.2 miles a gallon for the 2007 model year and is now completing a review of whether to raise limits further for 2008. The administration is also considering adopting different standards for different weight classes of light trucks.

Over all, average fuel economy in the United States has been eroding since the late 1980's as automakers shifted production from cars to light trucks. It fell in the 2002 model year to the lowest level since 1980. Automakers in Europe have accepted European Union demands to increase fuel economy under different rules that could prove at least as stringent as China's minimums.

The Chinese standards would require the greatest increases for full-size S.U.V.'s like the Ford Expedition, which would have to go as much as 29 percent farther on a gallon of fuel in 2008 than they do now in the United States, Mr. An calculated. Sport utility sales in China have more than doubled so far this year, but are still a much smaller part of the overall market than they are in the United States.

Because the American standards are fleet averages while the Chinese standards are minimums for each vehicle, the effect of the Chinese rules could be considerably more stringent. A manufacturer can sell vehicles in the United States that are far below average in fuel efficiency if it has others in its product line that offset it by being above average. But under the Chinese rules, the fuel-inefficient models—especially new ones introduced after the standards take effect—would be subject to fines no matter how well their siblings do, Mr. Zhang said, and the maker would not be allowed to expand production of the gas-guzzling models. In Garrison Keillor's phrase, China plans to require that every vehicle be above average.

Mr. An said that at the final meetings on the new rules, the only outspoken objections had come from a representative of the Beijing Automotive Industry Holding Company, which makes Jeeps in a joint venture with DaimlerChrysler.

According to people who have seen the new standards, many Jeep models sold in China do not now comply with them; neither do the Chevrolet Blazer sport utilities built by a General Motors joint venture in Shenyang. Some of Volkswagen's car models also fall slightly short, these people said. By contrast, Honda's cars, built at a sprawling factory complex here in Guangzhou, the commercial hub of southern China, would comply easily because they use advanced engine technology, these people said.

Trevor Hale, a DaimlerChrysler spokesman, declined to comment in detail. ''DaimlerChrysler complies with local regulations where it does business,'' Mr. Hale said in an e-mail response to an inquiry. ''It continues working to improve fuel economy in the vehicles it develops, builds and sells around the world.''

Bernd Leissner, the president of Volkswagen Asia Pacific, said that his company's cars would comply because ''it's just a question of how to adapt the engine—it's something that could be done quickly.''

The fastest way to improve fuel efficiency is to switch from gasoline to diesel engines, as Volkswagen is starting to do in China. The latest diesel engines are much cleaner then those of a decade ago, but are still more polluting than gasoline engines of similar power.

A spokeswoman for General Motors, which is beginning to introduce Cadillac luxury cars in China, said she did not have enough information about the newly drafted rules to comment on them, but that her company's vehicles were comparable in fuel economy to those of rival manufacturers in the same market segments. Executives of G.M. were preparing for an event in Beijing on Tuesday and Wednesday when the company plans to showcase examples of its work on gasoline-saving fuel-cell and hybrid engines for cars.

In the United States, G.M. has argued that tighter fuel economy rules are unnecessary because technological improvements will someday improve efficiency anyway. G.M. and other automakers have also contended in the United States that higher gasoline taxes would represent a better policy than higher gas mileage standards, because it would give drivers an economic incentive to choose more efficient vehicles and to drive fewer miles.

China is still considering its policy on fuel taxes, but has not acted so far, because higher fuel taxes would impose higher costs on many sections of society, Mr. Zhang said.

Another company that could run into trouble over the Chinese mileage standards is Toyota, which on Nov. 6 began selling a locally produced version of its full-sized Land Cruiser sport utility vehicle in China. A spokesman said on Monday that Toyota had not yet heard about the new Chinese fuel economy regulations, which has been prepared with a level of secrecy typical of many Chinese regulatory actions.

Japan is also phasing in new fuel efficiency standards based on vehicle weight that allow heavier vehicles only slightly worse gas mileage than lighter ones. American automakers have complained that the Japanese rules discriminate against them because Japanese automakers tend to produce slightly lighter cars anyway.

China has more than 100 automakers, as Detroit did a century ago, but the bulk of its output comes from a small number of joint ventures with multinational companies. Total production has more than doubled in the last three years, to about 3.8 million cars and light trucks in 2002, nearly as many as Germany. The United States builds about 12 million a year, Japan about 10 million.

The cars that Chinese automakers produce on their own tend to very small and lightweight, but the engines are built on older technology, and may not have an easy time complying with the new fuel economy standards.

The government has been encouraging the industry to consolidate, and the new rules may hasten that process by forcing investment in engine designs that small companies may not be able to afford on their own.

Ms. SNOWE. Mr. President, just consider for a moment how much the world has changed technologically over the past 25 years. We have seen the advent of the home computer and the information age. Computers are now running our automobiles, and global positioning system devices are guiding drivers to their destinations. Are we to believe that technology couldn't have also helped those drivers burn less fuel in getting there? Are we going to say that, while even a developing country like China is transforming, America doesn't have the wherewithal to make SUVs that get better fuel economy?

We should keep in mind that China is expected to pass the United States in the next 10 years as the largest emitter of manmade carbon dioxide, the major greenhouse gas that the vast majority of international scientists believe is causing global climate change. And, it is interesting to note that there is not one mention of climate change in the entire conference report. Not one reference in a report of over 1,000 pages that is supposed to shape the Nation's energy policy for the 21st century.

Last year's Energy bill—which I remind my colleagues is the bill the Senate actually passed this year—had at least three different titles addressing climate change, including research on abrupt climate change. Also, the administration's National Energy Policy of May, 2001, stated, ''Energy-related activities are the primary sources of U.S. man-made greenhouse gas emissions representing about 85 percent of the U.S. man-made total carbon-equivalent emissions in 1998.''

Other grave concerns I have involve provisions in the report that will threaten coastal and marine environments and lead to further degradation of our oceans. As Chair of the Subcommittee on Oceans, Fisheries, and Coast Guard, I am troubled by the ramifications of these provisions, as I strongly believe that any changes to U.S. marine policy should only be developed with contributions and oversight of the subcommittee.

For example, under section 321 of title III, the bill grants sole authority for all energy-related projects in the Outer Continental Shelf to the Secretary of the Interior. Currently, protecting these ecosystems is the responsibility of the Department of Commerce. This section does not suggest that the Department of the Interior should even consult with Commerce.

Two other sections in this bill would limit the ability of the Secretary of Commerce and coastal States to guide, plan, and regulate activities that affect coastal and ocean resources and that occur in offshore areas— a right they currently have under the Coastal Zone Management Act.

Further, section 325 would shorten the timeframes for submitting information and appealing the permitting decisions for offshore activities that are inconsistent with States' coastal management plans—regardless of the quality or quantity of information received. Another section, section 330 would limit all appeals or reviews of offshore energy action to the Federal Energy Regulatory Commission record. I believe that the Secretary of Commerce should have the discretion to develop a record that is relevant to issues on appeal.

These provisions are inconsistent with the administration's proposed rule amending the appeals processes, and they conflict with the goals and purposes of the Coastal Zone Management Act reauthorization bill, S. 241, I introduced last January. Moreover, the U.S. Commission on Ocean Policy, established and appointed by President Bush pursuant to the Oceans Act of

2000, is poised to present its recommendations to Congress on offshore energy and other ocean-related issues.

All of these provisions have serious consequences for marine environmental health, and they should not be hastily adopted without the thoughtful input of the Commerce Committee, the administration, and the U.S. Commission on Ocean Policy.

Moving from our oceans to our air, there are other disturbing provisions in the conference report that have been raised by many of my colleagues. For instance, the report contains a provision delaying clean air protections for millions of Americans, leading to thousands of additional asthma attacks—and that is of particular concern to me as my State of Maine leads the Nation in per capita cases of asthma.

Also, I am disappointed that the conference report contains no renewable portfolio standard, or RPS, to raise the amount of renewable energy as a source of electricity nationwide by increasing the percentage of electricity produced from wind, solar, geothermal, incremental hydropower, and clean biomass that produces electricity from burning forest waste.

The conference report does not ban MTBE that is polluting our ground water for another decade rather than the 4 years in the Senate bill, while at the same time virtually dismissing pending lawsuits states already have filed against MTBE producers for cleanup. State officials in Maine do not approve of extending the ban on MTBE or the fact that the heavy financial burden of cleanup will shift to the communities and water users because MTBE producers receive a safe harbor from lawsuits in the report.

For hydropower, the conference report provisions give the last say for hydropower permits to industry and does not give equal weight to the agencies/stakeholders process that has worked so well in Maine for reaching consensus on hydropower decisions, especially for dam removals.

On electricity reliability, the report holds up FERC's ability to go forward with its standard market design for regional transmission organizations—or RTOs except on a voluntary basis, until 2007. A voluntary only program, however, does not spur the capital needed right now for increased electricity transmission in New England, for instance. I hope my colleagues are aware that the New England RTO kept the great majority of New England's electricity grid working and the lights on during the blackout of August of 2003. Actually, the only component of the electricity title that effectively addresses the basic causes of the 2003 blackout is the establishment of electric reliability organizations that would enforce reliability standards through improved communication standards and would be overseen by FERC.

Regarding consumer protections, the conference report repeals PUHCA, the Public Utility Holding Company Act, that currently protects consumers from higher electricity prices. However, the conference report contains little language that ensures that consumers are shielded from higher bills resulting from, for instance, large electricity and gas convergence mergers. Public Power, co-ops and municipalities, who represent 25 percent of the industry, are especially vulnerable to the lack of adequate consumer protections in the report.

Also, the conferees stripped the tradable tax credits for Public Power that I and others had included in the Senate Finance Committee amendment. These tradable tax credits would have allowed Public Power to invest in renewable energy and assist them in decreasing their CO2 emissions by moving away from burning as much coal as they currently do.

On fiscal policy, I do not believe the conference report shows fiscal restraint or uses taxpayer dollars wisely. The fiscal year 2004 budget resolution calls for approximately $15.5 billion to be spent on tax incentives, and the Senate Finance Committee stayed within this budget blueprint. The conference report contains $24 billion in tax incentives plus another $5.4 billion in spending and with no offsets.

One of my concerns is that important tax incentives that appeared in the Senate and House Energy bills over the past 2 years have not been included in the conference. Where they have been included, they are so pared back that I question whether the various industries will take advantage of the smaller energy efficiency tax incentives provided, particularly for the construction, lighting, and heating, ventilation and air-conditioning, or HVAC, for commercial buildings.

Gone are provisions for tax incentives to promote the use of more efficient air-conditioners, even though 70 percent of the energy demand in peak periods is for air-conditioners, and that was a significant factor in last August's major blackout in the Northeast. The lack of these provisions that could be instrumental in the short term for energy savings simply does not move the Nation's energy policy forward into this century.

The knowledge of alternative and renewable sources has been known for over a century as the simple principle of fuel cells —combining hydrogen and oxygen to produce electricity and pure water—and the photovoltaic principle behind the solar power of the sun, were both discussed in 1839—164 years ago. We should ask ourselves why, instead of our daily diet of approximately 19 million barrels of oil a day, we are not also choosing to bolster even more the development of these sources of renewable energy for our consumption and to grow our economy.

Imagine automobiles driven by fuel cells—our U.S. auto manufacturers and the Federal Government are beginning to invest in fuel cells. Imagine businesses and homes having their own free-standing and reliable fuel cells—one of the cleanest means of generating electricity—that Senator LIEBERMAN and I have promoted. Fuel cells can provide electricity instead of our current vast, centralized fossil fuel systems that make our air dirtier and less healthy, causing us to spend millions more on health care each year. We need to be more serious about promoting these technologies.

I do not believe that the Energy conference report before us sets the Nation on the right course for the future and well being of the Nation, and I will, regretfully, vote against the conference report with the hope that Congress can continue working toward a more meaningful, secure, and balanced energy-efficient future for the Nation.

Mr. DORGAN. Mr. President, I rise to support the Energy conference report. While I have some serious concerns about the way this bill was created, I believe our country will be better off with this bill than without it. On balance, it will advance our interests.

This bill takes important, major steps toward developing renewable and limitless sources of energy such as ethanol, wind, and biodiesel. It puts us on the road to the development of a new hydrogen fuel cell economy, which is essential if we are to lessen our dependence on foreign oil. And it contains important conservation measures by improving efficient standards on appliances and other devices we use in our daily lives. If we are serious about security our energy future, I believe we must implement these measures without delay.

Additionally, this bill enhances our ability to develop more traditional sources of energy, while protecting our environment. It contains strong provisions to promote clean coal technology so that we can more effectively use our coal resources without degrading our environment. The bill also funds a pipeline to access over 30 million cubic feet of natural gas in Alaska and bring it to the lower 48 States. And it provides additional incentives for the discovery and recovery of oil and natural gas.

There is much in this bill that is positive, and I intend to vote for it. Having said that, I know this bill is far from perfect. But in some important matters, it is a step in the right direction.

The bill omits a renewable portfolio standard, RPS, that would have required utilities to produce 10 percent of their electricity from renewable sources. That is a serious omission. A majority of the Senate conferees voted to add this amendment to the conference measure and it passed. Unfortunately, the House stripped this amendment out without even debating it. I want to make it clear that I have not given up on this issue. I want to inform those who blocked this provision—get ready. I am going to keep fighting until we get an RPS standards enacted into law.

Unfortunately, this bill also provides liability protection for the producers of the fuel additive, MTBE. This is a major mistake. Insulating the big oil companies, while making the mom and pop gas stations of America liable for the costs of cleaning up these contaminated sites is simply wrong and bad policy.

I also want to address concerns that the bill waives a number of other important environmental provisions. For years, the administration has complained that the process of siting and permitting new energy projects is cumbersome and in the name of efficiency needs to be modified. This measure does that. But let me caution the administration for a moment. While Congress has provided discretion to the appropriate agencies in an effort to streamline the process, these agencies will be held accountable if they violate the spirit and trust we have given them. I expect these agencies to make informed decisions based on public input, sound science, and common sense.

Additionally, as a member and former chairman of the Commerce Committee's Consumer Affairs Subcommittee, let me address the issue of consumer protection. This bill repeals the Public Utility Holding Company Act and does not, in my opinion, go far enough to protect consumers from price gouging. Congress will be watching very closely to ensure that the agencies responsible for preventing market consolidation and market manipulation are doing their job. I believe we must keep pushing to get better protections for consumers. The experience on the west coast in recent years is a painful reminder that corporate power, if left unchecked, can cause serious injury to our consumers.

These deficiencies in the Energy bill could have been avoided had the majority party included Democratic conferees in a meaningful dialogue. Instead, Democrats were frozen out of the Energy conference. It was a flawed and arrogant process that prevented the American people from getting the best of what both political parties had to offer in the development of a national energy policy.

However, does the lack of involvement lessen the need for us to take steps to reduce our dependence on foreign oil? Does it lessen our need to promote energy efficiency and energy conservation? Does it lessen our need to promote the use of renewable energy and renewable fuels and vehicles? I believe the answer to all of these questions is no.

I will vote for the conference report, because on balance, this bill is a net plus for America. But my vote is in no way an endorsement of the manner in which the majority conducted this conference. In the future, before conferees are appointed, we will insist on a commitment that both political parties be represented in the deliberations of the conference.

These concerns aside, we must remember that energy is vital to our economy and our way of life. We count on a reliable energy supply for our everyday needs—heat, light, electricity, and all of the things that keep our society productive. Our economy would be devastated if we lost access to that supply, and were left without alternatives.

If, God forbid, terrorists would shut off the supply of oil to our country tomorrow, our economy would be flat on its back. We now import 55 percent of the oil we use, much of it from troubled parts of the world. That holds our economy hostage to this growing dependence on imported oil, in particular to the Middle East.

We need a new energy future that contains strong provisions dealing with conservation, aggressive approaches to renewable and limitless sources of energy, and embraces a new hydrogen fuel cell future which can allow us to break our dependence on foreign oil.

If a meaningful energy policy is analogous to a novel, then this bill is just a first chapter. It is not as comprehensive, as wise, or as bold as the American people have a right to expect. Let me reiterate, this is not a be-all-end-all comprehensive Energy bill, no matter who tells you it is. I am prepared to continue to modify, amend, and reform this measure as many times and as long as it takes in order to ensure it does what it is supposed to do: create a fair and balanced national energy policy, one that works to advance our country's interest.

In closing, we are left with two choices: one, do nothing and pray we don't have further blackouts, further price spikes, or God forbid, a terrorist strike on our supply of foreign oil; or two, enact the proposed energy legislation and use it as the first brick in the foundation of crafting a comprehensive energy policy that will reduce our dependence on foreign oil and strengthen our energy diversity and security.

Given these two choices, I choose action over inaction and urge my colleagues to do the same.

The PRESIDING OFFICER. The Senator from Kansas is recognized.

Mr. ROBERTS. Mr. President, it is my understanding that the pending business before the Senate is the Intelligence conference report; is that correct?

The PRESIDING OFFICER. The Senator is correct.

Mr. ROBERTS. Mr. President, I rise today to urge Senate passage of the conference report for the Fiscal Year 2004 Intelligence Authorization Act.

On November 20 the conference report was approved by the House of Representatives. In order to quickly provide the Intelligence Community the authorities it requires in order to pay, house, and equip its personnel for our most sensitive and critical national security work, this legislation should be sent to the President without delay. The horrible terrorist attacks in Turkey underscore the urgency of our task.

This conference report is good legislation with important management and budget authorities. I will review just a few of them for you.

In the conference report, the Senate receded to a number of significant House provisions of interest. The most significant of these is a provision that will consolidate and organize existing intelligence-related functions in the Department of the Treasury by creating a new Office of Intelligence and Analysis. This administration-supported provision also creates a new Assistant Secretary position.

Senate managers also accepted a House provision intended to foster better information-sharing among Federal, State and local government officials. The bombings in Turkey illustrate that terrorists remain capable of striking at the heart of peaceful societies. We must be prepared to meet this continuing threat.

The conference report retains a Senate provision on Central Intelligence Agency Compensation Reform, with a House amendment to ensure that Congress will have an opportunity to assess the impact of such reform before it becomes permanent.

The conference report provides important new personal services contracting authority to the Director of the Federal Bureau of Investigations. This authority is intended to permit the Director to exercise greater hiring flexibility as was recommended post-9/11 in order to bring aboard certain categories of critically-needed skills more quickly.

Turning to the budget, when we began to review the President's fiscal year 2004 request I became very concerned at the recent growth in intelligence funding. I am still concerned.

There is clearly not enough money in future years to fully fund the intelligence programs in this year's budget request. That is the sad reality of this budget. The intelligence community is stretched thin, with far more requirements than available funds. Too many projects and activities have been started that cannot be accommodated in the top line. It does not matter what caused this problem. The problem exists. Unless the President directs a dramatic and sustained increase to the intelligence budget next year, we will have to make the hard choices ourselves.

A significant issue that must be addressed by the executive branch is the manner in which cost estimates for the procurement of major intelligence community systems are conducted. The magnitude and consistency in the cost growth on recent acquisitions indicates a systemic intelligence community bias to underestimate the cost of major systems.

This ''perceived affordability'' creates difficulties in the out years as the National Foreign Intelligence Program becomes burdened with content that is

more costly than the budgeted funding. This underestimation of future costs has resulted in significant re-shuffling of NFIP funds to meet emerging shortfalls.

In an attempt to correct this problem, the conference report contains a provision which would mandate a fundamentally more sound approach to cost estimates for major systems. The business-as-usual approach must end.

There is another area I wish to mention in general terms concerning the analytical capabilities of the intelligence community. All recent after-action reports or studies of intelligence failures point to the inability of analysts to process ever-growing quantities of information. In an effort to correct this problem, the conferees agreed to move funds to programs at the Defense Intelligence Agency, the National Security Agency, and the CIA to improve the community's analytic capabilities.

My key objectives in formulating the conference report were to ensure our Nation's continuing effort to prosecute the war on terrorism and to ensure that the ''longer view'' about intelligence community requirements is taken into account. I believe that this conference report meets both objectives.

We met those objectives because we had bipartisan cooperation when and where it counted. I wish to thank the distinguished vice chairman, Senator ROCKEFELLER, as well as the distinguished House chairman, Representative GOSS, and his ranking member, Representative HARMAN, for their assistance in making the conference report possible. The staff of both intelligence Committees must also be commended for their diligent work on this important legislation.

There is no opposition on our side of the aisle. We have worked very hard with the House to come up with a good compromise. This bill is vitally needed on behalf of national security. A similar bill passed the Senate several weeks ago by unanimous consent.

I yield to my distinguished colleague, the vice chairman, Senator ROCKEFELLER.

The PRESIDING OFFICER. The Senator from West Virginia is recognized.

Mr. ROCKEFELLER. Mr. President, I agree with the chairman of the committee, the Senator from Kansas. There is no objection on this side. It has been cleared. There is no objection on our side. I presume the bill will be voted through.

Mr. President, I am pleased to join the distinguished chairman of the Select Committee on Intelligence in recommending passage of the conference report on H.R. 2417, the Intelligence Authorization Act for Fiscal Year 2004.

The bill authorizes appropriations for the Central Intelligence Agency, the Defense Intelligence Agency, the National Security Agency, and the intelligence components of the F.B.I. and other U.S. government agencies. It also contains a number of important provisions intended to lay the foundation for process and organizational changes in the intelligence community.

The classified nature of U.S. intelligence activities prevents us from disclosing publicly the details of our budgetary recommendations. As I described to the Senate when our bill was considered in July, 10 years ago I joined a majority of Senate colleagues in voting to express the sense of Congress that the aggregate amount requested, authorized, and spent for intelligence should be disclosed to the public in an appropriate manner. The House opposed the provision. I continue to believe that we should find a means, consistent with national security, of sharing with the American taxpayer information about the total amount, although not the details, of our intelligence spending. In holding the intelligence community accountable for performance, and the Congress and the President accountable for the resources they provide to the Intelligence Community, citizens should know the Nation's overall investment in intelligence.

The bill includes a number of provisions intended to promote innovations in information sharing, human intelligence, and counterintelligence, among other things. Many of these initiatives represent initial steps rather than solutions, but they are necessary to raise the level of awareness in Congress and the executive branch regarding a variety of urgent and complex challenges and to lay the foundation for reforms the committee will be considering next year.

Section 351 of the bill requires a report on the threat posed by espionage in an era when secrets are stored on powerful, classified U.S. computer networks rather than on paper. A single spy today can remove more information on a disk than spies of yesteryear could remove with a truck. We have already suffered losses, for example, in the Ames, Regan, and Hanssen cases, where sloppy computer security permitted traitors to exploit large quantities of highly classified information. Unfortunately, these cases provide a warning that appears to have gone largely unheeded. We still do not have a cohesive set of policies and procedures to protect our classified networks from cleared insiders who seek to betray their country, Our reliance on classified information systems for warfighting and intelligence is growing daily, yet hundreds of thousands of individuals have virtually unrestricted access to these critical networks.

All but a few Government personnel are honest and patriotic Americans, but the sad fact is that there has not been a day since WWII when we have not had spies within our Government. There have been over 80 espionage convictions in the last 25 years. They include personnel from the Army, Navy, Air Force, Marine Corps, NSA, CIA, FBI, State Department, the National Reconnaissance Office and the Office of the Secretary of Defense. It is a very real and continuing problem and there will undoubtedly be more espionage arrests in the months and years ahead. Espionage is an unfortunate fact of life, and we simply cannot afford to operate classified systems in which thousands of individuals enjoy the ability to download or upload classified information at will.

Other countries are seeking to exploit this situation to collect defense secrets, and no doubt contemplate blinding our Government and troops in time of war. We would never permit such broad access to weapons in an armory, yet these classified systems are of much greater strategic significance than M–16 rifles, tanks, or 500 pound gravity bombs. We simply must develop the policies and capabilities necessary to control input and output devices on these systems and monitor their use.

Section 352 of the bill calls for a review of our cumbersome, outmoded, and many would say ineffective personnel security system. It is a fact that almost every spy has held high-level security clearances. It is also a fact that few, if any of these individuals were identified through routine security clearance updates.

Most people who become spies join the government with no intention of betraying their country. Research by the Defense Department shows that most spies are people who develop grievances as their careers progress, at times having developed money and alcohol problems as well, and then turn to espionage as a way of feeding their egos and their bank accounts.

Yet, we give a young, single Navy recruit seeking an intelligence assignment the same scrutiny as a 30-year intelligence operative with financial troubles who routinely travels to countries of concern. Further, even when derogatory information surfaces, sometimes even very disturbing information which raises serious espionage issues, the government rarely revokes the clearances we rely on so heavily and which cost so much.

In the information age, we cannot wait 5 to10 years to identify employee problems that may be related to espionage. Too much damage can be done too quickly. We need fresh thinking and recommendations that will provide more effective security for the large sums of money the taxpayer is investing.

Section 354 of our bill calls for a review of classified information sharing policies within the Federal Government. This is an issue closely related to the foregoing provisions regarding inadequate security policies. ATM machines, for example, are a wonderfully convenient and effective means of providing access to banking resources—but they could not exist without magnetic cards, personal identification

numbers, cameras and locks. Similarly, improved security is not a barrier to more flexible information sharing, it is a fundamental ingredient. The Joint Inquiry report on the 9/11 attacks highlighted information sharing as a critical shortcoming that prevented the interception of several hijackers. To help accelerate reform, the Joint Inquiry requested an administration report by this past June 30 on progress to reduce barriers among intelligence and law enforcement agencies engaged in counterterrorism. Unfortunately, no report has been submitted.

We have the technology for improved information sharing, and significant progress is being made. A Terrorist Threat Integration Center has been established, and new guidelines regarding sharing of grand jury information have been promulgated. These are very important steps forward. But to truly break down the barriers to information sharing, rather than relying on workarounds, we need revised policies on sharing classified information which recognize and exploit the opportunities provided by modern information technology. This is especially important as we look to bridging the gap between the Intelligence Community and organizations charged with Homeland Security.

Section 355 of the bill identifies a problem that would probably stun most taxpayers. Simply stated, notwithstanding the many billions of dollars invested in complex intelligence systems, ranging from satellites, to aircraft, to ships, and land-based collection platforms, there is no capability in the executive branch to independently and comprehensively model the performance of these systems. Consequently, new multi-billion-dollar systems are procured without the ability to rigorously evaluate potential tradeoffs with other systems.

Questions such as these should be asked: Given projected satellite, aircraft and UAV constellations, what is the marginal value of adding space-based radar satellites? Are there alternative investments that can better satisfy intelligence requirements? Don't senior policymakers need the ability to systematically examine the interactions of these many systems to identify trade-offs that can be achieved?

Currently, most of the analysis of proposed collection systems is performed by the agencies seeking to justify their programs, or by senior policy officials who struggle to apply common sense and spread-sheet level analysis to systems that often have overlapping capabilities. There is no reason that a rigorous, independent and comprehensive capability cannot be developed to support the programmatic reviews of the DCI and the Defense Department. This is but one example, though an important one, of the ways in which we believe the intelligence community can improve its strategic planning and decisionmaking processes.

Section 356 of the bill raises an issue of profound strategic significance for the United States, namely the growing reliance of our country on hardware and software produced overseas. Although specific cases are classified, this is clearly a growing problem.

After 1973, when the risks inherent in America's reliance on foreign oil became clear, many positive steps were taken to ameliorate our national vulnerabilities. Those steps included establishment of a strategic petroleum reserve, establishment of the Central Command, and research into alternative fuels. Unlike our dependence on foreign oil, however, our rapidly growing dependence on foreign hardware and software creates numerous opportunities for espionage and information operations that are extremely difficult to detect. Ironically, the countries identified by the FBI as most actively engaged in economic espionage against the United States are leading producers of the hardware and software we all use on a daily basis.

The plain truth is that even the Defense Department does not know where most of the hardware and software it uses originates. Moreover, the Government does not have the right to examine source code unless voluntarily supplied. Further, at the present time, there are limited capabilities for analyzing source code that is made available. This situation requires serious attention by senior policymakers, including Congress, and the report required by section 356 should help to prompt a long overdue discussion of these issues.

In concluding my remarks, I would like to look beyond our current bill to the issues the Intelligence Committee must contend with next year. Other committees share responsibility for reviewing the funding and systems needed by the intelligence community, but our committee is uniquely positioned to evaluate the intelligence community's performance—both its successes and failures—and to identify the changes required to meet the challenges of the future.

In my view, money alone is not sufficient to enable the intelligence community to reach its full potential. The current structure of the intelligence community is fundamentally unchanged from its establishment in 1947. Serious change is long overdue. I strongly believe that new structures and authorities, coupled with able and aggressive leadership, are required to dramatically improve our intelligence community's efficiency and effectiveness.

In many respects, the organizational issues confronting the intelligence community are analogous to those confronting the Defense Department prior to the Goldwater-Nichols Act. The fundamental problem confronting the Department of Defense prior to Goldwater-Nichols was excessive military service control over military operations, policies and budgets. In response, Congress strengthened the weak integrating mechanisms in DoD, specifically the Chairman of the Joint Chiefs and the Commanders of the Combatant Commands. The difference in military performance before Goldwater-Nichols—e.g., Desert 1, Lebanon, and Grenada—and after—Panama, Haiti, and Iraq—is stark and clear. In fact, I am convinced that the Goldwater-Nichols Act did more to enhance U.S. national security than any weapons system ever procured by the Department of Defense.

Although the Goldwater-Nichols reorganization is not a precise template for restructuring the intelligence community, the problems are fundamentally similar: towering vertical structures—NSA, CIA, DIA, NRO, NIMA, the service intelligence components—and relatively weak integrating mechanisms—the DCI and his Community Management Staff. Any reorganization proposal needs to address this fundamental problem of inadequate integration and coordination. In that regard, I would suggest that the intelligence community's lack of responsiveness to the DCI's declaration of war on al-Qaida prior to 9/11 was in part a result of the DCI's weak community management authorities and inability to move the system. I am convinced that a strengthened DCI could more effectively manage the intelligence community, leading to performance improvements comparable to those achieved by the military in the wake of the Goldwater-Nichols Act.

A conservative, incremental approach would involve the creation of a permanent cadre to staff the DCI much as the Secretary of Defense has an OSD staff. This simple change, coupled with aggressive business process reengineering and ''year of execution budget authority'' for the DCI over NFIP programs, would significantly strengthen the DCI's ability to manage the intelligence community and respond to new threats and opportunities.

A more aggressive and far-reaching plan would have to address the fundamental changes that have occurred since the current structure was established by the National Security Act of 1947. Specifically, it would recognize that the once useful distinction between home and abroad has become not only irrelevant, but dysfunctional. This is not to suggest any need to reduce the protections afforded U.S. persons under the Constitution, merely that globalization and the development of cyberspace, combined with the rise of apocalyptic terrorists groups empowered by lethal new technologies, require a different, more agile structure that is not impeded by outmoded geographic distinctions. In that regard, we should find ways to more effectively coordinate foreign and domestic intelligence.

Achievement of any substantial reorganization will require meticulous research by the congressional oversight committees, a substantial hearing record, and sustained interest by the administration. At the end of the day,

incremental steps will be better than none, and a more aggressive reorganization require a consensus not only on the Intelligence Authorization Committees, but with the Armed Services Committees as well. As challenging as these issues are, we simply cannot fulfill our duty to the American people unless we confront these crucial issues when Congress returns next year.

In conclusion, the important steps we have taken with this measure, to include full funding of the administration's requests for intelligence activities, are the result of lengthy deliberations on matters as complex as they are vital. It is gratifying to see the work that has been done in both Chambers come together today in a bill we can send to the President. It is a useful first step, but only a first step, towards the development of an intelligence community better able to adapt to the rapidly evolving threats confronting our great nation.

Finally, I would like to thank the chairman and the Committee staff for their arduous work on this bill. I look forward to making great strides together next year.

I urge support for this measure.

OFFICE OF INTELLIGENCE AND ANALYSIS

Mr. SHELBY. Mr. President, I rise in my capacity as the chairman of the Committee on Banking, Housing and Urban Affairs regarding the Conference Report to accompany H.R. 2417, the Intelligence Authorization Act of 2004. Section 105 of the act will create a new Office of Intelligence and Analysis within the Department of the Treasury. The Office is to be headed by a newly authorized Assistant Secretary for Intelligence and Analysis appointed by the President and confirmed by the Senate. It will enhance the Department's access to intelligence community information and permit a reorganization and upgrading of the scope and capacities of Treasury's intelligence functions in light of the Nation's counterterrorist and economic sanctions programs. This section was drafted with bipartisan participation and close coordination with the Department of the Treasury.

The particular terms governing the new office are important to me as chairman of the Committee on Banking, Housing, and Urban Affairs over legislative and oversight matters relating, inter alia, to the Nation's economic sanctions laws and the Bank Secrecy Act, and, more generally, because of the importance of carefully delineating the limitations on any part of the U.S. intelligence community that lie within the structure of an executive department of the Government. I have a letter signed by the ranking member of the Banking Committee, Senator PAUL S. SARBANES, and myself addressed to Secretary of the Treasury John W. Snow, as well as Secretary Snow's response. This letter reflects the agreement of Treasury about the organization, structure and role of the new Office and Assistant Secretary position created and important related organizational matters concerning the Financial Crimes Enforcement Network and the Office of Foreign Assets Control.

I request unanimous consent that the two letters be included in the RECORD. They provide, I believe, a good statement of congressional intent with regard to the establishment of the new Office and the new Assistant Secretary position. At this time I would yield the floor to the ranking member of the committee on Banking, Housing and Urban Affairs, Senator SARBANES.

Mr. SARBANES. I thank the Senator. I simply want to note my agreement with the chairman and with his request to include the two letters in the RECORD.

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

U.S. SENATE, COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS,

Washington, DC, November 20, 2003.

Hon. JOHN W. SNOWE,

Secretary of the Treasury, Department of the Treasury, Washington, DC.

DEAR SECRETARY SNOWE: A proposed amendment to section 105 of the Intelligence Authorization Act of 2004, H.R. 2417, would create a new Office of Intelligence and Analysis within the Department of the Treasury, The Office would be headed by a newly-authorized Assistant Secretary for Intelligence and Analysis appointed by the President and confirmed by the Senate. The Office would enhance the Department's access to Intelligence Community information and permit a reorganization and upgrading of the scope and capacities of Treasury's intelligence functions in light of the nation's counterterrorist and economic sanctions programs.

We are writing to you to confirm formally, before consideration of the amendment proceeds, your and our mutual understanding of the role of the proposed new Office and Assistant Secretary within the Department of the Treasury. Such confirmation is necessary because of the authority of the Senate Committee on Banking, Housing, and Urban Affairs over legislative and oversight matters relating, inter alia, to the Nation's economic sanctions laws and the Bank Secrecy Act, and, more generally, to the Nation's financial system. In that context, the Committee is necessarily concerned with the careful delineation of the functions, and limitations, of any part of the U.S. Intelligence Community that lies within the structure of the Department of the Treasury.

Based on discussions between members of our staffs and the Assistant Secretary of the Treasury (Legislative Affairs), we understand that:

1. The new Office is to be responsible for the receipt, collation, analysis, and dissemination of all foreign intelligence and foreign counterintelligence information relevant to the operations and responsibilities of the Treasury Department, and to have such other directly related duties and authorities as the Secretary of the Treasury may assign to it. The new Office will replace and absorb the duties and personnel of Treasury's present Office of Intelligence Support (''OIS'') and will carry on OIS' work in the provision of information for use of the Department's senior policy makers.

2. The Assistant Secretary for Intelligence and Analysis will report to an Under Secretary of the Treasury (Enforcement) as required by the statute. The Assistant Secretary for Intelligence and Analysis will at no time supervise any organization other than the new Office or assume any other policy or supervisory duties not directly related to that Office.

3. The Secretary will seek prompt designation of a new appointee for the vacant position of Under Secretary, and ensure the chain of command will be organized and implemented as outlined above.

4. Our mutual understanding is that Treasury plans to have an official appointed to a vacant Assistant Secretary position. The official appointed to that position will supervise the Office of Foreign Assets Control (''OFAC'') and the Financial Crimes Enforcement Network (''FinCEN'') as well as other functions, but he or she will at no time supervise the Office of Intelligence and Analysis. This Assistant Secretary also will report to the Under Secretary referred to in paragraphs 2. and 3., above.

5. The general responsibilities of OFAC and FinCEN will not be changed in the course of creating the new Office and these new positions. However, it is anticipated that the new Office will coordinate and oversee all work involving intelligence analysts who work in OFAC and FinCEN (or in other parts of the Treasury) primarily with classified information, in the interest of creating the more robust analytic capability at Treasury that was the articulated reason for the authorization of this new Office. One of the primary tasks of the new Office will be to examine and analyze classified information, in conjunction with the relevant unclassified information already available to OFAC and FinCEN, so that the resultant product can be of use to OFAC and FinCEN as well as to other agencies, under applicable legal rules. Thus, the new Office will have access to all relevant information held by FinCEN and OFAC for national security and anti-terrorism purposes.

The expertise of the Department of the Treasury is necessary and integral to our Nation's security and to success in the war on terrorism. We expect within the next year to highlight your efforts in this area in one of the series of Terror Finance hearings to be held by the Committee, and we look forward to hearing at that time about the innovative approaches to counter-terrorism efforts that the proposed revitalization of Treasury's capacity for financial intelligence analysis can produce.

Sincerely,

RICHARD C. SHELBY,
Chairman, Committee on Banking, Housing and Urban Affairs.

PAUL S. SARBANES,
Ranking Member, Committee on Banking, Housing and Urban Affairs.

DEPARTMENT OF THE TREASURY,

Washington, DC, November 21, 2003.

Hon. RICHARD SHELBY,

Chairman, Committee on Banking, Housing and Urban Development, U.S. Senate, Washington, DC.

DEAR CHAIRMAN SHELBY: Thank you for your letter concerning creation, in section 105 of the Intelligence Authorization Act of 2004, of the proposed Office of Intelligence and Analysis, to be headed by a new Assistant Secretary for Intelligence and Analysis, within the Department of the Treasury. I have reviewed your letter and it correctly states the commitments made to you on behalf about the role of the proposed new Office and new Assistant Secretary within the Department of the Treasury.

I appreciate your input and look forward to working with you, Senator Sarbanes, and

your House colleagues to make sure the Treasury Department meets the Congress' expectations. An identical letter has also been sent to Senator Sarbanes.

If there is anything that I can do to be of assistance to you, please do not hesitate to contact me.

Sincerely,

JOHN W. SNOW.

Mr. ROBERTS. Mr. President, I ask that the Chair put the question to the body.

The PRESIDING OFFICER. Is there further debate?

If not, the question is on agreeing to the conference report.

The conference report was agreed to.

MORNING BUSINESS

Mr. ROBERTS. Mr. President, I ask unanimous consent that there now be a period for morning business, with Senators permitted to speak therein for up to 10 minutes each.

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

Who seeks recognition?

Mr. CHAMBLISS. 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. REED. I ask unanimous consent that the order for the quorum call be rescinded.

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

ENERGY POLICY ACT

Mr. REED. Mr. President, we have just concluded a cloture vote which will give us the opportunity to look more carefully at the Energy bill that is before the Senate. I believe such a careful and thorough review of the bill is entirely warranted. Indeed, it is not just my opinion but the opinion of countless numbers of Americans and also countless numbers of opinion leaders throughout the country.

These are a sample of some of the editorials that have appeared with respect to the Energy bill. The Washington Post calls the bill ''depleted energy.'' The New York Times says ''a shortage of energy''. The Atlanta Journal-Constitution directs: ''Put backroom energy bill out of the country's misery.'' The Houston Chronicle: ''Fix the flaws—this proposed energy bill is half a loaf, half baked.''

The American people deserve good national energy policy, created through an open and democratic process. Sadly, the legislation before the Senate is not such a policy nor has it been achieved through an open and transparent and collaborative process. The Energy bill was crafted behind closed doors by members of one political party who chose to involve industry but not elected Senators and Congress men and women. It looks as if the industry got the bill they wanted.

We have been told ''take it or leave it.'' I hope we can leave this bill behind. I hope this cloture vote signifies such a development.

If we leave it behind, one of the salient aspects of the Energy bill presented to Members is that it does not leave any lobbyist behind. In fact, to borrow a statement from my colleague from Arizona, this bill, indeed, leaves no lobbyist behind.

There is an Archer Daniels Midland ethanol provision adding $8.5 billion to gas prices over each of the next 5 years while cutting $2 billion a year from the highway trust fund. It seems to me to be implausible, indeed irrational, that we would enhance an industry while at the same time depriving our local cities and towns and States of the money they need to maintain the roads and bridges of America.

According to the Denver Post, there is $180 million to pay for development projects in Shreveport, LA, including the city's first ever Hooters restaurant. I am not sure how that will help our energy policy.

Let's not forget the $2 billion that taxpayers bear to clean up the mess left by MTBE producers.

As the Wall Street Journal wrote:

> We'll say this for the energy bill that is about to come to a final vote in Congress: It's certainly comprehensive. It may not have all that much to do with energy anymore, but it does give something to every last elected Representative.

This bill utterly fails to establish an energy policy for the 21st century. It does nothing to address our country's dependence on foreign oil, an issue I will discuss at length in a few minutes.

In addition, it contains so many provisions that will hurt consumers and damage the environment that it is impossible to list them all. Here are just a few:

The bill doubles the use of ethanol in gasoline, which will drive up gasoline prices and deny valuable revenue to fix our roads.

The bill fails to make the reforms necessary to modernize our electricity grid and enhance reliability by providing a standard set of rules for our electricity markets. These rules would have provided greater efficiencies, greater reliability, and reasonably priced electricity that our homes and businesses need.

The bill increases air pollution by delaying rules to control mercury and ozone pollution, putting millions of Americans at risk for health problems.

The bill increases water pollution by exempting oil and gas exploration and production activities from the Clean Water Act storm water program.

The bill allows drilling on our coastlines by diminishing States' rights to review offshore oil development projects and other proposed Federal activities to determine if the projects are consistent with the State coastal management plans.

The bill threatens our national security by failing to reduce the Nation's dependence on foreign oil and providing billions of dollars in subsidies to build new nuclear powerplants. And the list goes on and on and on.

The American public deserves an economically sound Energy bill that will strengthen our economy and create good-paying jobs for Americans. But that is not this Energy bill before us.

This Energy bill is business as usual. It is a special interest grab bag cloaked in the rhetoric that it would create jobs and spur the economy. The cost of the entire bill is estimated to exceed $100 billion, more than $120,000 for each job that the authors claim the bill will create. With the tax breaks alone costing American taxpayers over $25 billion, this bill adds to the deficit and further reduces spending for vital programs, such as education, health care, and water infrastructure.

The American public also deserve an environmentally friendly Energy bill that will protect our air and water and reduce greenhouse gases. But that is not this Energy bill.

This Energy bill will endanger the public's health by allowing the energy industry to increase the pollution it emits into the air and water and limiting environmental review of energy projects.

One of the most egregious giveaways to corporations, at the expense of the environment and public health, is the product liability protection for MTBE. MTBE is known to cause serious damage to water quality nationwide. This immunity provision—which is retroactive to September 5, 2003, before virtually all the recent lawsuits involving MTBE—would shift $29 billion in cleanup costs from polluting corporations to taxpayers and water customers.

My State of Rhode Island and our residents are all too familiar with the dangers of MTBE. After MTBE leaked from an underground storage tank at a gas station and found its way into the water system of the Pascoag Utility District in Burrillville, RI, in the summer of 2001, more than 1,200 families were forced to use bottled water for drinking, cooking, and food preparation for several months. Subsequent tests showed MTBE at such high levels that the State department of health recommended residents reduce shower and bath times and ventilate bathrooms with exhaust or window fans. Fortunately, Pascoag's lawsuit against ExxonMobil to pay for the cleanup was filed before the September 5, 2003, cutoff date, but many similar suits filed on behalf of residents in New Hampshire and other States will be thrown out by this bill. That, to me, is a tragedy.

The American people deserve a meaningful Energy bill that will ensure our national security by ending our dependence on foreign oil, diversifying our energy resources, and increasing our Nation's energy efficiency. But that is not this Energy bill.

This Energy bill perpetuates the failed policies of the past 30 years, focusing almost exclusively on squeezing what little domestic energy production

is available and offering generous incentives to the oil and gas industry while giving little attention to developing alternative sources of energy and reducing consumption. We have to face the facts: We cannot drill our way to energy independence.

Furthermore, the bill creates new security threats by reversing a longstanding ban on the reprocessing of spent fuel from commercial nuclear reactors. It promotes, through the Department of Energy's advanced fuel cycle initiative, joint nuclear research efforts with nonweapon states, undermining efforts to curtail new weapons systems. The proliferation of nuclear weapons is one of the most challenging and difficult and serious problems we face, and we are now involving ourselves with states that do not have nuclear weapons, but we are doing so in a way that we could inadvertently and unintentionally give them insights that are advantages. This is poor proliferation policy as well as, I believe, poor energy policy.

Our Nation needs a comprehensive Energy bill, but we must reorder our priorities if we want to achieve greater energy independence. Yesterday's solutions will not meet today's urgent need for energy security. Increased efficiency in our homes, our cars, and our industries, renewable energy resources, and new technologies will secure our energy independence.

We are on a collision course that threatens our economic and national security. Worldwide oil consumption is projected to grow by 60 percent over the next two decades. For developing countries, the growth is expected to be much higher, possibly as much as 115 percent. China and India will be major contributors to these increases in demand and will require imports to meet their needs.

Chinese economic expansion is rapidly changing the oil demand map throughout the world. The International Energy Agency estimates that Chinese demand for oil next year will rise to 5.7 million barrels per day. This would account for about a third of global demand growth. Growing global demand will raise prices for U.S. consumers as countries race for the world's remaining oil supply.

Two-thirds of the world's proven crude oil reserves are in the Middle East. While experts disagree about when global oil production is likely to peak, they agree that when it does, the vast majority of remaining untapped reserves will be left in the Middle East and imports to feed our growing global demand for oil will come from the Persian Gulf.

What is the result of this increasing global demand? Many countries, including our allies and trading partners, will compete with us for finite oil supplies as their and our economies rely more heavily on imports. This will inevitably stress the delicate balance that exists among national interests in the world and give the Middle East a disproportionate leverage in the international arena.

America's dependence on imported oil is a major constraint on our foreign policy. A substantial portion of our Nation's military budget is spent in the Middle East for the defense of oil. Our policy toward the Middle East will not change as long as our economy remains dependent on oil from the region. The United States has less than 5 percent of the world's population but consumes 26 percent of the world's oil. Oil imports contribute to our trade deficit and heighten our economy's vulnerability to oil price spikes. According to the Rocky Mountain Institute, 53 percent of the U.S. oil supply is imported and one-fourth is from the 11 countries of the OPEC cartel.

Net oil imports cost the United States $109 billion in the year 2000—29 percent of the then-record trade deficit. Retail oil products cost Americans more than one-quarter trillion dollars per year. As long as the U.S. economy is dependent on oil, we remain vulnerable to major oil disruptions anywhere in the world and to domestic price spikes. According to the Department of Energy, every million barrels of oil per day taken out of production increases world oil prices by $3 to $5 per barrel. The Organization of Economic Cooperation and Development estimates that an increase of $10 per barrel would cut U.S. economic growth by .2 percent and boost consumer prices by .4 percent. A .2 percent drop in growth would cost the economy $22 billion.

Our economy is extremely vulnerable to variability in oil prices, and we are doing nothing in this legislation to give ourselves a hedge against those variable oil prices.

To achieve energy security, we must wean our economy off its heavy reliance on oil. The immediate priority must be to head off growth in demand. Efficiency is the cheapest energy source. Let me say that again. Efficiency is the cheapest energy source—not drilling in Alaska or the gulf or any place else.

In 2000, America used 40 percent less energy and 49 percent less oil to produce each dollar of GDP than in 1975. Why? Because after the 1973 oil embargo, we were shocked into taking steps to improve our efficiency. We raised gas mileage standards. We provided support incentives for energy improvements and efficiencies throughout our society. This savings we have been able to develop since 1975 has been five times our domestic output of oil in that period.

So we essentially saved five times more oil than we produced in the period. We need to use energy in a way that saves money. It is much cheaper to conserve energy and increase efficiency than build a nuclear powerplant. It is much cheaper and much less deadly to conserve energy and increase efficiency than to send troops to protect oil interests in the Middle East, as we have done since the first Persian Gulf war. While our soldiers in Iraq are fighting for many reasons, we cannot divorce what is happening in the Middle East from our dependence on oil. This bill may create a few jobs, but will it save lives? Will it prevent future military conflicts undertaken to feed America's addiction to oil? I don't think so. I think a bill like this should do precisely that.

The Energy conference report that we are considering is too heavily weighted towards production with minimal emphasis on increasing energy efficiency. According to the American Council for an Energy-Efficient Economy, the conservation savings in the bill will amount to only about 3 months of U.S. energy consumption between now and the year 2020. That fact bears repeating. Over the next 17 years, this bill conserves only 3 months worth of energy or 1.5 percent of energy use. The bill could have and should have saved at least four times as much energy through conservation.

This bill could have taken meaningful steps to secure our energy future, but the drafters of the bill chose not to. The energy conference could have reduced our dependence on foreign oil by increasing CAFE standards, but they did not. In model year 2002, the average fuel economy for cars and light trucks was 20.4 miles per gallon, a 22-year low. Yet if performance and weight had stayed constant since 1981, the average fuel economy would have improved 33 percent, enough to displace the amount of oil we import from the Persian Gulf 2.5 times over. To displace Persian Gulf imports would only take a 3.35 mile-per-gallon increase in the 2000 light vehicle fleet. We are risking our soldiers in the Persian Gulf, but we are unwilling to raise mileage standards in the United States. If we don't do that, I fear we will be at risk again and again and again—our troops, our economy, and our society.

According to the Rocky Mountain Institute, since 1975, the U.S. has doubled the economic activity wrung from each barrel of oil. Overall energy savings, worth about $365 billion in 2000 alone, are effectively the Nation's biggest and fastest growing major energy source, equivalent to three times our total oil imports or 12 times our Persian Gulf imports. Let me say that again. We have the greatest resource available to us. It is not oil under the ground or under the sea. It is energy efficiency. Yet this bill refuses to tap that great resource.

During 1977 to 1985, gross domestic product rose 27 percent. Oil use fell 17 percent. Net oil imports fell 42 percent, and imports from the Persian Gulf fell 87 percent. When we were forced by the embargo in 1973 to take steps to improve efficiency, the results were palpable, dramatic, and beneficial. The key to the huge 1977–85 oil savings was better mileage for our automobiles. Unfortunately, light vehicle efficiency

stagnated through the 1990s. And we refused to do the obvious and increase those standards.

Taking steps to reinvigorate the CAFE program is the best way to produce dramatic savings in oil consumption, those savings that we witnessed in the 1970s and 1980s. That is why I am an original cosponsor of S. 794, which would increase fuel economy standards for passenger vehicles to 40 miles per gallon by 2015 and for pickup trucks by 27.4 miles per gallon. This would save 1.8 million barrels of oil a day by 2015, and 3.1 million barrels a day by 2020. This is the Energy bill we need, not the one we are considering.

Indeed, this approach, a technological approach, is most suited to our greatest advantages. We are the Nation of technological innovation. We are the Nation that first ventured into space dramatically and went to the moon. I cannot believe that if we give them the simple mission of raising gas mileage standards, that our automobile industry cannot do so and do so promptly without losing jobs, without losing market share.

While we fail to take action to increase fuel economy standards and provide $100,000 tax loopholes for SUVs, China, already a growing economic power, recognizes the need to reduce its oil demands from the Middle East. In contrast to this bill, China is preparing fuel efficiency rules that will be significantly more stringent than those in the United States. The Chinese standards call for new cars, vans, and sport utility vehicles to get as much as 2 miles a gallon of fuel more in 2005 than the average required in the United States and about 5 miles more in 2008.

Let me guarantee you, our automobile manufacturers will be trying desperately to sell in that market, and we will be producing cars that go into that market. Yet they will turn to us and say: It is impossible to do that here in the United States.

The Chinese are more sensitive to the global imbalance in supply and demand for petroleum products than we are. They are taking action—and we can't—because they recognize the economic implications and the national security implications.

The Energy bill before us could have reduced our dependence on foreign oil and strengthened national security by including a renewable portfolio standard for America's electricity industry. A strong renewable portfolio standard would diversify our fuel supply, clean our air, and better protect our consumers from electricity price shocks.

According to the Energy Information Agency, gradually requiring utilities to produce 20 percent of electricity from renewable resources such as solar and wind is both affordable and feasible. In addition, it would create jobs by spurring $80 billion in new capital investment. Again, this is the Energy bill we need, not the one we are considering.

For over 30 years, through four different Presidencies, Americans have been promised that our Government would end the national security threat caused by our dependence on foreign oil. But energy security means more than drilling in new places for oil and natural gas. It starts with using less energy far more efficiently. It means obtaining energy from sources that are less vulnerable to terrorism or world politics. Unfortunately, it appears that the American people will continue to wait for a meaningful energy policy that promotes national security and reduces our dependency on foreign oil.

We faced an important vote today. I believe we made the right vote. We have given ourselves more time to improve this bill, to develop legislation that will meet our economic, our environmental, and our national security needs, to serve the American people in a way which will make them more secure and more prosperous. I hope we use this intervening time not simply to return to this legislation but to vigorously reform legislation so that we can present the American people a bill that will serve their needs and not the needs of special interests.

I yield the floor and 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. DASCHLE. Mr. President, I ask unanimous consent the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. THOMAS). Without objection, it is so ordered.

HONORING TWO SOUTH DAKOTA SOLDIERS KILLED OVER THE WEEKEND IN IRAQ

Mr. DASCHLE. Mr. President, yesterday was a national day of mourning in Italy. Tens of thousands of people lined a procession route and gathered at a basilica in Rome to pay their final respects to 19 Italian soldiers killed last week in a truck bombing in Nasiriyah, Iraq. The soldiers' deaths mark Italy's worst military loss since World War II.

The American people share Italy's sorrow over their enormous loss.

There is also a profound sense of sorrow today in South Dakota. Two of the 17 American soldiers killed last Saturday, when those 2 Army Black Hawk helicopters collided in the sky over the northern Iraqi city of Mosul, were from our State.

South Dakota lost as many soldiers in that instant as we had lost in the entire Iraq war so far.

Today, we mourn our lost sons: Army CWO Scott Saboe; and Army PFC Sheldon Hawk Eagle.

We also mourn the 15 soldiers lost with them, the 405 other U.S. servicemembers who have given their lives, so far, in this war, and all of the sons and daughters of our allies who have been lost in this war.

CWO Scott Saboe was 33 years old, a career soldier with 14 years of military service.

He leaves behind his wife, Franceska, and their 6-year-old son, Justin, who live in Alabama.

His father, Arlo Saboe, is a decorated Vietnam war veteran who lost his wife and brother in the last 2 years. His sister, Amy remington, is stationed at Walter Reed Army Medical Center near Washington.

Willow Lake, where Scott Saboe grew up, is a small town. Only about 300 people live there. On Sunday, more than half of them stopped by Arlo Saboe's house to pay their condolences.

Before Iraq, Scott Saboe had flown helicopters over the demilitarized zone in Korea. As his father told a reporter for the Sioux Falls Argus Leader, ''He was willing to go anywhere.''

He reportedly was scheduled to return to the United States in 2 weeks for training.

Today, at Willow Lake High School, where he played center on the football team, the flag has been lowered to half-staff.

Bill Stobbs, a former teacher and football coach who now is the school's principal, told the Argus Leader:

> He died doing what he loved, and he was a dedicated soldier. That's all there is to it.

Darin Michalski, a childhood friend, said:

> Most of us can go through our who lives and don't really accomplish anything, and some of us only live to be 33, and we're heroes.

PFC Sheldon Hawk Eagle was just 21.

He lived in Eagle Butte, on the Cheyenne River Sioux reservation, and was an enrolled member of the Cheyenne River Sioux tribe—one of about 90 members of the tribe deployed to Iraq.

He was a descendant of the legendary Lakota warrior leader, Crazy Horse. His Lakota name was Wanbleoheteka, Brave Eagle.

Like Scott Saboe, Sheldon Hawk Eagle grew up in a family that viewed military service as a citizen's duty. His grandfather, father and uncle all served.

Friends and family members describe him as a hard-working, quiet young man. One of his former teachers remembers his ''nice smile.''

His parents died when he was a young boy. He was raised by his aunt and uncle, Harvey and Fern Hawk Eagle.

His only surviving sibling, his sister, Frankie Allyn Hawk Eagle, lives in Grand Forks, ND. He enlisted in Grand Forks, in June 2002, to be close to her.

He was deployed to Iraq in March and reportedly had hoped to be home this coming February.

Emmanuel Red Bear, a spiritual leader who teaches Lakota language and culture at Eagle Butte High School, remembered Hawk Eagle to a reporter as an aggressive, but fair, football player who was a model of sportsmanship on and off the field.

Said Red Bear of Hawk Eagle:

> He was a role model, in his quiet way. The younger kids looked up to him. . . . He really was a modern-day warrior.

Tribal Chairman Harold Frazier said simply:

He's our hero. He defended our country and protected our freedom.

News of Scott Saboe's and Sheldon Hawk Eagle's deaths reached their hometowns on Sunday. Many people first heard the news first at church services.

It had been some time since South Dakota had lost anyone in Iraq.

On May 9, CWO Hans Gookezen, of Lead, was killed when the Black Hawk helicopter he was copiloting got caught in a power line and went down in the Tigris River.

On June 18, PFC Michael Dool of Nemo, was killed while on guard duty at a propane distribution center in Baghdad.

The crash of the two Black Hawks last Saturday was the deadliest single incident since the United States invaded Iraq. The military is investigating whether enemy ground fire have caused the crash.

All 17 of the victims were from the Army's 101st Airborne Division—the famed ''Screaming Eagles''—the same unit that parachuted into Normandy on D-Day.

Like people in every state perhaps, South Dakotans sometimes focus on our superficial differences: East River versus West River, Native American versus the sons and daughters of pioneers and immigrants. Today, we are one State, united in sadness over the deaths of our soldiers, and pride over the noble lives they lived.

I yield the floor. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. 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.

OBESITY

Mr. FRIST. Mr. President, I rise for a few moments to speak to a once silent, now highly visible epidemic that plagues every neighborhood in this country. It is an epidemic that plagues our schools. It is an epidemic that plagues our school grounds. It is an epidemic that plagues youth in our playgrounds and it plagues older people in the workplace. It is a plague that in many ways is a new problem—a problem that is only really 15, 20, maybe 30 years old—but it is a problem and a plague that is growing. It is one that specifically hurts children, and, indeed, once it attacks our children, it can destroy in many ways their future quality of life and their future life in terms of longevity. This epidemic, this plague, is childhood obesity.

Just this summer, the Food and Drug Administration announced it will require food labels to list trans fatty acids. Most people do not know what trans fatty acids are; people do not know exactly what they do. But they do things which make in many ways food taste better. They make foods last longer. They give flavor to foods. They increase shelf life. The problem is that these trans fats contribute to heart disease. Heart disease is the No. 1 killer in the United States of America today.

For 20 years, before coming to the Senate, I spent my life in medicine and ended up gravitating to this field of heart disease. It wasn't as big of a problem in the late 1970s or early 1980s, but it was there. What bothers me most is that it is skyrocketing today, and it is increasing faster among adolescents—children—than it is among anyone else.

It is interesting. If my colleagues are listening to me, the likelihood is one out of every two of you is going to die of heart disease—not just my colleagues but on average around the country. That is how common heart disease is in terms of mortality.

Various food companies really deserve praise for their plans to reduce the level of trans fats in their most popular products. These are important advances in public health, and I applaud our food manufacturers for stepping up and taking this leadership position.

Ultimately, however, the responsibility for this growing, skyrocketing epidemic rests with all of us—individual consumers, American consumers—you and me—and all of us because ultimately we make that decision for ourselves in terms of our shopping, in terms of how we conduct our lifestyle, how much exercise we get, and what we eat.

But the point is that we have an epidemic. It is hurting specifically children. Children are really condemned to a lower quality of life because of this epidemic. But the good news is that there is something we can do about it; we can reverse these trends.

Sixty percent of Americans today are overweight. More than one out of two are overweight. By itself, obesity might be considered just another choice we have in life, that we just choose, that is what we do, and, if it hurts us, that is just the way it goes. It is more than just another choice. It really does come down to what we do, which may not be a choice in part because there may be even a genetic component to it. We don't know for sure. But researchers in England believe they have discovered a gene which they are calling an obesity gene that some way predisposes some to overeat. It is a choice in terms of lifestyle: People choose to take the metro or the subway rather than walk. We know our children in schools today are exercising a lot less. We know that our kids today are spending a lot more time in front of the television or at the computer and are less likely to be exercising.

Whether by choice or by some combination of genes and environment, we know obesity is now a major public health threat in the United States of America. Obesity contributes directly to heart disease but also to diabetes. Diabetes is reaching epidemic proportions in our children today. It directly contributes to other illnesses, including cancer and stroke.

There are 300,000 deaths a year that can be directly attributed to fat. The epidemic is spreading in faster and faster proportions with our children. The percentage of kids age 6 to 19 who are overweight has quadrupled since the early 1960s. It is not a static problem; it is getting worse.

Pick any city in the country. Look at New York City's public school children, nearly half are overweight; one in four is obese. The problem is particularly acute among African-American and Hispanic children, especially Hispanic boys. More Hispanic boys than Hispanic girls are obese. In my own State of Tennessee, the statistics are even worse.

Nationwide, type 2 diabetes, the kind of diabetes that is associated with obesity, is skyrocketing. At the Centers for Disease Control and Prevention, estimates are that one in three Americans born in the year 2000 will develop diabetes in their lifetime. One in three Americans born today will develop diabetes in their lifetime. This is attributed to obesity. It is attributed to being overweight. Among African-American and Hispanic children that number is not just one in three Americans, but it is one in two Americans in those populations that will develop diabetes in their lifetime.

People say diabetes is bad and that should be reversed. But it is even worse than saying it is just diabetes because diabetes itself is the leading cause of kidney failure, which is renal failure. Diabetes is the leading cause of heart disease. Diabetes is a leading cause of blindness as well as amputations. It all starts as a child, who, in this growing epidemic, is led to be obese.

As adults, we know how hard it is to battle the fat or the battle of the bulge. We all struggle with that in our environment of fast food and transportation. It is very easy to find excuses not to exercise four times a week for 30 minutes. But imagine struggling with obesity when you are just 10 years of age, where this is reaching those epidemic proportions. Teachers say they see the physical toll on their students every day. Kids are out of breath walking up the school stairs. Kids are not able to participate fully in sports. Kids are not able to participate when they do field trips and go outside, activities we associate with playing and vigorous childhood activity. Kick-ball, jumping rope, and climbing trees for many children today, unlike in the past, have become grueling exercises that, indeed, they try to avoid. They say they will not participate because they are embarrassed to participate.

Mr. President, 25 percent of our Nation's children say they do not participate in any vigorous activity today. That is one out of four children. Obesity is not only robbing them of those

everyday pastimes, it is also robbing them of their childhood years. Obesity is associated with the early onset of puberty among girls.

According to a study from the University of North Carolina, 48 percent of African-American girls begin puberty by age 8; over a quarter by age 7.

Yes, we are in the midst of a national health crisis. It is harming our children in ways that we can observe, but the crisis also occurs in ways we cannot observe. It threatens their future. It also condemns their future in many ways to the lower threshold of having other adult diseases if they start as a child being obese. They carry that with them for the rest of their life.

It affects what we call their morbidity, the relationship to other disease patterns. It affects their longevity in terms of length of life.

There is a lot we can do. We cannot just talk about it. The Surgeon General, Dr. Richard Carmona—for whom I have tremendous respect—is so alarmed, this month he urged the American Academy of Pediatrics to step up the fight against childhood obesity. In the Washington Post yesterday, Rob Stein wrote an article ''Obesity on FDA's Plate'' and he pointed out the Food and Drug Administration has launched an initiative to determine how and in what way it can play a role in helping to fight obesity, which, as the article points out, has reached epidemic proportions in this country.

In that article from yesterday, FDA Commissioner Mark McClellan—again, a physician for whom I have great respect and with whom I have worked in many capacities before; he is doing a great job at the FDA—said:

> The issue of obesity challenges us in every aspect of our efforts to protect and advance the public health, and that is why it needs to be front and center of our public health agenda.

The good news to all this is that there is action in government that obesity is both treatable and preventable, which means there are things we can do to reverse the epidemic. We can reverse the trends. We must reverse the trends. It is now time to put our minds to it in this body.

I am gratified by the action of the HELP Committee which unanimously approved recently the IMPACT Act, the Improved Nutrition and Physical Activity Act. I urge my colleagues to look at this piece of legislation. I urge my colleagues to support this legislation. I hope we can bring it to the Senate floor in the near future.

Very briefly, this act takes a multifaceted approach. It emphasizes youth education to jump-start healthy habits. We know if they begin in their early years, they are carried through life. It funds demonstration projects to find innovative ways to improve health, eating, and exercise and includes vigorous evaluations so we can learn what works best in reversing this epidemic. It does not attempt in any way to control what individual Americans eat or drink. It does not outlaw so-called bad foods. It does not try to replicate the $1 billion diet industry that we know exists. It does not try to replicate the fitness industry, which is actually doing a wonderful job around the country.

It does have a modest pricetag reflecting on the appropriate role of the Federal Government to set this platform to combat this epidemic.

There is no single solution to the growing epidemic of obesity. I believe we must increase awareness of it first and then implement programs we know will have an impact; look at the medical consequences. That is why I come to the Senate floor to share the medical consequences that are totally avoidable if we act, if we educate, and if we adopt practices that we know will work.

We do know the consequences of obesity today. We can and should keep our kids safe by keeping them fit. I look forward to working with my colleagues on this very important issue. It is a new problem, a growing problem, a problem we are obliged to reverse.

Mr. REID. Mr. President, I wish I listened to the speech before I had lunch.

On a serious note, Senator DURBIN is here and he will start talking about the Medicare bill that will soon be taken up in the Senate. I think the leader would agree that people should come now and start talking about this most important piece of legislation.

Senator DURBIN is in the Chamber to talk about it. I think we should invite all Senators because the time later could be a little more constrictive.

I also say, on a serious note, about the speech the distinguished majority leader just gave, one of the reasons the leader has such high respect on both sides of the aisle is we know of his background. It is not often we have someone of his medical talents come to this body. In fact, no one has ever had the same background. He uses it in such a dignified way, in his charitable work when we are on break, doing things for the less fortunate in Africa and other places. And here, it is always good for us to know that when we do deal with health issues, he is here.

So I speak for the entire Senate when I say this presentation he just delivered on obesity is something we should all pay attention to because I know this is not a speech that someone prepared for him; this is something he spoke to with his knowledge as one the finest physicians in America.

The PRESIDING OFFICER. The majority leader.

Mr. FRIST. Mr. President, I appreciate the comments, through the Chair, from the assistant Democratic leader. One of the great things about these issues is we do have the opportunity here to work together on both sides of the aisle on issues which affect people broadly. I very much appreciate his comments in that regard.

I do also add the point, and reinforce the statement the Senator made, that over the course of the afternoon we would like to shortly—and, hopefully, a little bit after 2 or after the appropriate comments are made on Medicare—go to Healthy Forests. We are waiting on some final agreements, but hopefully we can address that today.

But what I really want to say is, this is exactly the way to handle it. I encourage people right now to come and make their statements and make their points and have the debate on Medicare. The bill is out. The bill has been filed. People have access to that bill. I think everybody should take that opportunity, this afternoon, through tomorrow, and through the weekend, to come to the floor to begin talking about that very important issue.

We want to make the very best use of time today, tomorrow, and Sunday, in all likelihood, and Monday, on that issue as well as others. It may be confusing to people. We will be going back and forth because we have a lot of business to do. So we will be on Medicare, and then we will take up Healthy Forests, and then I encourage people to come back and begin Medicare.

I yield the floor.

The PRESIDING OFFICER (Mr. COLEMAN). The Senator from Illinois.

Mr. DURBIN. Thank you, Mr. President.

I join my friend and colleague from Nevada, Senator REID, in saying to Senator FRIST, thank you for your leadership. We disagree on issues from time to time, but we agree on some, too. You have been an exceptionally good leader on the Republican side. I have said this to you privately, and I want to make it a matter of public record: I think you have been eminently fair to the minority in this Senate. And that is, I am sure, not an easy task. There are certainly forces at work in your party, as there are in our party, calling for a different outcome.

But I applaud you for your fairness in allowing the minority on this side of the aisle an opportunity to debate, offer amendments, to express our points of view, and bring an issue to a vote. I do not think a member of any legislature—national or State—could ask for anything more. I think you have worked long and hard to make that a hallmark of your leadership.

As a member of the minority, let me say to the Republican leader, thank you for your service to this institution. You have been a great asset to our Nation and to this body.

MEDICARE AND PRESCRIPTION DRUGS FOR SENIORS

Mr. DURBIN. Mr. President, let me, if I may, address another issue which is about to come before us. If you follow boxing and have watched any big championship fights, you may know that it comes at the end of the evening. During the course of the day and afternoon and the early evening hours, there are preliminary fights, and they are interesting, but they are young

boxers who are untested. But the excitement builds and the attention of the audience builds for the prize fight, the heavyweight championship fight, always the last thing on the card.

Much the same occurs in Washington, DC. We have a lot of preliminary fights that lead up to the championship. You are here witnessing on the floor of the Senate today, and in the closing days of this session, the heavyweight fights.

We just finished one. That was the Energy bill. This was a controversial issue of some 1,400 pages that had been debated for years. It came to the Senate floor and just a short time ago was basically stopped. A filibuster prevailed by a bipartisan rollcall with, I believe, six Republican Senators and a number of Democratic Senators. The Energy bill was stopped. It was a heavyweight fight because those supporting the bill include the biggest energy interests in America, the big oil companies.

Certainly the President and the Vice President and the Republican Party, which controls the House and the Senate, were, by and large, anxious to pass this bill, and we had a confrontation on the floor and my position prevailed on that. It came as somewhat of a shock to people who follow this Senate. It is not very often that the favored side in one of these debates loses. And just a short time ago they did, by two votes. They needed 60 votes to stop the debate and move the issue to a vote, and the motion to stop that debate did not prevail; it only received 58 votes.

Well, the windows are open now, and there is anxious negotiation and a lot of effort underway to try to find two more votes. And I would imagine, in the closing days of the session, we may see this issue surface again. I could express myself in saying I hope it does not, but it makes no difference what I hope. I am in the minority here, and the majority will decide whether they have the votes to bring it to closure.

That is one of the heavyweight fights. But there are two more coming, two more that will affect virtually every family in America.

One is an omnibus appropriations bill, with five major appropriations bills lumped into one, that is now in conference, a conference on which I serve; and debate is underway. The debate is behind closed doors, and I, frankly, do not know what is happening there. But before we can leave, we need to pass that bill. It could include a myriad of issues, issues as far-flung as stem cell research in medicine, issues as diverse as education, transportation. All of these issues could come before us in that large bill. That is another heavyweight fight.

But the one I come to address today is one that has received a lot of attention across America for a long time, and it is likely to receive even more attention in the closing days of the session, both in the House and in the Senate.

The issue is the issue of prescription drugs, particularly for seniors. I do not know of a single Member of the Senate who has not expressed support for finding some way to help seniors pay for prescription drugs.

We all know what has happened here. We have more and more and better and better prescription drugs available across America, and a lot of people have learned—in my family and yours, too—that if you take the appropriate medication, with the advice of a good physician, your life can be healthier and you can be stronger and more independent.

So people try to find the right drugs to keep them healthy and to move along with the happiness of life, trying to avoid going in for hospitalization or surgery. Prescription drugs are an important part of that.

But, sadly, prescription drugs for seniors in America are not covered by Medicare. So unless you are in a hospital receiving those drugs, you have to pay for them. For a lot of seniors, it is too expensive. There are people living on fixed incomes under Social Security or relatively small pensions. They have a few assets left on Earth, maybe a home they saved up for all their lives and a car, and they are trying to figure out how to pay several hundred dollars per month for prescription drugs they need, and they can't afford it. So, many do not take the drugs, some take half of what they need, and many find themselves in a terrible, perilous personal position.

We have come forward and said: We should change Medicare. If Medicare covers your illness when you go into a hospital, why wouldn't Medicare cover the drug that would keep you from going into the hospital? That makes eminent sense not just from a human point of view but from an economic point of view. It is money well spent to keep people healthy and to pay for prescription drugs.

So we had this debate, and it went on for years, and we talked about how to do it, and we did not get much done. But we did finally pass a bill out of the Senate, a bill which I supported. It was not the greatest bill. In fact, there were some aspects of it I thought were pretty bad.

Then it went into a conference between the House and the Senate, and they started working out differences. Then something unusual occurred. Someone in the House of Representatives decided that this debate was not about prescription drug benefits for seniors; no; they said this debate is really about the future of Medicare, the whole program.

It isn't about adding a benefit for seniors to pay for prescription drugs but how we are going to change Medicare in the future. Republican leaders in the House said the best way to change Medicare is to change it as a government insurance program and instead let private insurance companies, HMOs, offer Medicare coverage in the future.

My experience as a Senator from Illinois and as a Congressman is that HMOs can break your heart. They cost a lot of money. They deny care, they limit your choice in terms of doctors and hospitals, and, frankly, when the going gets rough and they are not making enough money, they cut and run. Is that what we want to hold out as the future of Medicare? I don't think so. But a lot of people do.

The Republican majority in the House certainly believes that, and that is what they have pushed now in this so-called prescription drug bill. It is no longer a bill about just paying for the prescriptions. It is now a bill about changing the face and future of Medicare. That, to me, makes a substantial difference in our mission and what we need to do.

The bill, as it is currently written, is not a bill which I can support. I guess the biggest disappointment I have is the fact that we started off with such a valid goal and such a lofty purpose. We were going to help our mothers and fathers and grandmothers and grandfathers pay for their prescription drugs. Now we have gone far afield. There are many who want to change Medicare.

Let me ask you: If you stepped back in the course of legislation and wanted to determine whether or not it was good for consumers and families in America, isn't it fair to say that one of the first questions you would ask is: Where does the money go? Who ends up profiting from this bill, and who ends up losing as a result?

Clearly, you want to turn first to the pharmaceutical industry, the people who sell drugs in America. I will readily concede this is one of the most important industries in America. We lead the world in breakthrough drugs and pharmaceuticals. I want to make certain that these drug companies in my State and others are profitable; that with their profits they can fund research to find new drugs. I want to make certain that those drugs are available to Americans. That is something on which everybody agrees. But sadly, what we find in this bill is that the pharmaceutical industry is cheering the loudest for the bill to pay for prescription drugs. That leads us to ask some serious and important questions.

First, let me show you how profitable drug companies are in America today. Take a look at the profitability of Fortune 500 drug companies versus the profitability for all Fortune 500 companies in the year 2002. The red bars indicate the profitability of the drug companies, the drug industry median, and the yellow bar is all other Fortune 500 companies. You can see profits as a percent of revenue in the first illustration, 17-percent profit for the drug industry; 3.1 percent for the rest of the Fortune 500 companies. You can see profits as a percent of assets, 14 percent. Then when it comes to profits as a percent of equity, 27.6 percent for the

pharmaceutical companies; 10.2 percent for the rest of the Fortune 500. So it is very clear that we are talking about a profitable industry.

Here is another illustration of the same point. This is an indication from Fortune magazine of the most profitable industries in America, with 2002 profits as a percentage of revenues. No. 1 on the list is pharmaceutical companies. Pharmaceutical companies are extremely profitable in America today. We understand that. We ought to keep it in mind as we discuss how we are going to pay for prescription drugs for seniors.

Then I would like to show you what some of the people who are the CEOs of managed care companies earn. Here we have a chart that shows the chairman of Aetna, John Rowe, his compensation, exclusive of stock options, $8.9 million; Anthem, Larry Glasscock, president and CEO, $6.8 million; CIGNA, Edward Hanway, chairman and CEO, $5.9 million—this is exclusive of stock options which are usually considerably more—Coventry, Allen Wise, president and CEO, $21.6 million annual compensation; Health Net, senior vice president, $6 million; Humana, president and CEO, $1.6 million—that is pretty small in comparison—then Oxford, Norman Payson, former chairman and CEO, made $76 million; PacifiCare—you may have seen the ads that show the whale flopping in the water—Mr. Howard Phanstiel is not a flop when it comes to his salary, $3 million; Sierra Health, Dr. Marlon, chairman and CEO, $4.7 million; UnitedHealth, Channing Wheeler, chairman and CEO, $9.5 million; WellPoint, Leonard Schaeffer, chairman and CEO, $21.7 million.

The total compensation for these 11 executives at these managed care companies is $166.3 million. Their average compensation, $15 million.

We are struggling to figure out how people who make $200 or $300 or maybe $500 a month can survive. And we are dealing with two industries that are extremely profitable. The obvious question we should ask is: What is fair? What is fair compensation to the pharmaceutical companies and managed care companies, but what is fair to the seniors in America? Therein lies the problem.

This morning's Washington Post, on page A4 in the first section, I think, is written an article that every Senator should read, and those who follow this debate on prescription drugs.

It is entitled ''Drugmakers Protect Their Turf.'' It says: ''Medicare Bill Represents Success for Pharmaceutical Lobby.'' Let me read a little bit from this article:

> No industry in negotiations over the $400 billion Medicare prescription drug bill headed to the House floor today outpaced the pharmaceutical lobby in securing a favorable program design and defeating proposals most likely to cut into its profits, according to analysts in and out of the industry.
>
> If the legislation passes as Republican leaders predict, it will generate millions of new customers who currently lack drug coverage. At the same time, drug manufacturing lobbyists overcame efforts to legalize the importation of lower-cost medicines from Canada and Europe and instead inserted language that explicitly prohibits the federal government from negotiating prices on behalf of Medicare recipients.

The pharmaceutical lobby has become the biggest player in Washington, DC. When I got here, it was the tobacco lobby. I know it because I fought them—beat them a couple times, too—over the course of my career. They had more money than friends, and they went out to buy a few friends, and they did.

Listen to what the pharmaceutical companies have done:

> After objecting for years to proposals to add prescription drug coverage to Medicare, the pharmaceutical lobby recently shifted position and poured enormous resources into shaping this legislation. Since the 2000 election cycle, the pharmaceutical industry has contributed $60 million in political donations and spent $37.7 million in lobbying in the first 6 months of this year.

Thirty-seven million dollars on Capitol Hill? You will meet these fine men and women in their beautiful suits and well-shined shoes in the lobbies right outside this Chamber. The article goes on to say:

> The lobbying continued in earnest this week with a television and print advertising campaign urging passage of this bill. In one series of witty commercials sponsored by the industry-backed Alliance to Improve Medicare, elderly citizens look into the camera and demand: ''When ya gonna get it done?''

I think I may have a copy of that ad somewhere around here. You have seen it. The fellow is pointing to Congress saying, ''When ya gonna get it done.'' That is paid for by the pharmaceutical companies. So if we are talking about helping seniors pay for prescription drugs and the pharmaceutical companies can't wait to see this legislation passed, what does that tell you? It tells you they are not going to have to cut their prices. It tells you they are going to make more money. It tells you that ultimately we are not producing a bill which helps consumers and families and senior Americans. We are creating a profit opportunity for pharmaceutical companies that already lead the Nation in profitability.

The pharmaceutical lobby is so strong in this town that they have been able to deceive the American people into believing that this prescription drug package is somehow going to cause some sacrifice on the part of pharmaceutical companies. It will not.

They are the big winners in this, just as the big oil companies and energy companies would have been the big winners in the last bill. This is the heavyweight fight, the match you can expect to see in the closing hours of this session.

Let me tell you, in closing, what the Washington Post says this morning:

> Perhaps the most striking political victory for the pharmaceutical industry was the decision to reject provisions that would have allowed Americans to legally import drugs from Canada and Europe, where medications retail for as much as 75 percent less than in the United States. Polls show that an overwhelming majority of Americans support that change, and the House approved a measure 243–186. But the Bush administration and the pharmaceutical lobby said the move was dangerous and would cut into future research and development. The provision was dropped from the bill's final version.

So why would people want to import drugs? I think we know the answer. They are cheaper. The same drug made in the United States by an American company, based on research paid for by the Federal Government many times—that same drug for sale in Canada is a fraction of the price. Why? Why is it cheaper in Canada or in Europe, if it comes from the same American drug company? Because we are not importing drugs from Canada or Europe; we are importing leadership.

The Canadian Government, and governments around the world, have decided to stand up to the pharmaceutical companies and tell them there is a limit to how much money they can charge for their drugs. Our Government is unwilling to do that. This bill will not do that. Instead, what seniors have been forced to do—and families, I might add—is to pay high pharmaceutical drug bills, and some are going to Canada trying to keep up with the costs. This bill closes that border for the reimportation of drugs from Canada—meaning that America's senior citizens will continue paying the highest drug prices in the world.

This is all in the name of a prescription drug benefit for those seniors. So it is natural that pharmaceutical companies are spending millions of dollars trying to urge Congress to pass this bill as quickly as possible. The ads that they run—some are directly from their own front organizations, but others come through organizations such as AARP. I know about AARP because once you reach age 50 in America, they start filling your mailbox with solicitations for membership. I have been rejecting those for many years. I don't plan on being a retired person soon. However, the voters will have the last word on that decision.

Here is their full-page ad calling for Congress to pass the proposed prescription drug Medicare bill. Honestly, I think if you looked under the lid, you would find that AARP money to pay for this ad comes through the pharmaceutical companies that cannot wait to see this bill passed. It means more money for them. They want to cut off the sources of drugs coming in from Canada and Europe so they can really charge seniors the highest prices in America.

Let me give you an illustration of what competition can mean when it comes to drug prices. If you said to people: Do you want price controls from the Federal Government, they would say: No, no, no, that is too much Government.

But if you say: Would you want your Government to bargain for the best prices for people who need prescription drugs, most people would say: Why, sure. And why wouldn't they? You could say to them: Do you realize we do that now?

The Veterans Administration does that today; it bargains with drug companies so veterans get cheaper drugs, and the Veterans Administration pays less. The Indian Health Service does it, and some community health centers do it. States also do it through the Medicaid programs. They bargain with them successfully. A lot of people are not covered in those groups—veterans health care, Indian Health Service, or Medicaid. They are left totally unprotected, with no bargaining power.

Look at this chart. These are some fairly common drugs. Xalatan is an eyedrop. If you buy this at the Federal supply schedule price, it is $41 for the prescription. If you go to the drugstore to buy it, it is $101. So we manage, through the Federal Government, to bargain with the drug companies and bring prices down for some people.

Celebrex, for arthritis, is $108 on the Federal Supply Schedule. That is what we pay because we bargain down the price. If your grandmother goes into the drugstore to have that filled, she will pay $173—$65 more.

Lipitor, a very valuable and important drug, is $215, based on what we have negotiated and bargained. If you pay the full price at the drugstore, which many American seniors do, it is $446.

Plavix, for stroke, is $257. It is $593 at the drugstore.

The point I am making is this: This bill is designed so that the Federal Government is prohibited from bargaining and negotiating for lower prices for seniors across America. That is why the pharmaceutical companies are so wild to pass it. That is why they want to see this enacted as soon as possible. It closes down competition. You can no longer go over the border to buy drugs in Canada or Europe, and you cannot find the Federal Government standing up for you and bargaining for seniors to bring down costs.

That is why the pharmaceutical companies are salivating. They cannot wait. They want to see this thing passed because, frankly, it means less competition. So who pays the highest prices for prescription drugs in America today? The people who can afford it the least—senior citizens on fixed incomes.

Even with the prescription drug benefit in this bill, there is no cost containment, no effort to keep the prices under control. So no matter how much money you put into this prescription drug benefit, it is going to go bankrupt because prescription drugs go up in cost 10 to 15 percent a year, and they will continue to. That inflation is going to destroy this program, and it is going to destroy seniors, because this Congress and this President refuse to confront the pharmaceutical companies.

In Canada, their government stands up for their people and says to American drug companies: We are not going to let you gouge or take advantage of our people when it comes to prescription drugs. Our Government refuses to do that. As a result, we find ourselves in this predicament. AARP and others are pleading for a prescription drug benefit that, frankly, has no cost containment built into it.

I came to the floor during this debate and urged colleagues to give to the Medicare Program the ability to bargain, which is what we give to the Veterans Administration and other Federal agencies, to let Medicare go to the drug companies and bargain for the best price for Medicare recipients across America. I was summarily defeated. The pharmaceutical lobby prevailed. I think that answered the basic question as to whether this bill truly will lead to lower drug prices across America. It will not. It will help some seniors pay for drugs, but the cost of drug prices will continue to skyrocket, and the competition from Canada and Europe will disappear. It specifically prohibits the Federal Government from negotiating on behalf of Medicare recipients.

This bill rewards pharmaceutical companies and HMOs—insurance companies. The pharmaceutical companies are going to gain, the Medicare purchasing pool is divided to prevent large group purchasing discounts, and the House language on reimportation was rejected.

There is another element. One of the ways to cut the cost of drugs is to encourage the use of generics. Once a drug has been discovered, it is the exclusive right of the drug company to sell it under a patent. During that period of time, nobody else can make that drug and sell it. When the patent expires, everybody can make the same drug and they do it under a generic name.

You may remember Claritin, with all the ads on television that showed the happy faces skipping through the field of wildflowers saying, ''I don't sneeze anymore.'' It went off patent and it is now available over the counter. So they came in with Clarinex—I think that is the name.

So once you see the generic drugs come in, the prices go down for consumers, and they get the benefit of what was a pretty expensive drug for a long time.

We tried in the Senate to make sure there were more generic drugs for sale because it is a good way to keep everybody healthy at a lower cost. It turns out that the pharmaceutical companies didn't care for that at all. They want people to pay for the more expensive drugs under patent. So they ended up weakening the language we had, which would have allowed generics to come to the market more quickly so seniors could take advantage of it. Also, this would weaken the ability of States to negotiate with drug manufacturers.

Some States are way ahead of the Federal Government. Oregon is one, and my State of Illinois has a plan. The ability of each State to bargain for the people living in that State is also restricted by this bill because all drugs are paid for through Medicare—something else the pharmaceutical companies wanted. They don't want to have to bargain with anybody. They want to charge top dollar. They don't want any voice from consumers or Government to reduce their profitability, which is already at record-breaking levels. They have been successful. They cannot wait for this bill to pass because they are already profitable, and this bill will enhance their profits even more.

Under this bill, seniors will receive a benefit that will cover less than 20 percent of the projected drug costs for seniors over the next 10 years.

A break-even point of $810 is what you have to put in, in payments and copayments, before you get anything back, which means about 40 percent of seniors will either lose money or gain very little under this prescription drug plan.

There is also a hole in this plan. It is complicated, but I will try to explain it, and it has been changing, even this week.

The coverage on this plan, once you make your monthly premium cost and once you pay your copayment—and then understand that you have to pay 25 percent of the cost of the drug itself—the coverage goes up to a certain point and then it stops. If you are still paying for drugs at that point, you have to go to your pocket to pay out. Then when you reach the higher level, it kicks back in again. So there is a period where you are, frankly, not covered.

If you have expensive pharmaceutical costs, you buy into the program, you make your copayment, and you are paying a percentage for each prescription you take, at a certain level the Federal help stops. Then if you keep paying out of pocket without Federal assistance, it kicks in again for catastrophic coverage. Let me try to describe where it is today.

The reports in the news have been, frankly, misleading. They have been reporting the catastrophic cap in the Medicare prescription drug bill is $3,600. It is not true. It is $5,100. So the gap between $2,250 and $5,100 is $2,850, the total out-of-pocket expenses for which seniors will be responsible is $3,600.

We have a situation where at $2,250 worth of costs, the seniors are on their own. It turns out, according to the Congressional Budget Office, 30 percent of seniors spend between $2,000 and $5,000 per year on prescriptions. That is 12.6 million people. It basically means even though prescription drug coverage and this complicated scheme I just described has been offered, there is an exposure where seniors will have to pay

out of pocket, which will be a surprise to many of them, particularly when they are facing astronomical costs.

I had some examples made to give you some idea of what seniors might face in my State and others. One involves Mrs. Jones who has arthritis and takes Celebrex, which costs about $86 a month. Her husband has high blood pressure and takes Norvasc, which costs $152 per month. Under this plan, Mrs. Jones would pay at least $865. If her premium is more than $35 a month, she would pay more. There is no set premium in this bill. Mr. Jones will pay at least $1,064, for a combined cost of $1,929. This benefit will only cover a third of the drug costs of Mr. and Mrs. Jones.

There are other elements we ought to look at here. If you want to get the most help from this bill, you have to be in the lowest income categories. That is fair. I think that is the right thing to do. The people struggling to get by should get the first helping hand from our Government. They decide they are going to look at certain income levels as to whether or not you benefit from this prescription drug. Then they have an asset test which, as I understand it, is $6,000. That means if you have assets of $6,000 or more, you don't get the most help.

Some of these seniors, I know, have the old family car that may still be worth $6,000, and they would be disqualified when, frankly, they have almost no income and very few other assets on Earth.

The asset test is extremely low. Six million poor seniors will be made worse off by this bill. They previously paid nothing for drugs. They will now have to pay copays that increase annually.

Three million fewer low-income senior citizens will receive enhanced benefits than under the original Senate bill because of the strict assets test. Let me give an example.

If a senior has an income of $12,000 a year but owns a $6,100 savings bond, burial plot, insurance policy, or car worth $6,000 or more, they will not have access to low-income assistance. They will have to pay the full premium, deductible and donut, or the period where the Federal program does not apply.

That means if they have high drug costs, they could pay more than $5,000 a year for their medications simply because they own a burial plot and an insurance policy. That is what the bill says. That, frankly, is something about which we ought to be concerned.

We have to understand that when it comes to this prescription drug situation, most seniors are going to be stunned by it. I might add something else that is interesting. The decision was made by the Administration and the Republican leaders in Congress that this prescription drug plan would not go into effect until after the next election, a very interesting political move.

If this is really supposed to help seniors across America, wouldn't you think this President and this Congress would want to put it in place and activate it before the election?

The reason they won't is because it is extraordinarily complicated, it is unfair to many seniors, and it includes provisions that, frankly, seniors won't be happy with at all. So they want to put it off until after the next election, and that is what they have done.

One of the other concerns I have is the role of AARP in this whole conversation. AARP is an interesting organization. Most of us over the age of 50 receive a lot of solicitations. A lot of seniors 50 and older across America have joined. If you look at AARP, it is more than a feel-good operation to try to help seniors pay for trips overseas and maybe give them a few discounts.

It turns out it is a major earner of insurance money. Here is a chart which shows the insurance royalties at AARP over the last several years—insurance royalties which, frankly, indicate $111 million in 1999 up to $123 million in 2002. The same thing goes for the investments they have made. We can see that AARP makes a lot of money from the insurance business.

One of the companies they sell insurance with is UnitedHealth Group. It turns out, coincidentally, that UnitedHealth Group could be one of the biggest beneficiaries of the bill that is going to come before us. So AARP comes to this debate not with clean hands.

AARP is fronting for an insurance company that has the potential for dramatic profitability from this bill. So when AARP announces they are for this bill, they ought to be very honest with the seniors about what that means.

AARP receives millions of dollars from the sale of health insurance policies. AARP's insurance-related revenues made up a quarter of their operating revenues last year and one-third of their operating revenue in 2001.

They receive royalties from AARP insurance policies marketed to their members by UnitedHealth Group, MetLife, and others.

More than 3 million AARP members have health-related insurance policies from UnitedHealth Group. Last year, UnitedHealth Group earned $3.7 billion in premium revenues from their offerings to AARP members.

The royalties AARP earned as a result of lending their name to insurance products, as I mentioned, went up to $123 million in 2002. They received so-called access fees from insurance companies of over $10 million. They received something called a quality control fee of almost $1 million from insurers.

AARP also earns investment income on premiums received for members until the premiums are forwarded to UnitedHealth Group and MetLife. In 2002, AARP earned $26.7 million in such investment income.

There is a total of $161.7 million in revenue from insurance just in 2002.

According to Advertising Age magazine, AARP and UnitedHealth Group hired a direct marketing agency in May to conduct a marketing campaign for their insurance product that could cost $100 million.

UnitedHealth Group stands to gain significant portions of the new Medicare Advantage market that would be created by this bill, given that it is currently participating in a Medicare PPO demonstration project in eight States.

AARP can make a lucrative business even more lucrative by continuing its partnership with UnitedHealth Group. Let's take a look at AARP's advertising.

Last year, AARP earned $76 million on advertising. Their magazine, formerly called Modern Maturity, and now called AARP, The Magazine, has the largest circulation of any magazine in the United States, going to 21.5 million households.

The latest issue has three full-page ads for brand-name drugs, and another for a Pfizer glaucoma kit. It contains four ads for AARP's various kinds of insurance.

Combine that with the four ads for insurance in the November AARP Bulletin, and that is a lot of insurance advertising. The September/October AARP magazine and the October bulletin have a combined 14 ads for insurance.

There is a direct linkage between AARP and the insurance industry and another industry that stands to profit from this so-called Medicare prescription drug bill. It is interesting, too, that when the members of AARP were recently asked in a nationwide poll what they thought of this prescription drug bill that is pending before Congress, the results were amazing. A poll that was released 2 days ago showed that 66 percent of AARP members were somewhat or very unfavorable to the level of prescription drug coverage which I have just described in this bill. Eighty percent of AARP members do not believe this bill does enough to encourage employers to maintain current retiree coverage. Sixty-eight percent of AARP's membership were somewhat or very unfavorable to the following statement: This provision is designed to increase the number of seniors receiving their Medicare coverage through private health plans like HMOs and PPOs by significantly increasing Government subsidies for these plans.

So I would just ask this: If AARP is spending all of this money on behalf of their membership to promote a proposal which two-thirds or more of the members of AARP at this point oppose, what is driving this? I think it goes back to the earlier explanation. AARP is not acting as an advocate for seniors. AARP is acting like an insurance company. AARP has forgotten their mission. They have decided they have a new responsibility: They have to generate money from insurance companies.

Frankly, it is a sad situation because for many years AARP was respected across America for being a nonpartisan voice for seniors. Sadly, at this point in time they are not. As a result, there are very few who are standing up to speak for seniors and what they need.

When I take a look at this bill and what it does, it worries me that what started off as a prescription drug bill to help seniors has become so complicated that it is almost impossible to explain. It has gaps in coverage that will leave seniors without any help when they need it the most and instead is trying to dramatically privatize Medicare as we know it.

There are forces in Congress, primarily on the Republican side of the aisle, who want to privatize both Medicare and Social Security. That has been their goal. As a party, they never supported Medicare. Only a handful of Republicans voted for its creation. Over the years, they have made it clear where they stand. There was a time when former Speaker Gingrich and his assistant Richard Armey, who was a Congressman from Texas, said their goal was for Medicare to ''wither on the vine.'' That does not sound like a group that really is supportive of the program. Instead, it sounds like a group that will look for every opportunity to make sure that Medicare is not as good as it should be.

So ultimately what they are proposing is this: They are going to move Medicare from the program we know today, a Government-run program with low overhead and low administrative costs that serves all Americans universally, to a new model which will bring in HMO insurance companies to cover senior citizens.

Naturally, they are afraid the free market will not work. So they put in generous subsidies to these HMOs so that they will lure away seniors out of Medicare. Here is how this will work: An insurance company wants to insure the healthiest people it can find. Insurance companies do not go out and look for sick people. Insurance companies try, if they can, to exclude from coverage anybody who is going to be expensive. Understandable. If they reduce their risk and exposure, they increase their profitability. So these HMO companies, which are being designed to lure away seniors from Medicare, are going to not only achieve this by looking for the healthiest seniors, they get an added boost from our Republican friends, our free market advocates who argue that they need a subsidy on top of the—billions of dollars in subsidies to these HMOs.

What is wrong with this picture? If one believes in the free market, why in the world would they subsidize an HMO company: so they could take the healthy people out of Medicare? That is exactly what they want to do. What will happen to Medicare then? There will be fewer people in Medicare because these Government-subsidized HMOs will be creaming off and cherry-picking the healthiest people and those left in Medicare are going to be poorer and sicker.

The net result of that is obvious. At the end of any given year, there is going to be a more expensive per-claimant Medicare cost. There will be sicker people left in Medicare.

Those who are opposed to Medicare and behind this idea believe that will drive down the popularity of Medicare. They will be able to stand on the Senate floor and the House floor and say: See, we showed you; Medicare just is not going to work; look how expensive it is for every senior under Medicare.

So they will have achieved their dream and goal by reducing the coverage of Medicare and convincing Congress not to stand behind it.

That is the goal of those who took what was a prescription drug bill, as complicated as it is, and turned it into a bill to privatize Medicare. That is what we have coming before us in the next few hours, in the next few days.

I think, frankly, that when one looks at the HMOs across America, they find that they are doing pretty well. They are pretty profitable, just like these pharmaceutical companies. The average compensation of a chief executive of the 11 largest insurance companies currently serving Medicare was more than $15 million—average compensation, $15 million. The former chairman of Oxford Health Plan—and I mentioned it earlier—was paid $76 million in 2002. According to Weiss Ratings, an insurance rating agency, profits for 519 health insurance companies they evaluated jumped 77 percent from 2001 to 2002.

UnitedHealth Group reported a 35 percent increase. That is the group that is joined at the hip with AARP, and both of them are widely applauding this new idea to move seniors out of Medicare into these HMOs, to privatize Medicare and raise the premiums seniors would have to pay under Medicare. So when we look at this alliance, we can understand why we have now come to the heavyweight division of the prize fights at the close of the congressional session. That is exactly what we are facing.

We have a situation where two of the largest lobbies in this town, two of the biggest special interest groups, two of the best financed industries in America, pharmaceutical companies and HMO insurance companies, are anxious to see us pass a bill which means more profitability for them. Sadly, it will be at the expense of the same people we were really trying to help in the first place.

When it is all said and done, the seniors will not get a helping hand. Drug costs are going to go up. The program they are proposing is so complicated, it is impossible to explain, so it is understandable, and ultimately Medicare as we know it, a program which has served America well for over 40 years, is going to be phased out and privatized and HMOs will take over.

Some people believe—and I believe they think it passionately—that the free market is the answer to everything. I would say to them, take a look at what the free market is doing to health insurance in America today. The free market is at work. The free market is in the process of doing what we expect it to do, increasing profitability. Ask anybody in America about health insurance costs or ask any group why they are going on strike in America. Nine times out of 10 they will say it is because of health insurance coverage: The company we worked for will not pay for the coverage; there is less coverage, and, frankly, we had to go on strike.

It is the No. 1 reason for work stoppages and strikes across America. It is the biggest problem in my State when it comes to business complaints. Health insurance companies are using the free market exactly as they are supposed to. They are reducing their exposure and risk, and they are increasing the cost to the people who need help. As a result, we are finding fewer Americans with worse coverage, and those who have it have worse coverage every single year.

The Republicans believe that that is what we should do to Medicare: We ought to let the same HMO companies that are fleecing businesses and families across America get their grimy hands on Medicare recipients. Let them, with a Government subsidy, lure away the healthiest Medicare recipients and leave the sickest behind. Now, that is good for the companies. It is not good for Medicare, it is not good for seniors, and I believe it is not good for America.

We are in a situation where we have an important decision to make. Some people have said to me: How can you possibly go back to your State and explain that you voted against a prescription drug benefit for seniors? Well, I think those people do not understand the seniors I represent and most seniors across America. These are people wise with years. These are people who have heard a lot of political promises. These are folks who are skeptical when politicians say: I am going to give you the Sun and the Moon. They ask hard questions.

When the seniors across America ask hard questions about this prescription drug benefit, they are going to be sorely disappointed. Two-thirds of seniors already say what they have heard is not enough. They do not want any part of it. That tells me that they are tuned in and following this debate. They want something that is basic, universal, and fair, something that does not come to them at the cost of things they value such as Medicare and Social Security.

Unfortunately, this program, which has been designed behind closed doors and is now being unveiled one corner at a time, is not going to meet the needs of seniors across America.

In the next few days, I am sure you will hear from my colleagues who are

going to come and will explain in detail why this is a bad idea. I think we started off with the right goal, to help seniors pay for prescription drugs. Today, with this bill, we will have failed in meeting that goal. That is why I oppose it.

I yield the floor and 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. BYRD. Mr. President, I ask unanimous consent the order for the quorum call be rescinded.

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

Mr. BYRD. Mr. President, I am under the impression that there will be a session of the Senate either tomorrow or on Monday or on Tuesday or on any number of those days. I am also under the impression that the Senate is rapidly, hopefully, approaching a sine die date for adjournment.

Being confronted with those expectations, I want to make a speech about Thanksgiving. I don't want it to appear in today's RECORD, necessarily, but I would ask for it to appear in the RECORD of the last day's session prior to Thanksgiving, whatever day that is.

I make such a unanimous consent request, that my speech not appear in today's RECORD but that it appear in the RECORD of the last day of the session prior to Thanksgiving.

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

(The remarks of Mr. BYRD are printed in a future edition of the RECORD.)

Mr. BYRD. Mr. President, I yield the floor. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. COCHRAN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. BURNS). Without objection, it is so ordered.

HEALTHY FORESTS RESTORATION ACT OF 2003—CONFERENCE REPORT

Mr. COCHRAN. Mr. President, I ask unanimous consent that the Senate now proceed to the consideration of the conference report to H.R. 1904, the Healthy Forests Restoration Act.

The PRESIDING OFFICER. Without objection, the report will be stated.

The legislative clerk read as follows:

The committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H.R. 1904) to improve the capacity of the Secretary of Agriculture and the Secretary of the Interior to plan and conduct hazardous fuels reduction projects on National Forest System lands and Bureau of Land Management lands aimed at protecting communities, watersheds, and certain other at-risk lands from catastrophic wildfire, to enhance efforts to protect watersheds and address threats to forest and rangeland health, including catastrophic wildfire, across the landscape, and for other purposes, having met, have agreed that the House recede from its disagreement to the amendment of the Senate to the text of the bill and agree to the same with an amendment, and the Senate agree to the same; that the House recede from its disagreement to the amendment of the Senate to the title of the bill and agree to the same, signed by a majority of the conferees on the part of both Houses.

There being no objection, the Senate proceeded to consider the conference report.

(The conference report is printed in the House proceedings of November 20, 2003.)

Mr. COCHRAN. Mr. President, I am pleased to present to the Senate the conference report on the Healthy Forests Restoration Act.

Senators may remember that this bill was passed by the Senate on October 30 by a vote of 80 to 14. It embodied a bipartisan agreement to improve forest health on both public and private lands. It provides Federal land managers the tools to implement scientifically supported management practices on Federal forests, in consultation with local communities. It also establishes new conservation programs to improve water quality and regenerate declining forests on private lands. The legislation will reduce the amount of time and expense required to conduct hazardous fuel projects.

The conference report retains provisions adopted by the Senate that will protect old growth forests. It improves the processes for administrative and judicial review of hazardous fuel projects. But it will continue to require rigorous but expedited environmental analysis of such projects.

The conference report specifically encourages collaboration between Federal agencies and local communities to treat hazardous fuels that threaten communities and their sensitive watersheds. It provides for expedited environmental analysis of hazardous fuel reduction projects adjacent to communities that are at risk to catastrophic wildfire. It requires spending at least 50 percent of Federal hazardous fuels reduction funds to protect communities.

It requires courts considering legal actions to stop a hazardous fuel reduction project to balance the environmental effects of undertaking the project against those of not carrying it out. And in carrying out hazardous fuel reduction projects in areas that may contain old growth forests, it requires Federal agencies to protect or restore these forests.

In other areas, it requires agencies to maintain older trees consistent with the objective of restoring fire resilient stands. It authorizes $720 million annually for hazardous fuels reduction activities. It provides grants for removal of hazardous fuels and other biomass to encourage their utilization for energy and other products. It provides for assistance to private land owners to protect and restore healthy watershed conditions.

It authorizes research projects designed to evaluate ways to treat forests to reduce their susceptibility to insects, diseases and fire. It also authorizes agreements and easements with private landowners to protect and enhance habitats for endangered and threatened species. And it encourages more effective monitoring and early warning programs for insect and disease outbreaks.

This conference report would not be possible without the active involvement of Senators on both sides of the aisle who worked hard together to develop this bill. I especially appreciate the able assistance of the distinguished Senator from Idaho, Mr. CRAPO, who chairs the Forestry Subcommittee of the Senate Agriculture Committee; the Energy Committee chairman, the distinguished Senator from New Mexico, Mr. DOMENICI, and his Forestry Subcommittee chair from Idaho, Mr. CRAIG, were also very helpful in guiding this legislation along its path passage.

The Agriculture Committee also had assistance of Senator LINCOLN of Arkansas and active involvement on her part in developing the bill, and we also had the benefit of suggestions and assistance from Senators WYDEN and FEINSTEIN who came to me early and asked to be a part of the effort to develop this bill. They were involved along with many others whose contributions were necessary to make the approval of this bill possible.

The Agriculture Committee also benefited from the assignment of an employee of the Forest Service, Doug MacCleery, who assisted our staff in the development of this legislation. We appreciate his assistance. And our committee staff did a superb job under the able direction of the Agriculture Committee staff director, Hunt Shipman.

Let's not forget, it was President Bush, the President of the United States, who recommended in the first place that Congress act on a healthy forest initiative. It was at his suggestion and his urgings that we pushed and pushed until we finally achieved success, with the adoption today by the other body of the conference report, on this bill. I must also mention the able assistance of his Secretary of Agriculture, Ann Veneman, who provided valuable insight and assistance all along the way.

I urge the Senate approve this conference report.

The PRESIDING OFFICER. The Senator from Idaho.

Mr. CRAPO. Mr. President, this is truly a historic day. As the Presiding Officer knows, we have worked literally for a decade or more to try to find a path forward in the area of finding a solution to the problems we face in our national forests.

In recent years, we have seen an average of 4 million acres a year burn. We have seen devastating wildfires this

year that have destroyed not only tremendous amounts of property and environment in our forests, but have also taken lives. We have seen insect infestations that have jeopardized the future of one of the most incredible environmental resources we have in America, our forests.

All of it has occurred while we have been battling in the courts, trying to find a path forward simply to allow our forest managers the ability to implement their forest management decisions, to deal with insect infestation, to deal with the threat of catastrophic wildfire, and to help preserve the great legacy we have in America, in our forests.

I stand today to thank those in our Senate conference who have worked with us to build and strengthen the bipartisan solution that has brought us to this point.

Sitting here beside me is the Senator from Mississippi, THAD COCHRAN, chairman of the Agriculture Committee. Without Senator COCHRAN's able leadership, without his patience and his wisdom in guiding us through this process, we would not be here today. I want to personally thank him. I thank him, as well, on behalf of a grateful Nation for the skill and the patience he has given us to help bring this bill forward.

Also, I thank Senator LARRY CRAIG, my colleague from Idaho, who has worked on this issue tirelessly for the better part of the last decade to try to help bring America to an understanding of the need for reform, and for helping us work through a bipartisan solution in the Senate. Senator CRAIG deserves great praise and commendation for his untiring work to help give us the possibility of being here today—just a short time away from successfully passing in both the House and the Senate this Healthy Forests legislation.

Also, Senator DOMENICI, chairman of the Energy Committee, has worked tirelessly on this issue and he deserves to be thanked for his tremendous efforts. Not many people follow it this closely, but there is forestry jurisdiction in both the Energy Committee and the Agriculture Committee. Senator COCHRAN chairs the Agriculture Committee, and Senator DOMENICI the Energy Committee. By coincidence, both of the Idaho Senators chair the respective subcommittees on forestry. Senator CRAIG chairs the subcommittee on forestry in the Energy Committee, and I chair the forestry subcommittee on the Agriculture Committee. Together, on the Republican side, we have developed a strong team to work in the Senate.

I also thank Senator BLANCHE LINCOLN, from Arkansas, for stepping forward as the ranking member on the forestry subcommittee and working with me to develop the senate bill that set the mark for improving this legislation and moving it through the Senate. We then expanded that bipartisan base and worked with Senators FEINSTEIN from California, WYDEN from Oregon, and others, including additional Republicans and Democrats, all of whom came together to bring a bipartisan solution to the Chamber.

It was not easy. There were many who wanted to use this issue to further their political efforts, to either cause further strife and conflict on the issue surrounding our forests or to simply promote some agenda that was not consistent with our efforts to move forward on a bipartisan basis to protect and preserve our forests.

We fought many battles over the last 2 or 3 months, and they were the resulting, concluding battles in a crescendo that has been developing over the last decade. When we were done, we needed to work with the House of Representatives. There was concern at that point. There was actually another filibuster to stop us from even going into conference with the House because there was concern that the bill would be changed too much in ways that would not allow us to find a common consensus-based path forward.

Yet we have gone on together, again, in that bipartisan fashion that we developed in the Senate to work in a bicameral fashion and bipartisan fashion with the House to come together with this legislation that is now before us.

As many of us said as we developed this legislation, it is not necessarily what any of us would have written had we had complete control over the issue. But it is the result of what can happen if we work across party lines, across the lines of the rotunda between the House and Senate, and across regional lines in our Nation, to try to make sure that we get past the politics, the partisanship, past the personal attacks, and focus on the principles that will allow us to move forward and develop positive legislation such as that.

I am confident this legislation will pass the Senate today. I am confident that when it goes to the President's desk, he will sign it. The United States will have taken a very big step forward in terms of preserving one of the great environmental legacies we have—our forests; we will have taken a step to protect and preserve our rural areas in America; we will have done much to protect our great firefighters, many of whom gave their lives this year, and in previous years, in trying to protect our forests and our communities; we will have put statutory protection in place for old-growth forests in our Nation; we will have worked to develop small-diameter timber and other uses of those parts of our forests that need thinning; we will have taken steps to make sure that rural communities such as Elk City, ID—literally at the end of the road—do not face the potential devastation a wildfire could cause not only to their economy but to their safety and the community at large; we will have protected the wildland urban interface, where so many of the people who now live in urban areas find their homes and lives and property threatened by the danger of uncontrolled wildfire.

All of these things will be brought together because we were successful today and, over the past few years, in bringing together the kind of politics that America wants, the kind of politics that is good and beneficial, that helps us to cross the divisions and eliminate those conflicts that so often bring us to a stalemate or a stall on the floor of the Senate or on the floor of the House.

Mr. President, again, I thank all Senators and all of the House Members who have done so much to look past their own individual concerns and to work together for the collective good of the whole as we built this strong bipartisan solution to a critical issue facing our Nation.

With that, I yield the floor.

Mr. DASCHLE. Mr. President, I am pleased to support the conference report on the Healthy Forest initiative.

The question of how we effectively and efficiently deal with the threat of wildfire is a complex one, and I have been committed to finding a solution that will provide the Forest Service with additional tools, can win approval in the Senate, and can become law. This bipartisan compromise meets that test.

As I toured the Black Hills National Forest this August, it was clear that the Forest Service needs additional tools to address the increasing fire risk to South Dakota communities. There are currently over 460,000 acres of the Black Hills National Forest that are in moderate to high fire risk. And, it is increasing. The Forest Service estimates that over 550,000 acres will fall into this category in the next 10 years if we do nothing to address it.

It is clear that we must find a way to allow Forest Service personnel to spend less time in the office planning, and more time in the forest actually clearing high fuel loads.

This legislation takes major steps to do just that. The legislation provides communities more flexibility in defining what should be considered priority areas as well as incentives to work near communities. It clarifies how much detail is needed for environmental analysis of fuel reduction projects. The conference report adopts the Senate-passed streamlined appeals process, expediting decisions for fuel-reduction projects while ensuring that the public has an opportunity to be heard early in the developmental stages forest restoration projects. And, it includes Senate-passed language encouraging speedy disposition of any projects that are challenged in court without giving undue deference to any party.

While the legislation is not exactly how I would have written it, I think it is the best shot we have to get something meaningful enacted into law this year. I am please the House has passed

this legislation and encourage my colleagues to pass it, and hope the President will quickly sign it into law.

Mr. BAUCUS. Mr. President, I rise to urge my colleagues to support the Healthy Forests Restoration Act of 2003. This bill is extremely important to the west and to my constituents as we look for ways to reduce the risk of large and dangerous wildfires that threaten our homes and communities. You just have to look at the devastating fire season Montana went through this past summer to understand why we feel so strongly about this issue.

I have said that a healthy forests bill must first allow Federal agencies and communities to address dangerous fuel loadings on a local level, quickly and efficiently. Second, it must support small, independent mills and put local people to work in the forests and the mills. Third, it must promote and protect citizen involvement and be fair to the principals underlying the federal judicial system. And finally, it must protect special and sensitive places.

We have achieved that with this legislation.

My one disappointment is that the conference committee stripped out the Rural Community Forestry Enterprise Program. I worked together with Senators CRAPO and LEAHY to include this program in the Senate bill, first in the Agriculture Committee and then as part of the Senate-passed bill.

The Rural Community Forestry Enterprise Program would bring much needed support for building and maintaining a thriving forest industry in rural communities.

Just as this industry is important to maintaining the economic vitality of these small and often remote communities, it is vital to meeting the objectives of this legislation. We cannot afford to lose more mills and highly skilled forest industry workers in Montana. We cannot accomplish needed hazardous fuel reduction work without them.

I would like to share with you concerns I heard today about the removal of the Community Enterprise Program from a friend, Jim Hurst, the owner and operator of a small family-owned mill called Owens and Hurst, in Eureka, Montana.

He said:

> Small mill owners like myself and Ron Buentemeier, the General Manager of F.H. Stoltze Land and Lumber Company in Columbia Falls, told you we needed this type of help to make the Small Business Set-Aside program more responsive to the needs of small, independent and mostly family-owned mills across Montana. You responded with the Community Enterprise program.
>
> This is an important program and should be put back into the Healthy Forests Bill. Independents have been under long-time family ownership and because of that my family and the other families who own mills know that we each have one heck of a responsibility to our communities. This Community Enterprise program would help the independents who have been impacted the hardest by reduced federal timber supply. They have shown their mettle and have been courageous. We need to keep fighting for small mill owners, operators and the rural communities who depend on these small mills for their livelihood.

While I will continue to work with my colleagues on both sides of the aisle to ensure a thriving forest industry in our rural communities, it is imperative to pass this legislation now. I believe we do have a serious problem with the buildup of hazardous forest fuels and that we need to do a better job of addressing it now.

The legislation has the elements necessary to allow local citizens and leaders to make wise decisions that address this problem efficiently and effectively and I urge my colleagues to support it. I would like to thank several Senators for their hard work on this bill, including Senators WYDEN, FEINSTEIN, CRAPO, LINCOLN and COCHRAN. Without their dedicated efforts and leadership that I was very pleased to support, we would not be the close to passing this bill today.

Ms. MURKOWSKI. Mr. President: I rise today in strong support of the conference report for the Healthy Forest Restoration Act of 2003.

I especially thank my colleagues—Senator COCHRAN, Senator DOMENICI, Senator CRAPO, Senator CRAIG, Senator LINCOLN, Senator WYDEN, and Senator FEINSTEIN for the leadership they demonstrated in addressing this national crisis that affects all Americans, particularly those who live in the urban-wildland interface.

The conference report is a major step forward toward preventing the severe wildland forest and rangeland fires that have become an annual event. What is more important is that the human tragedy associated with wildfires the heartbreak of losing one's home and possessions, the economic losses, and the dangers that wildfires pose to our devoted wildland firefighters will be reduced through the sound forest management practices provided for in this legislation.

The 2002 and 2003 fire seasons have been some of the worst on record nationally. Forest fires continue to create extensive problems for many Americans, predominantly for those living and working in the West. In 2002, Alaska alone experienced fires that burned more than one million acres.

These catastrophic wildfires caused great damage to our forested lands; many were already vulnerable as a result of unaddressed insect and disease damage.

Deteriorating forest and rangeland health now affects more than 190 million acres of public land, an area twice the size of California.

In my home State of Alaska, the damage caused by the spruce bark beetle, especially on the Kenai Peninsula has been devastating. Over 5 million acres of trees in south central and interior Alaska have been lost to insects over the last 10 years.

I am particularly enthusiastic that this legislation authorizes and expedites fuel reduction treatment on Federal land on which the existence of disease or insect infestation has occurred, such as those on the Kenai Peninsula. Federal land managers will now be able to manage these dead and dying tree stands.

The key to long-term forest management on the Kenai Peninsula is to manage the forested landscape for a variety of species compositions, structures and age classes; not simply unmanaged stands. The legislation before us will do just that, and will prevent a reoccurrence of the type of spruce bark beetle mortality we have experienced in Alaska.

I firmly believe that this conference report is a comprehensive plan focused on giving Federal land managers and their partners the tools they need to respond to a national forest health crisis. The legislation directs the timely implementation of scientifically supported management activities to protect the health and vibrancy of Federal forest ecosystems as well as the communities and private lands that surround them.

Under this legislation, the Secretaries of the Interior and Agriculture will conduct authorized hazardous fuel reduction projects in accordance with the National Environmental Policy Act with a critical, streamlined process.

Additionally, for those authorized fuel reduction projects proposed to be conducted in the wildland-urban interface, the Secretaries will be able to expedite such projects without the need to analyze and describe more than the proposed agency action and one alternative action. In other words, we can now get the work on the ground done quickly.

Still, the Secretaries must continue to provide for public comment during the preparation of any environmental assessment or EIS for these authorized hazardous fuel reduction projects. The public process is not undermined in this legislation.

I also support the proposed new administrative review process associated with these authorized fuel reduction projects. Too often we have become mired in administrative appeal gridlock in this country at the expense of communities at risk to wildland fire. We saw such devastation recently in the State of California.

This legislation will establish a fair and balanced predecisional review process. Specific, written comments must be submitted during the scoping or public comment period.

Additionally, civil actions may be brought in Federal district court only if the person has exhausted his/her administrative review process. The legislation will foreclose venue-shopping.

It encourages the courts to weigh the environmental consequences of management inaction when the potential devastation from fires could occur. This provision is important public policy and demonstrates to the American people that the risk of catastrophic

wildfire must be known, understood and respected in our judicial system and acted upon quickly.

I am also excited about title 2 of the legislation which will encourage the production of energy from biomass. Developing energy from biomass could provide a tremendous boost to the local economy on the Kenai Peninsula while reducing the dangerous wildland fire risks that exists there. That is a win-win solution. The biomass provision is innovative, environmentally sound and a good approach in achieving healthy forests.

The bipartisan legislation before us is good for the nation and good for Alaska. I will enthusiastically support its passage today.

Mrs. BOXER. Mr. President, southern California has recently experienced the devastating impacts of wildfire firsthand. More than 750,000 acres burned, and 24 people died. We have seen how important it is to take the appropriate steps to protect our vulnerable communities from the threat of wildfire, and that is why I am supporting this bill.

The bill before us invests in preventing wildfires, rather than just trying to fight them after the fact. Each year, $760 million is authorized for wildfire prevention projects, such as tree and brush removal, thinning, and prescribed burning. In total, the bill would allow treatment of 20 million acres. Priority is given to projects that protect communities and watersheds, and at least 50 percent of the funds must be used near at-risk communities. The other 50 percent will be spent on projects near municipal water supply systems and on lands infested with disease or insects. This is a good start at preventing fires.

I do, however, have to mention my deep disappointment with the House Republican conferees for removing my amendment to help firefighters who battle the biggest fires. I am almost speechless that the House Republicans would turn their backs on our brave firefighters.

My amendment, which passed the Senate 94 to 3, would have required long-term health monitoring of firefighters who fought fires in a Federal disaster area. These firefighters are exposed to several toxins known to be harmful to long-term health, including fine particulates, carbon monoxide, sulfur, formaldehyde, mercury, heavy metals, and benzene. This amendment was important to the firefighters in my State and was supported by the International Association of Firefighters.

I pledge to the firefighters, this is not over. I will be back to continue fighting on behalf of all firefighters who are put at risk in Federal disasters.

I am also disappointed that the conferees dropped another amendment of mine, which was included in the Senate-passed bill. My amendment required the EPA to provide each of its regional offices a mobile air pollution monitoring network, so that in the event of a catastrophe, toxic emissions could be monitored and the public could know the health risks.

Despite the fact that the conferees dropped my two amendments, I believe this bill will help protect communities from the threat of wildfires, which is why I am supporting it.

Mrs. FEINSTEIN. Mr. President, today's vote to pass the Healthy Forests legislation is a major bipartisan victory. This is not just because it is the first major forest bill in 27 years.

Much more significantly, we have nourished the middle ground in the forest debate that is so often lost in the partisan rhetoric.

We actually can create good rural jobs, protect our communities, and restore our forest environment at the same time.

Let me repeat this: we can create rural jobs, protect our communities, and take action to restore the health of our forests at the same time.

Ever since I cosponsored the Herger-Feinstein Quincy Library Group Act 5 years ago, I have been working to bring together the rural, forest-dependent communities—rather than unnecessarily dividing them.

This bill goes a long way to that end throughout the West and the Nation.

There are many people who deserve credit for this bill, but there are a few Senators in particular to whom I want to give special thanks. Senators PETE DOMENICI and LARRY CRAIG were the best bipartisan allies I could ever ask for in terms of how they approached this issue.

Even though they are in the majority, Senators DOMENICI and CRAIG realized that a forestry bill needed a bipartisan coalition. They worked in good faith with me and Senator WYDEN from start to finish, and I am deeply grateful for it.

I also want to thank Senator COCHRAN, the chairman of the conference on this bill, for his leadership throughout the process. Senator COCHRAN ably and skillfully represented the Senate position in the negotiations. I particularly want to emphasize that his staff conducted the conference in a fine and fair manner throughout, and it's a credit to his leadership.

There are many others Senators who played critical roles in this process, including Senators CRAPO, KYL, LINCOLN, MCCAIN, BAUCUS, and BINGAMAN.

I finally want to thank Senator WYDEN, the ranking member on the Forestry Subcommittee of the Energy Committee. He is as good a ranking member and as good a leader on forestry as the Democrats could ever have.

I also want to say that I second his views on the meaning of the different parts of the bill in his statement today. As the two principal Democratic negotiators of this bill, he and I are in complete accord as to the meaning of its contents.

This legislation H.R 1904, approved by a House-Senate conference committee today is very similar to a bill passed by the Senate last month, with priority given toward removing dead and dying trees and dangerously thick underbrush in areas nearest communities as well as targeting areas where insects have devastated forests. This is especially important in California, where hundreds of thousands of trees have been killed by the bark beetle, creating tinderbox conditions.

While the recent wildfires in Southern California have been contained, these deadly fires consumed a total of 738,158 acres, killed 23 people, and destroyed approximately 3,626 residences and 1,184 other structures. Clearly, we must do everything we can to avert such a catastrophe in the future. The National Forest Service estimates that 57 million acres of Federal land are at the highest risk of catastrophic fire, including 8.5 million in California, so it is critical that we protect our forests and nearby communities.

More than 57 million acres of Federal land at the highest risk of catastrophic fire, including 8.5 million in California. In the past 5 years alone, wildfires have raged through over 27 million acres, including nearly 3 million acres in California. It is critical that Congress acts to protect our forests and nearby communities.

The House-Senate agreement both speeds up the process for reducing hazardous fuels and provides the first legal protection for old growth in our nation's history.

Let me describe what the legislation would do.

Critically, it would establish an expedited process so the Forest Service and the Department of the Interior can get to work on brush-clearing projects to minimize the risk of catastrophic wildfire.

Up to 20 million acres of lands near communities, municipal watersheds and other high-risk areas can be treated. This includes lands that have suffered from serious wind damage or insect epidemics, such as the bark beetle.

We made an important change to the bill's language in section 102(a)(4) in the conference report. In the Senate-passed bill, the insect and disease exception was related to infestations, whereas in the conference bill, the exception has been clarified to apply only where there is a presence of an epidemic of insects or disease. By its own terms, an insect or disease-related event of ''epidemic'' proportions is different from ''endemic'' insects and disease, which are present in a naturally functioning forest ecosystem.

Under the final bill, only epidemics are given special treatment. This is an important distinction.

A total of $760 million annually for hazardous fuel reduction is authorized by the legislation, a $340 million increase over current funding.

At least 50 percent of the funds would be used for fuels reduction near communities.

The legislation also requires that large, fire-resilient, old-growth trees be protected from logging immediately.

It mandates that forest plans that are more than 10 years old and most in need of updating must be updated with old growth protection consistent with the national standard within 2 to 3 years.

Without this provision in the amendment, we would likely have to wait a decade or more to see improved old-growth protection. And even then there would be no guarantee that this protection—against the threat of both logging and catastrophic fire—would be very strong.

In California, the amendment to the Sierra Nevada Framework that is currently in progress will have to comply with the new national standard for old-growth protection.

Let me explain how the agreement improves and shortens the administrative review process and makes it more collaborative and less confrontational. It is critical that the Forest Service can spend the scarce dollars in the federal budget in doing vital work on the ground, rather than being mired in endless paperwork.

The legislation fully preserves multiple opportunities for meaningful public involvement. People can attend a public meeting on every project, and they can submit comments during both the preparation of the environmental impact statement and during the administrative review process. I guarantee you the public will have a meaningful say in these projects.

The legislation changes the environmental review process so the Forest Service still considers the effects of the proposed project in detail, but can focus its analysis on the project proposal, one reasonable alternative that meets the project's goals and the alternative of not doing the project, instead of the 5–9 alternatives now often required.

In the highest priority areas within 1½ miles of communities, the Forest Service need only study the proposed action and not alternatives. There is no relaxation from current law, however, in how closely the Forest Service must study the environmental effects of the project it is proposing to undertake.

The legislation replaces the current Forest Service administrative appeals with an administrative review process that will occur after the Forest Service finishes its environmental review of a project, but before it reaches its decision. This new approach is similar to a process adopted by the Clinton administration in 2000 for review of forest plans and amendments to those plans. The process will be speedier and less confrontational than the current administrative appeal process.

Next I want to turn to judicial review. I want to emphasize that cases will be heard more quickly under the legislation and abuses of the process will be checked, but nothing alters citizens' opportunity for fair and thorough court review.

Parties can sue in Federal court only on issues raised in the administrative review process. This is a commonsense provision that allows agencies the opportunity to correct their own mistakes before everything gets litigated.

Lawsuits must be filed in the same jurisdiction as the proposed project.

Courts are encouraged to resolve the case as soon as possible.

Preliminary injunctions are limited to 60 days, although they can be extended if appropriate. This provision sends a signal to courts not to delay important brush-clearing projects indefinitely unless there really is a good reason to do so.

The court must weigh the environmental benefit of doing a given project against its environmental risks as it reviews the case.

In closing, I want to say that my colleagues and I have been trying to come to an agreement on a forest bill for several years. We finally broke through the deadlock.

I am deeply pleased that we are enacting this legislation to give the residents of southern California and elsewhere a better chance against the fires that will come next time.

SECTION 105(C)(3)(B)

Mrs. FEINSTEIN. I have a question for the Senator from Oregon as to the meaning of one specific provision of the conference report on the Healthy Forests Restoration Act of 2003. This provision is section 105(c)(3)(B), which sets forth an exception to the general requirement that parties must participate in the administrative review process before raising claims in Federal court. I don't understand the conference report and statement of the managers as doing anything to change the parties' preexisting obligations as to environmental review except as explicitly provided in the statute. Do you agree, as the ranking member on the Subcommittee on Public Lands and Forests of the Senate Committee on Energy and Natural Resources?

Mr. WYDEN. I have the same understanding of this matter as the Senator from California.

Mr. LEAHY. Mr. President, I will oppose the conference report on H.R. 1904, the so-called Healthy Forests Act. While I have several substantive concerns about this legislation, let me first speak about the process by which this legislation has come before the Senate.

As my colleagues know, there has been a significant and growing concern about the way the other side is operating conference committees. In fact this conference was delayed several weeks because the minority has continually been excluded from conferences.

However, in good faith, I, along with interested Members and their staffs, worked out an agreement on the first six titles of the bill. Coincidentally, there were only six titles in the House version of the bill. An agreement was reached on those first six titles, and while I still had serious concerns about the substance of the agreement, I did not object to the process moving forward. I did so because I was given commitments that we would work out an agreement between the House and Senate on the remaining three titles that were passed by the Senate.

But what happened next is absolutely astounding. One half hour before the conference committee was scheduled to meet, I was informed that the conference would only consider the first six titles of the bill, and that the remaining titles that were passed by the Senate were ''off the table.''

Yet another backroom deal was cut by the other side to exclude the minority from any real conference proceedings.

These were highly important provisions that were passed by the Senate. Of particular importance to me was the Rural Community Forestry Enterprise Program, which I authored with Senators CRAPO and BAUCUS. In my State of Vermont we have a good deal of small-diameter trees for which we need help finding markets. This program would build on the existing expertise of the Forest Service by providing technical assistance, cooperative marketing and new product development to small timber-dependent communities. Whether it is producing furniture, pallets, or other creative new markets, this program would help small forest-dependent communities expand economically.

Back room deals summarily excluded this, and several other important initiatives in the Senate-passed bill, from consideration in the conference committee. That is why I declined to sign this conference report.

I will not vote for this conference report because this bill before us remains a well-camouflaged attempt to limit the right of the American people to know and to question what their Government is doing on the public's lands.

The bill before us is really a solution looking for a problem. So let's take a closer look at the ''solution'' on the table.

First, the bill would make it much more difficult for the public to have any oversight or say in what happens on public lands, undermining decades of progress in public inclusion. In this new and vague pre-decisional protest process, this bill expects the public to have intimate knowledge of aspects of the project early on, including aspects that the Forest Service might not have disclosed in its initial proposal.

The bill gives the Forest Service a real incentive to hide the ball or to withhold certain information about a project that might make it objectionable, such as endangered species habitat data, watershed analysis, or road-building information. If concerns are not raised about this possibly undisclosed information in the vaguely outlined ''predecisional'' process, the Forest Service can argue to the courts that no claims can be brought on these issues in the future when the agency, either through intent or negligence, withholds important information from the public.

Essentially, this provision penalizes citizens and rewards agency staff when the agency does not do its job in terms of basic investigation and information sharing regarding a project. This bill makes other significant changes to judicial review. It will force judges to reconsider preliminary injunctions every 60 days, whether or not circumstances warrant it.

In many ways, this provision could backfire on my colleagues' goal of expediting judicial review. It will force judges to engage in otherwise unnecessary proceedings, slowing their consideration of the very cases that proponents of H.R. 1904 want to fast track. Moreover, taking the courts' time to engage in this process will also divert scarce judicial resources away from other pending cases. It is also likely to encourage more lawsuits. Requiring that injunctions be renewed every 60 days, whether needed or not, gives lawyers another bite at the apple, something they often find hard to resist.

Instead of telling the courts when and how to conduct their business, we should instead be working to find a workable and effective approach to reducing wildfire risks.

This bill does not achieve that, but, with these provisions that minimize the public's input, it instead poses a real risk to the checks and balances that the American people and their independent judiciary now have on Government decisions affecting the public lands owned by the American people.

Sadly, this bill plays a bait-and-switch trick on communities threatened by wildfires. It is not fair to roll back environmental laws, public oversight, or judicial review under the guise of reacting toe devastating wildfires. It will do nothing to help or to prevent the kid of devastation that southern California recently faced. It is a special interest grab-bag shrouded behind a smokescreen.

We should be offering real help and real answers, instead of allowing fear to be used as a pretext for taking the public's voice out of decisions affecting the public's lands and for ceding more power to special interests.

Mr. COCHRAN. 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. COCHRAN. 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. COCHRAN. I understand we can proceed to adopt the conference report on a voice vote since there is no objection to that. First, I am happy to yield to the assistant majority leader.

Mr. MCCONNELL. Mr. President, I will not object. I simply came to the floor to congratulate the distinguished Senator from Mississippi and the Senator from Idaho for an extraordinary job on a very difficult subject on which they have worked for years. I commend them both so much for this very important piece of legislation.

The PRESIDING OFFICER. If there is no further debate, the question is on agreeing to the conference report.

The conference report was agreed to.

Mr. COCHRAN. Mr. President, I move to reconsider the vote.

Mr. CRAPO. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. COCHRAN. 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. BAUCUS. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

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

MEDICARE PRESCRIPTION BENEFITS

Mr. BAUCUS. Mr. President, I would like to speak a few minutes about the upcoming Medicare conference report that will be before this body—I don't know when—maybe Sunday, Monday, Tuesday. Before I do so, I would like to thank and compliment many people who helped bring this legislation to this point. For many years, many of us in Congress have urged the passage of prescription drug benefits legislation for seniors. We have been close to passage many times in the last several years.

I remember last year, for example, about this time when Congress was close to adjournment. I called a meeting together in my office for one last chance—Senator KENNEDY, Senator SNOWE, myself, Senator HATCH, and other Senators who were vitally concerned about passing prescription drug legislation. We worked mightily. We worked very hard. At the very end, the talks collapsed. It didn't work, largely for political, partisan reasons, I might add, and we were not able to get a bill passed.

Here we are again. We are at the brink. We are on the verge. We are very close to getting prescription drug legislation passed. This time I very much hope that all of us—as Senators and House Members—put partisan differences aside and suspend judgment. That is, we should look at the legislation, look at the facts, and not listen to the rhetoric from various groups, to see what really makes sense.

There are a number of people I wish to thank at this time—the chairman of the committee, Senator CHUCK GRASSLEY, who has worked very hard; Senator BREAUX, also a member of the committee; Senator OLYMPIA SNOWE, a member of the committee.

In addition, Congressman BILL THOMAS, chairman of the Ways and Means Committee, has worked extremely diligently. The Speaker of the House, the majority leader of the House, TOM DELAY; the majority leader of the Senate, BILL FRIST—there are many people who have worked very hard. I thank them very much for their efforts and for their work.

One person I also wish to thank is Senator TED KENNEDY. Senator KENNEDY worked very hard to help us pass prescription drug legislation in the Senate not too many weeks ago. He worked very hard. He worked with me. He worked with the minority leader. He worked with the majority leader. He worked with various Members of the Senate who were critical to passage of the bill.

I thank Senator KENNEDY for his yeoman's work to help pass prescription drug benefits legislation in the Senate. He also worked very hard to help get a conference report put together. He spent a good deal of time with the conferees, with myself, with the Senator from South Dakota, Mr. DASCHLE, the Senator from Tennessee, Mr. FRIST, and many other people trying to help get prescription drug legislation passed. I regret at this point that he and I have a different view of this bill. He believes there are certain flaws in this bill. I think this is a good bill and should be passed. Nevertheless, Senators should know that Senator TED KENNEDY has done a great job in helping move this legislation to the point it is today. Without his efforts, this bill would be flawed in many areas. He helped make this, in my judgment, quite a good bill.

Why should we pass prescription drug benefits legislation? I suppose the main reason is that times have changed so dramatically. In 1965, when Medicare was enacted—and it was enacted by a large vote margin—prescription drugs were not necessary. Most senior citizens were more concerned with doctors, office calls, and hospital visits for their medical concerns, rather than prescription drugs.

Look what has happened in the last 38 years since the Medicare Act passed. Prescription drugs and generic drugs are so vitally important today. They replace procedures. They help prevent the onset of disease. Often times, the medications people take tend to prevent, forestall, and delay all kinds of maladies. They are really important, much more important today and getting more important every day.

In addition, prescription drugs are becoming more expensive—much more expensive—and it is putting seniors in a bind. Many low-income seniors are in a real bind.

I worked at a pharmacy during one of my work days at home. I have worked at many different jobs in Montana. I show up at 8 o'clock in the morning with a sack lunch. I have worked in sawmills, I have waited tables. One day I was working in a pharmacy in Montana. I saw senior citizens walk up to the pharmacist in a quiet voice and ask how perhaps they could change their

medication or what prescription should they cut back on because they couldn't afford to pay for them all.

Seniors couldn't afford to pay it. It was stunning, and it was sad. It was a revelation to me. You hear about it, but when you see it, it has a real effect. It happens. Many low-income seniors are having a very difficult time trying to make ends meet. Sometimes it is a tradeoff between buying prescription drugs, buying food, and paying the rent. It happens way too frequently, and it is just not right for our country, the United States of America, to let this happen.

This legislation does a good job in remedying this situation. First of all, it is $400 billion of prescription drug benefits for seniors spread out over 10 years—$400 billion. That is a lot of money, but we have a lot of seniors who have great needs.

Under this legislation, seniors will find they will not have to pay all the cost of the drug but, rather, 25 percent, and the rest will be picked up by Medicare, the Federal Government, through the mechanism that is designed in this bill. They will only pay a quarter. But if you are a low-income senior, you are in a much better position under this legislation.

One-third of United States seniors are classified as low-income. A full one-third are low-income. Under this bill, low-income citizens will find that 90 percent of their benefits are covered—90 percent. That means low-income people can get the prescription drugs they need and will not have to walk up to that pharmacist and, in a hushed, quiet tone, ask what tradeoff, what drugs that person should cut back on because he or she cannot afford them.

If you are a low-income senior—and one-third of Americans are low-income. In my State, that is about 46,000 seniors who will be affected; there are about 46,000 seniors in the State of Montana who are low-income, out of about 140,000 seniors statewide. The general rule for all seniors is 75 percent of your prescription drug costs; if you are low-income, 90 percent of your prescription drugs will be paid for.

This is good legislation. We are here at a time when people in our country are asking us, Should we help our seniors or should we not?

Let me mention a couple additional reasons why I support this bill.

First of all, it helps rural America. Mr. President, there is an extra $25 billion in this bill for rural health care. The $400 billion I mentioned earlier all goes to benefits for seniors, either directly or indirectly. But $25 billion extra goes for providers and $25 billion is for rural America.

Why is that so important? It is so important because of the cost and the strain of the practice of medicine in rural America. We run the risk of not having good, adequate health care in rural parts of our country. We have all talked to many doctors and nurses who practice in rural parts of our country. They talk about the hours. They want to serve their patients. Believe me, they want to serve their patients, but after a while there comes a time when they are just worn out.

In rural parts of America, there are often pathologists—or pulmonologists or other specialists—who have to be on call all the time or on call every second or third day. Why? Because there are fewer of them in rural America than in urban America. The costs, believe it or not, are also very high in rural America—in many cases higher than in cities. There are the transportation costs, the cost of distances, the travel costs, for patients, doctors, and suppliers.

Our State of Montana is a low-income State, unfortunately. Our per capita income in Montana is low, but we are in the middle of all the States when it comes to cost of living. We are about the bottom when it comes to family income, but we are in the middle when it comes to costs. It is because we are a rural State, and this is true for rural parts of all States.

This bill finally helps address the unlevel playing field that has existed between urban and rural America. Now rural America, finally after many years, gets its fair share.

When I first came to the Senate years ago, I realized just how hard it was for rural America to get a square deal, particularly in health care. It was stunning. Every year since I have been here, I have been working to try to get rural America a square deal compared with urban America. I was part of an organization—and I still am—called the Rural Medicare Caucus. In fact, I chaired it for a few years. Every year I am here, I have—as I know my good friend from Montana, the Presiding Officer has—worked to help to make sure that rural parts of the country are getting a fair deal. This is not rhetoric. This is real. After all of these years, finally rural America gets a fair deal.

I also support this legislation and strongly advocate for its passage because it makes sure that senior citizens, wherever they live in our country, get a universal Medicare prescription drug benefit. Now, this certainly is true in the first years after this legislation is effective, but it is also true in the future. It is also true when preferred provider organization plans are designed to come into effect. It is also true in the year 2010 when in six regions of the country, there may be demonstration projects selected to test a new system called premium support.

In all respects, all seniors in all parts of the country, in all years, will have access to the same prescription drug benefit as any other senior, in any other part of the country, in any other year. This bill does not undermine traditional Medicare fee-for-service. The drug benefit is universal and nationwide in all respects. The bill does not undermine traditional Medicare—that is, Part A and B—during the years in which it is in effect. In a few moments I will return to this and will explain in greater detail.

This bill also very much helps address an issue that is on the minds of a lot of Senators—retiree coverage. When the bill was debated in the Senate, the prediction was that companies, States, municipalities, and nonprofit organizations might drop their retiree coverage because the bill, when passed, would provide government drug benefits to seniors. The thinking was why should companies not just go ahead and drop their retiree coverage.

Well, when the Senate took up this legislation, the CBO, which is the organization we rely upon for estimates, said that the drop rate might be about 37 percent. Since then, they have revised their numbers and they have come up with other figures. In short, if one compares apples with apples, the conference report that will soon be before this body results in a retiree droppage rate that is about 50 percent less than the bill that passed this body by a vote of 76 to 21. Maybe it is 45 percent. Stop and think about that for a moment.

For Senators who voted for the Senate bill, they can be comforted and relieved that retiree droppage rate is estimated by CBO to be about half of what it was in the Senate bill.

Let's focus a little bit on the retiree provisions. Essentially, companies receive about $88 billion under this bill for their retiree benefits. The net effect is that it will discourage companies from dropping—not encourage droppage. We all are very concerned that companies across America are beginning to cut back, and have cut back, on the number of retirees who have health care benefits or on the nature of the benefits. It is happening in America. It is happening in America as the world becomes even more competitive with global competition and as companies strive to cut down on their costs to increase their profit margins. One of the ways they can do so is cut back on employee and retiree benefits. This is happening. We know it is happening.

This legislation tends to discourage companies from cutting back. It tends to help companies keep coverage. It discourages dropping retiree coverage—it does not accelerate it. Again, it is because of the additional dollars that are going to companies. The companies still get the tax deduction for their health benefit plans. That is unchanged. In addition, under this legislation, the payments to the companies for retiree coverage are tax free. One could even say perhaps there is a little double-dipping because the assistance is tax free. This is a tremendous additional financial benefit to companies, to nonprofits, to cities, and other plans to encourage them to keep their coverage. It is a bonus. It is an incentive. This is another reason passage of this legislation is important—because it helps companies keep their retiree health plans. As a result, employers

will tend less to drop retiree coverage. They will probably tend to maintain and increase it.

There is also a myth about this bill that is there is a coverage gap on prescription drug coverage that will leave seniors out in the cold. Well, the truth about this so-called donut hole gap is the majority of seniors will never reach the spending level where they would not have coverage. Even more important, seniors who are low-income get full coverage in the benefit gap.

Of course, we wish we had more money to give a complete benefit to everyone without any donut hole, but we do not have an infinite number of dollars. We only have $400 billion. It sounds like a lot, and it is a lot, but if we are going to give a universal drug benefit to seniors that is honest, that makes sense, that does something, not over the top but that makes sense for all seniors, it would cost a lot more than $400 billion. We have limited ourselves to $400 billion, and at $400 billion there are going to be some people who will not get quite the same benefit as other people, but they will all get the benefit.

I might add that if we looked at each State, the number of seniors who have coverage for prescription drugs varies. In some States it is very high. In some States it is low. Compare that with the passage of this bill, every State gets about 96.6 percent. That is virtually 100-percent coverage. That is a big improvement.

Let's take the State of Delaware, for example. I know the Senators from Delaware know their State a lot better than I. Today, about 27 percent of seniors in Delaware have no drug coverage. Only 3.4 percent will be without coverage once this bill is enacted. Let me restate this positively; 27 percent of seniors in Delaware today do not have drug coverage. When this bill passes, virtually every Delawarean will have drug coverage.

The same is true of the State of California. Now about 21 percent of California's seniors and disabled live without prescription drug benefits. This bill will reduce this number to 5 percent. Again, most seniors, in California and in every other State, would benefit as a consequence of this legislation.

I would like to address some concerns others have raised regarding this bill. The concerns are that this legislation undermines traditional fee-for-service Medicare—that this is the beginning of undermining Medicare, the camel's nose under the tent. This is the charge.

What are the facts? The bottom line: Fee-for-service Medicare, traditional fee-for-service Medicare as we know it today, is held harmless under this bill. This is the bottom line. So if you are a senior in the United States of America you can decide that you want to keep traditional Medicare and that you do not want to join a private plan—any of the plans that may or may not exist in the future. That is, it is voluntary. A senior can either join or not join. It depends on what he or she wants to do. It is an honest choice because fee-for-service traditional Medicare remain what it is today. It is held harmless. That is, the deductible doesn't change, the copay doesn't change, the benefits don't change. What exists today is what exists under this legislation. I hope Senators listen to that. I hope staffs of Senators listen to that. I hope the others who are listening, who are concerned about the bill, listen to that.

Let me explain this in greater detail. The bill finally provides a prescription drug benefit for senior citizens. We have had this opportunity many times in the past. We now have the chance to seize this opportunity. The bill also makes some changes in the general Medicare structure in terms of setting up some health care plans in the future, assuming the plans actually take shape, form, and come into existence. They don't exist today. I am referring to regional PPOs; that is, regional preferred provider organizations. They don't exist today. There are other managed care companies called HMOs in many cities. They exist in the cities primarily because they can cherry-pick counties. They can pick the counties in which they want to provide service, and if they do not want to pick one county because it is less profitable, they do not have to. If they want to serve another county because it is more profitable for them, they do. This is the way HMOs operate today. This is the system today.

This legislation says, beginning in the year 2006, our country will be divided up into various regions. Insurance companies will be allowed to offer Medicare services, including drugs, in any of the regions. The question remains, What about traditional fee-for-service? What happens to traditional fee-for-service in an area where a company sets up a plan? What if one wants to remain in traditional Medicare? The answer is, fee-for-service is held harmless. There is no change in fee-for-service.

If regional PPOs serve a region, it has to serve the entire region. It can't choose this part of this State and that part of that State. It has to serve the entire region—people in the cities, people in the rural parts of that region. Everybody has to get the same deal.

The senior living in one of these regions has a choice. The senior can stay in traditional fee-for-service Medicare or can join the plan. But fee-for-service Medicare is held harmless. There is no change to traditional Medicare.

Obviously, this does not undermine traditional Medicare as we know it. This bill builds up and strengthens Medicare. There are additional dollars here for hospitals, for doctors, for providers who will provide traditional Medicare. So this bill does not in any way undermine traditional fee for service. In fact, Medicare is held harmless under this legislation.

Some people say: That's OK, Max, we understand that, but what we are really concerned about is the so-called premium support demonstration areas. Their argument is, in those areas, traditional fee-for-service is undermined. Private plans will pull away seniors, and it will be unfair to seniors who remain in Medicare. It is the beginning of the demise of traditional fee-for-service Medicare, they argue.

That is not true. It is nonsense. Look at the facts. Look at what is in the legislation.

Let me just remind Senators that this legislation is now available for Senators to look at. Thank goodness, because when they look at it, they are going to see what is and is not included. I just ask Senators to trust me long enough to suspend judgment on it so they can go look at the legislation and make up their own minds. That is what the Senators are supposed to do—make up their own minds. I am urging Senators to suspend judgment for a little while, listen to what I am saying, because I think when they do look at the legislation, they will see that what I am saying is true. But you do not have to take it on my account. Just please do not make up your minds until you read what is actually in the legislation. You will see, even in the supposed premium support demos, and there might be up to six cities in the country, that fee-for-service Medicare is held harmless. There is no change in fee-for-service in any respect, deductibles and on—except for one. That one possible change is the Part B premium.

However, this legislation ensures that seniors who happen to live in one of the six demonstration areas can keep the same fee-for-service Medicare. If it happens that your Part B premium goes up as a result of the demonstration—it may or may not go up—but if it does, the legislation says there can be no more than a 5 percent increase on your Part B premium. This is the only possible way a senior citizen could be adversely affected in these demonstration projects.

Another point regarding these demonstrations. I have heard various figures that the demos are going to affect 10 million fee-for-service beneficiaries. We have all heard the 10 million figure. It is what some Senators suggest.

It is not true; it is untrue.

How many seniors might possibly be affected? Let's get an unbiased, objective opinion.

We asked the CBO, the Congressional Budget Office: Mr. CBO, what is the answer? How many seniors may potentially be in an area where they would be faced with a choice, stay in fee-for-service Medicare or join one of these premium support organizations? How many could be adversely affected? The answer is not 10 million. CBO says: We think it is between 670,000 and 1 million. 10 million is the figure of scare rhetoric. The actual facts are 670,000 to 1 million.

There are many other instances where there is a lot of rhetoric floating

around. But if you look at the facts, if you read the legislation that is now available, you will find it is really good legislation and all these worries and exaggerated claims about the bill are just not true.

I have a couple of additional points regarding premium support. It is a time-limited demonstration. It exists only for 6 years, starting in 2010. It would take an act of Congress to change it, an act to expand it. It cannot be extended or expanded by the Secretary or anybody else.

Fact No. 2, the demonstration will only affect limited areas of the country—up to six areas of the country only.

Fact No. 3, low-income beneficiaries are totally protected in any of these areas where premium support might occur.

Facts No. 4 and No. 5. There is no requirement for beneficiaries to enroll in the private plans. None. There is no inducement to enroll in any of these plans unless the plan happens to be a lot better than traditional fee-for-service Medicare which this bill strengthens.

How does this bill undermine traditional fee-for-service Medicare? How?

The fact is, it doesn't.

I will close by saying this is a good bill. It provides prescription drug benefits for seniors. Seniors need and deserve this help. It provides $400 billion of help. We are not going to have this opportunity again. It is true that this bill is not perfect. But I think on the whole it is a very good. This bill is much closer to the Senate bill than it is to the House bill. It is about one-quarter away from the Senate bill. It is about three-quarters away from the House bill. Seventy-six Senators voted for the Senate bill. I think that the 76 Senators who voted for the Senate bill will find that in many respects, this bill is better than the Senate bill they supported. Additionally, when my colleagues look at the facts of this bill, they are going to find that this is pretty good legislation. It is something we should pass.

I hope people will look at the actual language and look at the facts and will support this bill.

The PRESIDING OFFICER (Mr. Cornyn). The Senator from Idaho.

Mr. CRAIG. Mr. President, I will be brief. My colleague from Oregon and I wish to mention only briefly the health bill which was passed.

MORNING BUSINESS

Mr. CRAIG. Mr. President, the leadership asked that 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.

THE HEALTHY FORESTS BILL

Mr. CRAIG. Mr. President, my colleague from Oregon is on the Senate floor. We thought for a few moments we would talk about something that just passed the Senate which we think is landmark forestry legislation. It has come in several forms over the last year and a half. But we here in the Senate call it Healthy Forests. The President calls it Healthy Forests.

The House and Senate have worked together over the last year to try to resolve an issue that the American public has seen in the form of devastating wildfires across our public land and forests for the last several years. Of course, we watched the tragedy of San Bernadino in southern California and the greater Los Angeles area just in the last month and a half that was truly devastating not only to 3,700 homes and human life but hundreds of thousands of acres of wildlife habitat and watershed.

Clearly, as chairman of the Forestry Subcommittee of the Energy and Natural Resources Committee, Senator WYDEN and I have been working for the last several years to resolve this issue. My colleague from Oregon is the ranking member of that Forestry Subcommittee. We have known that the team effort in a bipartisan way to resolve this issue would produce a resolution. The answer is that it has.

The Senate and the House just passed a conference report that has our fingerprints all over it. Frankly, we are mighty proud of it. It moves us in the right direction of active management of these dead and dying, bug-infested, and drought-impacted forested areas that are creating phenomenal fuel loads that the American public has seen played out in wildfires across our western public land and forests for the last good number of years. It is a clear step in the right direction. It is a cautious step. We certainly do not take away the right of appeal, but we limit it.

We don't want an effort on the part of the Forest Service to do what we asked them to do to be tied up in the courts endlessly in many instances as it has been over the last several years. We also want them to be selective. We targeted most of our efforts in what we call the wildland- urban interface which will impact most of those forested areas where there is a substantial human presence in the form of homes and, obviously, communities.

At the same time, we also recognize that the problem exists elsewhere across our forested landscape. We allow that treatment of those areas with caution.

We have designated old growth definitions for protection. We have also limited it in the next decade to 20 million acres. For those critics who would suggest that this is a ''ticket to log,'' that is purely political rhetoric to solve a political constituency problem that they have because they can't justify anymore the phenomenal loss of wildlife and watershed and habitat that we have seen over the last 4 or 5 years.

It is a cautious approach. It is certainly going to be limited in character. Why? Because we want to prove to the American people that there is a way to manage our forests in a right and reasonable fashion; that it does not do what we did historically 40 years ago—logged by clear-cut or logged with substantial problems of erosion and watershed degradation and all of that.

This is a new day. We want to treat our forests differently. But we also understand that if we don't do something, our forestry experts have told us that we could see devastating wildfires for decades to come that will destroy the watershed, the wildlife habitat, and release huge amounts of carbon into the atmosphere; and, oh, yes, by the way, destroy a very valuable resource in the form of timber that might in some areas be allowed for logging or for reasonable approaches of commercial value of the thinning and cleaning.

All of that said, we have worked hard to produce a bill. My colleague from Oregon is on the Senate floor. I will yield to him for any comments he would want to make. We have other colleagues here who I think are going to address the issue of prescription drugs and Medicare reform.

But today is an important day in the Senate in the area of forestry and forest and public land management. I am proud of the work we have done.

I yield the floor.

The PRESIDING OFFICER. The Senator from Oregon.

Mr. WYDEN. Mr. President, before he leaves the floor, I want to commend Senator CRAIG. He and I have been working with Senator FEINSTEIN in particular on this legislation in the Energy and Natural Resources Committee. We have really been a triumvirate with respect to this issue.

I am so pleased to have a chance to be on the Senate floor today to speak on this conference report. This is the first forest management bill to pass both Houses in the U.S. Congress in 27 years. The fact is, the forestry legislation that is now on its way to the President of the United States will protect our communities. It will offer the first legal protection for old-growth trees, and it will create jobs.

As the distinguished Senator from Idaho, Mr. CRAIG, just noted, this legislation came together because at every stage of the process Senators said we want to get beyond the old rhetoric. We want to get beyond the polarization that has dominated this issue in the past, and we want to, in particular, take meaningful action to protect our communities.

That is what this legislation has been all about. The fires in the West, as the Senator from Idaho has known through his field hearings and other such sectors, have literally be infernos. We just felt it was critical to take steps to ensure that the rural West wouldn't be sacrificed.

I am proud today to rise in support of the conference report on H.R. 1904. This conference report is based upon the Senate-based wildfire bill compromise

brokered by Senators FEINSTEIN, CRAIG, COCHRAN, DOMENICI and myself passed by the Senate on October 30. With the good faith efforts of Representatives POMBO, GOODLATTE, and my friend and colleague from Oregon, Representative WALDEN, this conference report has made only minor changes to the Senate approved version. This legislation will get us back on track restoring forests, protecting the environment, and putting people back to work in rural communities.

This conference report is the first forest management bill to pass both houses of the United States Congress in 27 years. The last time Congress was able to send a forest management bill to the President of the United States, the President was Gerald Ford and it was the Nation's bicentennial. The bill was the National Forest Management Act of 1976.

The world has changed a lot in the last 27 years. Forest management and forest-related economies have changed dramatically. Americans have grown more interested in protecting the environment while using natural resources to support rural communities like those in my home state of Oregon. The conference report we passed today reflects some of those changes: it contains the first ever statutory recognition and meaningful protection of old growth forests and large trees, while streamlining a National Environmental Policy Act process that has seemed to favor paperwork over forest health.

This conference report will streamline restorative forestry in forests at risk of unnaturally catastrophic fires resulting from 100 years of fire suppression. It provides the authorities and guidelines for the Forest Service and Bureau of Land Management to treat unhealthy forests while preserving public input and protecting old growth it's a truly balanced approach to forest health.

There were times when I was not sure this day would come. After the Senate passed our version of H.R. 1904 on October 30, 2003, there was doubt and disagreement on how to proceed with the House of Representatives. As a solution to the gridlock threatening the final passage of wildfire legislation, Senator FEINSTEIN and I proposed informal meetings. The staffs of the two Houses reached the agreement on Title I, the forest health title, through these informal meetings that allowed for a formal conference on all the rest of the Titles. That conference was held Thursday, November 20. I lost a couple of provisions for Oregon that I cared deeply about. But, I am overall pleased that the forest health provisions worked out so diligently by both Houses were preserved intact.

The Senate said there were four features that were particularly important to us to maintain in the legislation.

First, we said we have to have the funding to do the job right. We are not going to get this work done without funding to get this work done on the ground. I am very pleased with the conference report in that it keeps that funding intact. I am very pleased that the conference report will authorize $760 million annually for the projects, a $340 million increase over current funding. It also ensures that we spend the money in the right place. That is in the area known as the wildland/urban interface. The Senate took one approach, the House had other ideas. With some very minor tweaking, this, too, was preserved in terms of the work done by the Senate.

On the old-growth part of the legislation, I am especially pleased because all Americans value these unique treasures, our very large old-growth trees. Professor Jerry Franklin of the University of Washington is considered the leading authority on this subject. He says our provisions with respect to old growth are a major step forward. I am particularly pleased and honored to have Dr. Franklin's comments on this. He is the authority, as Chairman CRAIG knows, on this subject. For those who have followed the environmental aspects of the forestry legislation, let the word go out that Professor Jerry Franklin from the University of Washington, one of the most distinguished scholars in this field—not just now but at any time—believes this is a significant step forward in terms of environmental protection.

We were able to protect the public involvement aspect of forestry policy. Citizens all across this country—whether in Senator DODD's part of the world in Connecticut or any other part of the country—feel passionately about their natural resources and want to be involved in the debate over this process. As Senator CRAIG has noted, we have streamlined the process but we have preserved every single opportunity for the public to comment. Every opportunity that exists today, for the public to comment on forestry legislation, has been preserved in this bipartisan compromise.

Finally, the Senate conferees did very well at defending the Senate compromise. The Senate kept the number one issue the environmental community was concerned about off the table and preserved the Senate compromise position on judicial process. In negotiating this bill, I did not accept the notion that any special deference beyond the deference that is ordinarily due should be given to any agency determinations under the Act, except where explicitly provided in the statute's text. In fact, the conference report expressly rejected the House bill's language giving special deference to agency determinations.

This section, section 106 of Title I, limits venue for these hazardous fuels reduction cases exclusively to the district court for the district in which the federal land to be treated is located. It also encourages expedited review of jurisdictional and substantive issues leading to resolution of cases as soon as practicable. In addition, this section limits the duration of any injunctions and stays pending appeal to 60 days and provides an opportunity to renew an injunction and stay pending appeal. It also requires the parties to the action to present updated information regarding the status of the authorized hazardous fuel reduction project in connection with such injunction and stay renewals. This last provision is intended to provide an incentive and opportunity for the parties to the complaint to work together to resolve their differences or explain to the judge why that is not possible over time.

This section also directs the courts to balance the impact to the ecosystem likely affected by the project of the short- and long-term effects of undertaking the agency action, against the short- and long-term effects of not undertaking the agency action. There can be environmental risks associated with both management action and inaction. America is acutely aware that the past few fire seasons have been among the worst in modern history in terms of effects on natural resources, people and private property. Air pollution problems are rising and wildland fires have forced thousands to evacuate. In 2002 in one state alone, Colorado, 77,000 residents were evacuated for periods of a few days to several weeks. Seventeen thousand people in Oregon's Illinois Valley were on half-hour evacuation notice the same year. In 2002, millions of dollars of property damage included the destruction of over 2300 homes and other buildings. It is becoming increasingly evident that while one cannot uncut a tree, similarly one cannot unburn a forest. In hazardous fuel reduction projects it is important to focus on the removal of the right vegetation to modify fire behavior—primarily surface and ladder fuels.

At the same time, there can also be adverse environmental consequences of hazardous fuel reduction projects, including but not limited to loss of wildlife habitat, increased sedimentation in streams, soil compaction, and fragmenting of unroaded areas. As documented by the General Accounting Office, poorly designed vegetation treatments in the past have contributed to increased fire risk by removing the large and fire resistant trees, while leaving highly flammable smaller trees behind.

This Act is intended to foster prompt and sound decision making rather than perfectly executed procedures and documentation. Environmental analyses should concentrate on issues that are essential to the proposed projects rather than on amassing needless detail. Section 106 is intended to reinforce Congress's desire that the totality of circumstances be assessed by the courts to assure that public interest in the environmental health of our forests will be served.

Let me be more specific about a few of the other provisions of this legislation. The Senate also prevailed in

keeping the Senate funding requirements and levels, preserving the Senate NEPA language on at-risk lands outside the wildland urban interface; preserving the Senate old growth and large tree protections, and preserving the Senate administrative appeals process.

The legislation changes the environmental review process so the Forest Service still considers the effects of the proposed project in detail, but can focus its analysis on the project proposal, one reasonable alternative that meets the project's goals and the alternative of not doing the project, instead of the 5–9 alternatives now often required. In the highest priority areas within one mile and a half of communities, the Forest Service need only study the proposed action and no alternatives. There is no relaxation from current law in any areas, however, in how closely the Forest Service must study the environmental effects of the project it is proposing to undertake.

The changes that were made to the Senate compromise on H.R. 1904 include more relief and respect for rural forested communities. This conference report allows a single action alternative to be analyzed under the National Environmental Policy Act inside the wildland urban interface defined as 1.5 miles from the community boundary. Within the area identified for protection as the wildland urban interface under a community fire plan, the agency is not required to analyze the ''no action'' alternative under NEPA, but is required to analyze two action alternatives. This conference report also limits the treatment of diseased forests to those with epidemics, whereas the Senate compromise allowed the treatment of forests with only an infestation of bugs.

This conference report preserves all current opportunities for public input and appeal, while streamlining the appeals process and eliminating some of its worst abuses. Not one current opportunity for public comment would be lost under the compromise. The compromise will require the Forest Service to rewrite their appeals process using the pre-decisional appeals and comment process that has been used by the Bureau of Land Management since 1984. It works by encouraging the public to engage in a collaborative process with the agency to improve projects before final decisions have been rendered upon them by the agency. This model places a premium on constructive public input and collaboration, and less emphasis on the litigation and confrontation of the post-decisional appeals process currently used by the Forest Service. The compromise is designed to move from the current model of confrontation, litigation and delay to one which places a premium on constructive, good faith public input. Whereas in the past, parties could ''sandbag'' the appeals process by not raising salient points in hopes of later derailing the entire proposed action in the courts, parties would not be allowed to litigate on issues they had failed to raise in the comment or appeal period unless those issues or critical information concerning them arose after the close of the appeals process—as a result of the revised agency decision.

This conference report provides the first-ever statutory recognition and meaningful protection of old growth forests. Never before has Congress recognized by statute the importance of maintaining old growth stands. Under the compromise, the Forest Service must protect these trees by preventing the agency from logging the most fire-resilient trees under the guise of fuels reduction under these new authorities.

The issue of old growth continues to be the subject of considerable scientific inquiry and debate. What is not subject to debate is the special character and ecological value of old growth. Clearly, it is the intent of Congress that in interpreting the provisions of section 102(e), federal agencies affirmatively recognize the special importance of old growth forests while maintaining the deference they are due unless their determinations are arbitrary, capricious or an abuse of discretion.

This legislation is designed to address past mismanagement of federal forests, and to protect old-growth so that we don't repeat the mistakes of the past. The majority of old-growth stands are healthy, and don't require management. In some old-growth stands in the drier parts of the west, where natural fire regimes have been disrupted by a century of fire suppression, silviculture with a minimum of disturbance can be appropriate that will restore natural forest structure and fire regimes.

Where old growth stands are healthy, as they are throughout much of the forest on the west side of the Cascade Ridge in Oregon, the compromise requires that they be ''fully maintained.'' Section 102(e) of the conference addresses the treatment by the Forest Service and Bureau of Land Management of old growth stands that may occur on authorized hazardous fuels treatment projects. Since recently issued resource management plans of the two agencies are supposed to provide guidance on the treatment of old growth Section 102(e) directs the agencies to rely on the old growth definitions contained in resource management plans that were established in the ten-year period prior to the enactment of the legislation.

Older plans must be reviewed, and if necessary, revised and updated, to take into account relevant information that was not considered in developing the existing definitions or other direction relating to old growth. Any revision or update must meet the requirements of subsection 102(e)(2), which requires the Secretary, in carrying out authorized hazardous fuels treatment projects, to fully maintain, or contribute toward the restoration of, the structure and composition of structurally complex old growth stands according to the pre-fire suppression old growth conditions characteristic of the forest type, taking into account the contribution of the stand to landscape fire adaptation and watershed health, and retaining the large trees contributing to old growth structure. Nothing in the bill is intended to prohibit or restrict establishing other standards for old growth stands where purposes other than hazardous fuel management are being pursued under other authorities.

The intent of section 102(e)(4) is to avoid disrupting resource management plan revisions that are already underway. Comprehensive revision of older resource management plans may be preferable to separate amendments or updates for old growth standards, and the bill allows additional time for operating under older plans where revisions are in progress.

In negotiating this bill, I did not agree to the imposition of any more restrictive standards than the ''substantial supporting evidence'' explicitly set forth in the statute for members of the public's identification of old growth stands during scoping in subsection 102(e)(4)(C).

The compromise makes it less likely that old growth will be harvested under current law by mandating the retention of large trees and focusing the hazardous fuels reduction projects authorized by this bill on thinning small diameter trees.

In moving this legislation, it was my intent to see that the right work get done in the right way in the right place using the right tools. In other words, to see that the risk of catastrophic fire is reduced through legitimate hazardous fuel reduction activities.

These activities are referenced in Section 101(2) of the bill and are spelled out in detail in the Implementation Plan for the Comprehensive Strategy for a Collaborative Approach for Reducing Wildland Fire Risk to Communities and the Environment, dated May 2002. That document lists the following tools as being appropriate for hazardous fuel reduction: prescribed fire, wildland fire use, and various mechanical methods such as crushing, tractor and hand piling, thinning, and pruning.

In other words, this bill does not authorize a new wave of large tree commercial timber sales. It must be noted that the bill emphasizes the avoidance of the cutting of large trees in Section 102(f), where it specifically states that protects must focus largely on small diameter trees, thinning, strategic fuelbreaks and prescribed fire to modify fire behavior and that projects maximize the retention of large trees.

Section 104(f) requires the agencies to focus on small diameter trees, thinning, fuel breaks and prescribed fire to modify unnaturally severe fire effects, and to maximize the retention of large trees. Large trees are important ecological components of most forest systems. In particular, they are often more fire and insect resistant

than smaller diameter trees, and therefore, with rare exceptions do not contribute to hazardous fuels overloads. They are also considered to be critical ecological legacies because they are essential to the desired future structure and composition of forests. However, large trees are now often underrepresented components of many forest types. In those forest types, forest health will not be restored without a diversity of age classes and types, including large trees.

Section 102(f) deals with federal agency treatment of large trees in authorized hazardous fuels treatment projects outside of the areas identified under section 102(e) and requires the Forest Service and Bureau of Land management to maximize the retention of large trees, as appropriate for the forest type, to the extent that the trees promote fire-resilient stands. From an ecological standpoint, and in regards to modifying future fire behavior, large trees are the very last ones that should be removed, if at all.

This is an appropriate limitation in that the last trees that need to be removed from an ecological sense, as well as to modify fire behavior, are the large trees. The clear intent of this legislation is to focus primarily on surface fuels such as brush and dead and down woody material and ladder fuels consisting of small diameter trees and saplings.

This direction is very important to me and I intend on remaining vigilant and responsive to concerns where projects veer from this important direction.

This conference report restores balance to healthy forests legislation by authorizing $760 million annually for these projects. This is a $340 million authorized increase over the currently appropriated level of $420 million for hazardous fuel reduction projects. The conference report maintains the requirement that at least 50 percent of funds spent on restorative projects to be spent to safeguard communities which face the greatest risks from fire.

This conference report also includes improved monitoring language that will help Congress track the successes and failures of this legislation. Section 104(g) requires the Secretaries to monitor and assess the results of authorized projects and to report on the progress of projects towards forest health objectives. This evaluation and reporting will help guide the agencies in future hazardous fuels reduction treatments in existing project areas and in other project areas with similar vegetation types.

The Senate intends that treatments authorized under this Act be directed to restoration of fire-adapted ecosystems as well as hazard reduction. The threat of uncharacteristically severe fires and insect and disease outbreaks decreases when the structure and composition of fire-adapted ecosystems are restored to historic conditions. Thus, section 104(g)(4) directs agencies to evaluate, among other things, whether authorized projects result in conditions that are closer to the relevant historical structure, composition and fire regime.

The Senate recognizes that fire ecologists have learned that fire is a landscape process and that treatments are most effective when conducted in accordance with landscape- or watershed-scale analyses. Section 104(g)(4) requires the agencies to evaluate project results in light of any existing landscape—or watershed—scale direction in resource management plans or other applicable guidance or requirements. Managers should also evaluate and use available relevant scientific studies or findings.

Section 104(g) also requires the Secretaries, in areas where significant interest is expressed, to establish a multiparty monitoring and evaluation process in order to assess the environmental and social effects of authorized hazardous fuel reduction projects and projects implemented pursuant to section 404 of this Act. Many forest-dependent communities support multiparty monitoring, which simply means that communities and individuals may participate with the Federal agencies in monitoring the projects. The Managers recognize the importance of multiparty monitoring as a way to rebuild trust between rural communities and the agencies.

In conclusion, we have a lot of work to do. We will have others raise questions about the ramifications of this legislation as it relates to the National Environmental Policy Act and other concerns. We want to get this done and implemented properly. As Chairman CRAIG and I have seen in the subcommittee on forestry, we know, for example, it will be tough to get all the funds that are going to be necessary to do these projects on the ground. Our bipartisan coalition is committed to doing that. Then we can turn our coalition to looking at other areas where we can find common ground and move forward in the natural resources area.

A lot of people never thought we would get to this day. Look at the editorials that have been written, some of the interest groups with respect to this legislation, and some of the attacks made on Members. I recall some of those to which Senator FEINSTEIN was subjected. She showed the courage to make it clear she would hang in there and work to get this legislation enacted.

We had a lot of Members of the Senate on both side of the aisle say they would put the public interests first, they would concentrate on protecting communities. That is what has brought us to this day.

I want to thank the following Senate staff for all their hard work on this important legislation: Lance Kotschwar and West Higginbothom of the Senate Agriculture Committee staff, Frank Gladics and Kira Finkler of the Senate Energy and Natural Resources staff, Calli Daly of Senator CRAIG's staff, John Watts of Senator FEINSTEIN's staff and Sarah Bittleman and Josh Kardon of my own staff. Josh Penry and Doug Crandall, staff from the House Resources Committee, did yeomen's work to get this bill to conference. These folks, and many others, put in countless and numerous evenings and weekends into this bill and they deserve our appreciation for their hard work and dedication.

This legislation will now go to the President's desk for his signature. I look forward to that happening. Just this week it snowed in Oregon—the fire season has passed for another year but it will come again next year as sure as the spring follows the winter. With this bill in place as law I am hopeful that we will be a bit better prepared.

I yield the floor.

The PRESIDING OFFICER. The Senator from Connecticut.

Mr. DODD. Mr. President, are we in morning business?

The PRESIDING OFFICER. That is correct.

MEDICARE

Mr. DODD. Mr. President, I will take a few minutes and comment on the upcoming debate on Medicare. Let me begin by expressing my appreciation and my respect for those who have worked on this issue for a great deal of time. I have nothing but the highest admiration for my colleagues, Senator BAUCUS, Senator GRASSLEY, Senator BREAUX, Senator KENNEDY, and others who have spent a great deal of time over the last number of months trying to put together a proposal to provide Americans with a comprehensive prescription drug benefit while not undermining the core program of Medicare which has served millions of Americans so well for the past 38 years. Whatever other views I may have on this proposal, it does not diminish my respect for the efforts they have made to put this bill together. I begin on that note.

Let me state the obvious. I don't know of many other programs that have enjoyed as widespread and as deep and profound a degree of support in our Nation's history as the Medicare Program. I cannot think of another program which has done as much for as many people as Medicare has over the past 38 years. When you look back at the statistics of the poor in America prior to 1965, without exception, the poorest group of Americans were older Americans, our senior citizens. That was, of course, because they had left the labor force and to what extent they had any coverage at all, it was usually lost upon their retirement. As happens when people age, health problems often emerge, people become sicker and require more help. America could only watch as parents and grandparents got sicker and poorer and faced great difficulty making ends meet.

Through a very extensive and elaborate and lengthy debate, our predecessor Congress, both in this body and

in the House of Representatives, under the leadership of Lyndon Baines Johnson, in 1964, giants in this body, crafted the Medicare Program. In fact, President Johnson went to Missouri, to the home of Harry Truman, who had been such a great advocate of universal health care, to sign that historic piece of legislation into law. There have been a lot of other things we have done over the years, such as Title I of elementary and secondary education, that might come close—certainly Social Security—I suspect if we had to pick two programs this Government has fashioned in the 20th century that have meant as much to such a critical part of our society, one would certainly have to identify Social Security and Medicare.

It is with that background that I rise this afternoon to express my deep concern and worry over what we may be doing in the next few hours in a rather hasty manner. That does not mean to suggest that the conferees and others who have worked a long time on this have acted in haste; although I disagree with their product, I respect the amount of time and effort they have put into this. The Presiding Officer and this Senator are the only two Members present at this moment, and our ability to go through this and to understand what is about to happen in the coming days is rather limited.

Sometime tomorrow, Sunday, or Monday, but certainly no later than that, we will be asked to vote up or down on a conference report that does something all Members have wanted to do for years—provide a prescription drug benefit for older Americans under the Medicare program. Knowing, as we all do, that had we been writing the Medicare bill in the year 2003 for the very first time, or several years ago, we would never have considered a Medicare proposal without the inclusion of a prescription drug benefit. But those who wrote the bill in 1964 were not confronted with the terribly high cost of prescribed medicines. At that time, there simply were not that many pharmaceutical products out there, so prescription drugs were not as major a factor as they are today. The idea of providing basic healthcare services was what originally drove Congress to enact the Medicare Program.

Obviously, the world has changed. So the need for a prescription drug benefit today, given the tremendous costs our elderly face every single day across this country, where they literally, without any exception at all, are forced to make choices about whether or not to take the drugs they have been prescribed, to have a meal, or to pare back on their prescriptions so as to spread them out over a longer period of time so they will not have to go back in and pay for the drugs which they cannot afford, in which case they are not getting the full benefit of the prescriptions because they are self-medicating themselves, and in many cases can do far more harm than not taking a drug at all, as any good doctor can tell you—that is the reality today fro millions of our senior citizens.

It is my belief that if we were solely dealing with the prescription drug benefit piece of this package, it would pass 98 to 2, maybe 100 to 0. There is no doubt in my mind that would be the case. If that were the only issue before the Senate, that would clearly be the outcome. Although I would quickly tell you there are parts of this prescription drug benefit that could be drawn far more wisely and far more fairly in many ways, I could not argue over the fact that a $400 billion appropriation over the next 10 years offered a good start.

But also just as quickly I would say to my colleagues, if we were dealing with the portion of this package dealing with the structural reform of Medicare, and they were standing alone just as I suggested a moment ago if the prescription drug benefit package were standing alone, the parts of this package instituting structural changes to Medicare would not get 10 votes. I don't know of many people who would support a Medicare package that had the sections this bill does that would so dramatically alter Medicare. The only reason it is getting any consideration at all is that we have lured people into this on the prescription drug benefit aspects of this conference agreement.

So if you set that aside for a minute and begin to look at the structural side of this, and understand how many years it originally took to put together the Medicare program, what a difference it has made in people's lives—when you consider the tremendous salvation this has been to people—and then recognize the direction in which we are about to go if this conference agreement is adopted—and I suspect it may be—then it will not take long, in my view, when you will find what we saw only a few years ago, with the Congress coming back in to reverse itself in 2006 or shortly thereafter when the provisions of this bill go into place.

The more you look at the structural side of this particular proposal, then the more people are going to be concerned about what they are doing. So I applaud those who have worked on the prescription drug side of this bill. But I have great concerns about what this conference report would do to the foundation of Medicare.

In June of this year, when S. 1 was before this Senate, I based my support for that measure on the belief that it offered a strong, though not complete, first step towards ensuring prescription drug coverage for America's seniors and strengthening the overall structure of the Medicare Program.

This conference report, I say with deep regret, can now be accurately characterized, in my view, as a misguided step down the wrong path. The agreement before us today will lead us down the path towards greater privatization of Medicare, towards a greater burden on our States trying to meet the needs of their own low-income senior citizens, and towards an overall weakening of the Medicare Program.

A very simple way to describe this, as we look at the great success the Medicare program has enjoyed over the past 38 years, is to remember that this is a universal program. This program says to everybody who reaches a certain age, regardless of how healthy you are, or how wealthy you are, or how poor you are, or how sick you are, you can qualify and be a part of this Medicare Program. We are about to do something now that is going to say to those who are wealthier and healthier, you can move off into private plans, in which case the only ones who will be left within traditional Medicare are those who are less wealthy and those who are most sick.

Now, you do not have to have a Ph.D. in mathematics to understand what the outcome will be if this conference report is adopted. If Medicare becomes a program of poor, sicker people because wealthier, healthier people have left, as I believe they will under this bill, then you have just forced either a reduction of benefits or increased costs for those under traditional Medicare—those who can least afford it.

There is no other outcome you can draw from that which we are about to do. That is the eventual outcome. It fundamentally changes and alters the basic concept that was part of the plan passed in 1965—its universality.

The underlying concept of wealthy, healthy people joining with poorer, sicker people—being together—has been the cornerstone of this tremendously successful program. When you begin to pick off those who are wealthier and healthier, for all the obvious reasons, into private plans, the sicker and poorer people will be left with either Medicare benefits getting cut or premium costs going up. That is the sadly predictable outcome of this legislation, Mr. President.

Medicare is first and foremost a program to protect our Nation's seniors from the often insurmountable costs associated with securing quality health care services. Prior to its inception in 1965, as I mentioned, many seniors—the overwhelming majority, in fact—faced abject poverty as a result of skyrocketing health care costs. The creation of the Medicare Program provided a critical safety net for those seniors and allowed them to retain both their access to quality health care, as well as their financial security.

Earlier this year, and prior to the Senate's consideration of the underlying legislation, I had the opportunity to convene a series of forums in my home State of Connecticut on health care issues in an attempt to frame the scope of this debate for them. At those forums, I heard from my constituents on many matters regarding health care. I heard from seniors who literally could not afford to fill prescriptions—and I know my colleagues have heard

the same stories—called for by their doctors. I heard from elderly Medicare beneficiaries forced to choose between purchasing groceries or filling their prescriptions. I heard from seniors who were forced to skip dosages of their medicines in an attempt to stretch their limited supplies of these needed medicines. I heard from Medicare beneficiaries requiring more than 10 prescribed medicines a day unable to afford even half of those prescriptions.

Clearly, what I heard from hundreds of my own constituents is their grave concern over the present lack of a prescription drug benefit under the Medicare Program.

When Medicare was first enacted, few could have envisioned the tremendous costs associated with prescription medicines. However, it is the great need for prescription drug coverage under Medicare that was firmly behind my initial support for S. 1. Sadly, however, the conference report before us simply does not go anywhere near far enough to provide sufficient coverage for prescription medicines for the great majority of Medicare beneficiaries. That said, we cannot turn our backs on what this bill would do for Medicare beneficiaries with severely limited incomes. This bill says, if you make under $13,470, representing 150 percent of the federal poverty level, then you will get real help under this bill. But if you make anything more than $13,470, which is what two-thirds of our seniors citizens do, then you are going to be offered little in the way of help under ths bill. That is why it is my belief the prescription drug benefit aspect of this bill should be greatly strengthened.

But I believe for most seniors that it is terribly unrealistic to suggest that someone making more than $13,470 can somehow manage to afford the cost of their prescription medicines, particularly if they have costs that would push their spending into the bill's gap in coverage, or donut hole, as it is often described. But, nonetheless, that is the direction we are going with this conference agreement.

The emerging bill contains a gap, as I mentioned, of more than $2,800, twice the size, by the way, contained in the Senate-passed legislation. Under this conference agreement, 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 the monthly premium of an estimated $35—and I stress the word ''estimated''; I will get to that in a minute—and receive absolutely no financial assistance whatsoever.

Only 4 percent of seniors in the country make over $80,000 a year. Two-thirds of seniors make somewhere above $13,470. The idea that somehow people are going to have enough money, as a senior, trying to pay a home mortgage or pay whatever obligations they have, not to mention food and other things, and also be able to pick up as much as $2,800 a year for prescription drugs, is, I think, terribly unrealistic.

This bill would require Medicare to move dangerously toward privatization, which is what I want to get back to, because it is the side of this bill calling for structural change to the Medicare program that causes me the greatest concern and greatest worry, and undermines this incredibly fine program. I can't tell you how disappointed I am in the AARP for endorsing this conference agreement. I truly wish that AARP's affiliates across the country had been heard on this issue before their national leadership decided that they would support this bill and disregard the 38 years of history when it comes to Medicare and the millions of people who have greatly benefitted from its coverage.

As one who has witnessed firsthand the tumult and confusion created by Medicare+Choice organizations entering and then quickly withdrawing from communities in my home State of Connecticut, I can say assuredly to my colleagues here today that this would establish a dangerous precedent that may very well lead to the devolution of the Medicare Program as we know it.

Also of great concern to me is the effect this legislation will have on employers that have already provided their retirees with prescription drug coverage. In my State of Connecticut, more than 225,000 Medicare beneficiaries, fully one-third of my State's senior citizens, receive coverage for their prescribed medicines from their former employers. Under this bill, about 40,000 of those elderly will lose this coverage as a result of employers dropping their prescription drug plans.

I don't know the numbers in every other State, but if 40,000 of my 225,000 beneficiaries presently with prescription drug plans from their former employers are going to be dropped from their prescription drug programs, how many in other States are going to be? Where do the States of other Senators fall in this category?

I additionally have another 74,000 people in my State—and I represent a small State with a little more than 3.5 million people—who qualify for both Medicare and Medicaid. These beneficiaries—and there are 6.4 million of them across the country that are eligible for both Medicare and Medicaid—will face increased prescription drug costs under the underlying bill. There will be a significant cost increase for those people who fall within both Medicare and Medicaid if this conference report is adopted. So even before we start talking about what will happen in the year 2010 and down the road under this bill, Mr. President, we are going to witness significant numbers of people lose their present coverage or be forced to withstand both higher costs and diminished benefits.

Also very troubling to this Senator in the underlying conference agreement is its unqualified support for private for-profit insurers at the expense of traditional fee-for-service programs. Particularly disturbing are the provisions securing $12 billion to be solely reserved for these private insurers in order to entice them to enter the Medicare market. Twelve billion dollars is going to the private companies, just so they can compete against the traditional Medicare program. They are calling this competition. Back in the Roman Empire, they had a competition like that. You would go to the forum and on one side were the lions. Under this bill is a similar situation, private insurers will get $12 billion to compete, but Medicare will not get anything. Under this bill, we are going to cap Medicare spending and then say: Go out and compete against enriched private plans.

I was born at night, Mr. President, but not last night. I know and most other people know, without a great deal more knowledge about this, that if you provide $12 billion, as this bill does, to private companies to go out and compete against a company that doesn't get that kind of help, do you know who is going to win that competition? I wonder. I wonder what the outcome will be there. Yet that is what this bill does. Twelve billion dollars reserved for private insurers in order to entice them to enter the Medicare market. The inclusion of this provision truly represents a solution in need of a problem, Mr. President. Traditional Medicare already serves 89 percent of all Medicare beneficiaries and the addition of $12 billion to entice private plan participation is wholly unwarranted and unnecessary.

In fact, this bill will also prohibit the Medicare program from going out and forming a consortium to drive down the cost of prescription drugs. Under this bill, you are violating the law if you go out and do that. While we are going to provide $12 billion instead to others to allow them to compete with Medicare, we will not allow Medicare itself to go out and lobby or negotiate to lower the costs of prescription medicines. The traditional Medicare Program is a proven success and would be better served if this valuable funding of $12 billion were directed toward further strengthening its foundation.

Lastly, the conference agreement before us today establishes the dangerous precedent of instituting so-called cost containment measures that could directly lead to severe cuts in what Medicare covers and just as severe increases in the costs Medicare beneficiaries will be forced to bear. Very 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.

Can anyone cite for me any other Federal agency where that kind of provision has been imposed? There is not one—not one. Yet this bill goes out and places this kind of a restraint on Medicare, and on no other part of our Government do we do it, only on Medicare.

It is my belief that the adoption of this purely arbitrary cap, which you will find nowhere else, will lead to almost certain erosion of critical programs, scope of coverage, and affordability.

Today, nearly 40 years after Medicare's inception, we find ourselves at a crossroads. I can truly say that I am somewhat stunned that we are about to make a decision on a program that has worked so well for so long within a matter of hours here, without any of us fully understanding—at least most don't seem to understand—the implications of what we are about to do. How could you take a program that has worked so well for so many people and, in the waning days of a session, with just a few hours remaining, get up and ask the Congress to do what we are about to do here? I don't understand how we could allow this to happen. We are on the cusp of fundamentally altering a program that has worked so well for this nation's elderly and most frail citizens.

Again, Mr. President, we find ourselves 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 our Nation's senior citizens. Sadly, however, this conference agreement before us represents an opportunity lost, an opportunity not only to add comprehensive coverage for prescribed medicines under the Medicare Program, which would have been a great success story, but also an opportunity to strengthen the Medicare Program for future generations.

So it is with great sadness that I find myself, only months after originally supporting the underlying legislation when it was first considered by the Senate earlier this year, now having to oppose this conference agreement in its current form. Under the guise of providing needed prescription drug coverage under the Medicare Program, this conference agreement falls far short of addressing this need for the great majority of our Nation's nearly 41 million Medicare beneficiaries.

Forty-one million Americans take note. Over the weekend, in the next 72 hours, a program that has served you for 40 years, serving more than 40 million people presently, is going to be fundamentally altered unless this body, and only this body, stands up and says: Stop. Go back. Let's rethink this before we go out and make the kind of changes that are being proposed in this legislation.

While there have been numerous articles and commentaries written about this plan over the last number of days, people trying to attract attention, numerous editorial comments that I have found tremendously compelling, I come back to the basic point that this is dangerous policy. I put my colleagues on notice; I tell you this will happen.

In the Senate passed bill, which, again, I supported, in order to receive prescription drug coverage, there had to be two drug-only providers available. However, this conference agreement calls for only one of these plans and an HMO. This is a fundamental change. Let me describe what this can mean in the clearest terms I have seen written about this.

Under the conference report, we have now learned that the Medicare guaranteed fallback is only triggered if a senior does not have a choice of two private plans, one of which can be an HMO. Again, that was not in the Senate bill and it is in the conference report before us.

In order to receive prescription drug coverage under this bill you have two choices: One, you can choose traditional Medicare and receive no prescription drug coverage. Two, you can choose to keep traditional Medicare and purchase a drug-only plan. The problem is that there is no limit on the monthly premiums these drug-only plans can charge. When you hear about the $35 cost of premiums for these plans, you must remember that this is only an estimate. If there is only one provider of the drug-only plan in your area—and that is all there has to be under this bill the monthly premium could be $100 or more. Nothing in this bill caps what the premium should be on a monthly basis for the drug coverage. That is what the offer is under this bill.

In other words, it will be permissible for only one insurer to offer the new Medicare drug benefit and charge whatever premium they desire, as long as there is also an HMO option in the area. This type of arrangement strategically avoids the protection of a traditional Medicare fallback benefit from being made available to seniors. As a result, seniors in these regions, many of which will be rural areas, will be financially forced into HMOs just to obtain an affordable drug benefit. In the meantime, they will lose their choice of doctors.

Does this sound familiar? Earlier this year, President Bush and his administration made clear that he wanted to reform Medicare by providing a prescription drug benefit, but only to those seniors who were willing to go into a private insurance plan and HMOs. This compromise has been designed to help achieve that goal.

So that it is further understood, it is important to note that the Senate required that there be at least two private stand-alone options for Medicare beneficiaries. This would have ensured that there would at least be competition for premiums for the new stand-alone drug benefit. Some have argued that the competition between the drug-only plan and an HMO or PPO will force down the premium of the drug-only plan. The fact is, drug-only plans cannot compete on an even playing field with PPOs or HMOs. This is because HMOs and PPOs are provided additional subsidies under this bill and, by definition, offer a wide variety of services that give these plans a competitive advantage over the stand-alone drug plans. Any losses on the drug side can be offset by gains on the medical side, in a sense.

This is yet another example of how all financial incentives are designed to advantage the private HMOs and PPOs over traditional Medicare. People need to understand the fundamental changes in this bill that will greatly alter the very structure of the Medicare program.

I have taken a lot of time this afternoon, Mr. President, and I apologize to my colleagues. But I feel very strongly about this critically important issue. Last week in this body we had a filibuster that went on for 4 days because people were upset over the nomination of 4 judges. I contend that perhaps there ought to be a filibuster on this legislation as nearly 41 million Medicare beneficiaries are going to be adversely affected if this legislation is adopted by this body.

Here we are toady, Mr. President, down to the waning few hours of the session, and we are about to consider fundamentally altering and setting back Medicare for years to come. When the roll is called on this, I will vote no. I will seek other options between now and then to see if there is a way to delay consideration of this until we have more time to examine more fully the implications of this bill. Under the guise of providing needed prescription drug coverage under Medicare, the conference agreement before us today offers far too little coverage for the great majority of Medicare beneficiaries, while at the same time institutes structural reforms to the underlying Medicare program that will significantly weaken its ability to provide for the health and well being of our nation's senior citizens. It should be soundly rejected. I thank my colleagues and I yield the floor.

The PRESIDING OFFICER (Mrs. DOLE). The Senator from Iowa is recognized.

Mr. GRASSLEY. Madam President, I didn't interrupt the Senator from Connecticut, so I hope my colleagues will let me give my remarks in rebuttal unhindered by any other obstacles.

It is about time that we pass a prescription drug bill for Medicare. It is about time that we strengthen and improve Medicare, as we have been telling the voters for three elections.

In the 2000 election, it was an issue. It was an issue on the floor of the Senate last summer. It didn't pass last summer because the other party in this body wanted an issue for the election coming up last fall. The leader of the other party took it away from his own chairman of the committee, so there could not be a bipartisan bill put together.

In the Senate, nothing gets done that is not done in a bipartisan way. Maybe a lot of people don't like that about the Senate, but it has been that way for 214 years, and our country has functioned well. This is the only body in our political system where minority interests

are protected. We are going to have broad, bipartisan support for this bill, and we are going to pass it because when Republicans won the last election, we won it because there were a lot of things buried in this body by the leadership of the other party because they wanted issues for that election and because they thought they would increase their strength in this body and get more of what they wanted this year than last year.

But they miscalculated. The people of this country put the Republicans in charge of this body. But they didn't put the Republicans in charge of this body to do things just in a partisan way because we in the majority party know that nothing gets done here that doesn't have some bipartisanship with it.

As chairman of the committee of jurisdiction over Medicare, taxes, international trade, and a lot of other social programs, I have the privilege of having a good working relationship with the former chairman of this committee, now the ranking Democrat, Senator BAUCUS. We started out on Medicare prescription drugs, like we did on some other issues this year, to put together a bipartisan approach so that we could deliver on the promises of the last several elections—not just the last election, but the last several elections. Both political parties have been saying that we are going to strengthen and improve Medicare, and one of those strengthenings and improvements is going to be a universal and comprehensive and voluntary prescription drug program.

We are about to deliver on it, and people on the other side don't like it because they had an opportunity and they lost that opportunity because they wanted to do something in a partisan way. Previous speakers on the other side have raised this point about the AARP backing this plan. They are saying they are caving in to political pressure.

It seems as though, as far as the other side is concerned, the only time the AARP is political, in the eyes of the Democratic Party, is when AARP agrees with the Republican Party.

Senator BAUCUS and I have been working together, and we will bring to the Senate, after the House passes it tonight, a bipartisan, bicameral compromise out of conference, which will deliver on the promises of the last three elections. We are even going to deliver on the promise of the Democratic Party, where they were going to provide prescription drugs for seniors. The only thing I can think is that they regret it. They had an opportunity a year ago, when they were in the majority and when our President wanted to work with them, to do it, and they didn't take advantage of it.

I want to speak about this product that we have before us. It was just yesterday, after 4 months of conferencing, that the conferees agreed to a bipartisan breakthrough on a conference report that will make comprehensive prescription drug coverage a reality for our 40 million Medicare beneficiaries, both seniors and disabled. After 4 months of hard work, the conferees approved a sweeping package of new prescription drug benefits and other program improvements that makes good on our commitment to our seniors.

I am urging all my colleagues to support it. Since 1965, seniors have had health insurance without prescription drugs. By reaching agreement yesterday, the conferees came one step closer to changing that. The Senate can make history by improving this compromise report.

This important breakthrough came because of the tireless work of our committee members, both Democrats and Republicans, over the last 5 years. Senators FRIST and BREAUX led the way on prescription drugs before any of us were listening. Senators SNOWE, HATCH, and JEFFORDS, along with Senator BREAUX and this Senator, carried the torch as members of the Finance Committee, but also because we wanted to do things in a bipartisan way. We even called that a ''tripartisan way'' because Senator JEFFORDS lists himself not as a Republican or Democrat but as an Independent. That is an effort we have exceeded in the bill, but it was an effort that somewhat blazed the trail to where we are today, and I am glad to have been a part of it.

Finally, this breakthrough came because of the President's unyielding commitment to getting something done for seniors once and for all. Last December 10, I had an opportunity to meet with the President, as he knew I was going to be the new chairman of the Senate Finance Committee after the Republicans had won control of the Senate. We, in fact, had that meeting, anticipating all this time we had to work to get ready, a long time before Congress even convened. At that meeting, the President said two things that I remember. I did not take notes, but I remember very well that he was willing to commit political capital to this effort and that he was willing to put money in his budget for that effort.

The President delivered on both of those statements because his budget put $400 billion in over 10 years for this bill. That is exactly what we in the Senate wanted. We approved that last March. By June, the Senate Finance Committee had reported out a strong bipartisan bill by a vote of 15 to 6, building upon the agreement with the President and the agreement of the Senate for $400 billion for the budget.

The Senate, as you know, passed S. 1 on strong bipartisan grounds in June. The other body passed a similar bill, H.R. 1, that same night. I believe the committee report is measurably better than either S. 1 or the House bill, H.R. 1. It contains improvements, refinements, and changes that are better for seniors and better for the doctors and the hospitals that serve them.

We have come a very long way in getting to this point, and I am proud of where we have ended up. I will do everything I can to ensure successful passage of this conference report over the next few days.

Of course, the conference report can't and won't be all things to all people. Like any compromise, no one is left perfectly happy. That probably means that the conference committee came out just about at the right place. I urge all my colleagues to go beyond the perfect and to focus on the good that the conference agreement accomplishes.

The greatest good at the heart of this conference report is a comprehensive prescription drug benefit that will give immediate assistance starting next year and continuing as a permanent part of Medicare to every senior. Not only is it comprehensive, it is universal, and if nobody wants to participate in it, they don't have to. It is voluntary as well.

The conference report provides affordable comprehensive prescription drug coverage on a voluntary basis to every senior in America. The coverage is stable, it is predictable, and it is secure. Most importantly, the value of the coverage does not vary based on where you live and whether you have decided to join a private health plan. For Iowans and others in rural America who have been left behind by most Medicare private health plans, this is an important accomplishment that I insisted on way back as early as January of this year. I haven't budged on that commitment and that protection is in this conference agreement.

Overall, the conference agreement relies on the best of the private sector to deliver drug coverage, supported by the best of the public sector to secure consumer protection and important patient rights. This combination of public and private resources is what stabilizes the benefit and helps keep costs down.

Keeping costs down is essential not just for seniors but for the program as a whole. Throughout this bill, we have targeted our resources very carefully, giving additional help to the poorest of our seniors. Consistent with the policy of targeted policymaking, we have worked hard to keep existing sources of prescription drug coverage, such as employer-sponsored benefits, and to do it in a viable way.

This conference agreement goes great distances to keep employers in the game providing drug coverage, as they do now, to their retirees under those plans that were promised to people after retiring from their employment.

We all worried very much when we passed this bill in June that, as CBO scored our Senate bill, it might cause 37 percent of the corporations to drop their employees on the Government plan. The House bill had a 32-percent drop rate, according to the Congressional Budget Office. As a result of the conference activity and what we have done to shore up existing retiree plans, that percentage is now much less than

20 percent due to the substantial investment made by conferees to ensure that employers can continue offering the good coverage they have for a long period of time.

The conference report includes additional subsidies. It also includes regulatory flexibility that will do much more to help, rather than threaten, employer-sponsored coverage for those who currently receive it.

Still, we all must acknowledge that decisions about scaling back coverage or dropping it altogether are bound to be made regardless of whether we pass this conference report. But I am confident that the balanced policies before us are a very good deal for employers and their retirees.

I want to make it very clear to people listening who might be worrying about corporation retirees losing their health coverage because of something we are doing here, we are doing our darndest to supplement these plans and to give regulatory flexibility so these plans are not dropped. But Congress cannot pass a law that says corporation X, Y, or Z, some day, if they decide they want to dump them, might be dumped. That could be happening in some corporation in America today. This law is not even on the books. That happened in my State earlier this year and last year and the year before, not because Congress was talking but just because that was the policy of that corporation. It is something they felt they couldn't afford any longer, and they did it.

That could happen even after we pass this legislation, but where would we be if we didn't pass this legislation? The 35 percent of the seniors today who have no coverage whatsoever, and probably never have had it in retirement, will still not have drug coverage. Also, the corporations that dump their plans might not have anything either. By passing this legislation, even considering all the resources—about 20 percent of this legislation contains resources for these corporations to keep their plans—if they would drop them, at least these people have something on which to fall back.

I would think that is a better situation than the uncertainty of, Is my corporation going to dump me or are they not going to dump me?

If they are dumped, then they have zilch, unless they want to buy an expensive Medigap policy or something like that. So we are trying to have a safety net for all seniors, and we are trying to do it in a way that is very helpful. So I want to make that very clear. We cannot force corporations—never could and never will be able to—to say they have to provide health care coverage and prescription drug coverage for their retirees. But we do have a plan that is very good for people who do not have prescription drugs or people who might have prescription drugs today but tomorrow might not have it. This is a safety net and a darn good safety net.

Beyond just prescription drugs, the conference report is a milestone accomplishment for improving traditional Medicare, especially in rural America. The conference report includes the best rural improvement in the Medicare equity package that Congress has ever passed. The rural health care safety net is coming apart in rural areas. It is difficult to recruit doctors to rural areas because of low reimbursement. The conference report begins to mend that safety net.

As many in this Chamber know, hospitals, home health agencies, and ambulance companies in rural America lose money on every Medicare patient they see. Rural physicians are penalized by bureaucratic formulas that reduce payments below those of their urban counterparts for the same service. The conference report takes historic steps toward correcting geographic disparities that penalize rural health care providers. Providers in rural States such as Iowa practice some of the lowest cost, highest quality medicine in America. This is widely understood by researchers, academics, and citizens of those States, but not by Medicare.

Medicare instead rewards providers in high-cost, inefficient States with bigger payments that have the perverse effect of incentivizing overutilization of services and poor quality. This is very noted in my State.

The Des Moines Register has been very clear in informing the people of my State that Iowa is 50th in reimbursement in Medicare on a per beneficiary basis over a year, 50th of the 50 States, but yet under indices we are fifth or sixth in quality of care.

Over at the other end, there is Louisiana, No. 1 in reimbursement, about $7,000 per beneficiary per year compared to about $3,400 for Iowa, the lowest of the 50 States. More money to be spent on Medicare for seniors' medical care does not guarantee quality of care because Louisiana is listed 50th in quality of care. So we want to make sure that where one is getting high-quality delivery of health care, there is reimbursement that takes that into consideration. So the conference report begins to reverse that trend.

It also includes long overdue pilot programs that will test the concept of paying for performance and making bonus payments for high-quality health care. This benefits taxpayers and, most of all, patients.

Beyond prescription drugs and beyond rural health care, the conference report goes at great length to give better benefits and more choices—the right to choose is very basic in this bill—available to our seniors. It specifically authorizes preferred provider organizations—we call them PPOs—to participate in Medicare, something the current law does not fully allow. The idea is that these kinds of lightly managed care plans more closely resemble the kinds of plans that we in the Federal Government have and close to 50 percent of working Americans have. Baby boomers then, when they go into retirement, will be able to compare fee-for-service 1965 model Medicare with these new PPOs. I think they are going to find new PPOs closer to what they had in the workplace than traditional Medicare, but they have the right to choose. We think they ought to have that right, too, because traditional Medicare has not kept up with changes in the practice of medicine like the private health plans employees have in the workplace.

PPOs have the advantage of offering the same benefits of traditional Medicare, including prescription drugs, but they do that on an integrated, coordinated basis. So this creates new opportunities for chronic disease management and access to innovative new therapies. Unlike Medicare+Choice, we set up a regional system where plans will bid in a way that does not allow them to choose the most profitable cities and towns. They cannot do cherry-picking. Systems like this work well for Federal employees such as the postmaster in my hometown of New Hartford, IA. He has a choice of several plans. We want to give that same choice to his parents, who today have only Medicare and nothing else.

Are PPOs right for everyone? It is the right to choose that is important about this bill. Let the seniors decide. Our bill sets up a playing field for PPOs to compete for beneficiaries. We believe PPOs can be competitive and offer a stronger, more enhanced benefit than traditional Medicare. But let me be clear, no senior has to choose PPOs. My policy has been to let seniors keep what they have, if they like it, with no change. All seniors, regardless of whether they choose a PPO, can still get prescription drugs. They do not have to choose that, but they can choose that as an add-on to traditional Medicare if they want.

So I hope I have protected all of my colleagues, and maybe my colleagues do not need any protection, insisting on the voluntariness of this and the right to choose. I think it is pretty essential for people who are older, who do not want change in their life, not to have to make a change in their life.

I fear maybe, as the Senator from Iowa, that somebody is going to come up to me someday and say: GRASSLEY, just leave my Medicare alone.

They do not follow Congress closely, but they read here and there and they get nervous: What Senator is taking away their Medicare? I can say to Mary Smith in Columbus Junction, IA: You do not have to worry about anything. If you are satisfied with the Medicare you have, you can keep it. If you want to join a prescription drug program to add to it, you can do that, but you do not have to worry about Medicare. If you like it the way it has been all your life, we are leaving it alone.

I think that sounds like protection for Senator GRASSLEY, but I am concerned about the cynicism my seniors

have about Government, maybe because they do not study it as much as we do or understand it as much as we do. I want to reduce that cynicism, but I want them to have confidence in their Medicare as well. I think this right to choose gives them that confidence.

The conference report also includes other important policies that I believe make a much stronger, better bill. First, we make wealthier people pay a slightly higher premium. Why should someone who makes $80,000 a year or more pay exactly the same price for coverage as someone who makes $30,000 a year? The conference report makes wealthy seniors pay slightly more, and this is a very important and rational step toward stabilizing Medicare's growth.

The conference report also injects new and transparent accountancy rules into Medicare, making the trustees show in a comprehensive way what all of Medicare's assets and liabilities truly are. There are also expedited procedures for committee consideration of legislation that addresses any future Medicare funding crisis without changing the Senate rules.

Finally, and in my view most importantly, the conference agreement authorizes health savings accounts. I have been a long-time supporter of medical savings accounts. Now they are going to be called health savings accounts. Such tax-favored accounts encourage responsible utilization of health care services. They offer low-cost insurance to farmers and other self-employed people. For too long, medical savings accounts have languished under regulatory inflexibility. The provisions in the conference report go to great length to make medical savings accounts a stronger, more accessible option for more Americans, and I think that is very appropriate because it adds to the right to choose.

We are in a unique moment in our history as far as health insurance legislation is concerned. We have a limited opportunity to deliver on our promises to get this done once and for all.

Let me remind everyone, there is $400 billion sitting in front of America's seniors. If we let partisan disagreement prevent us from snatching it up for them, shame on us because, what do you think the chances are next March of this Senate adopting a budget with $400 billion set aside for Medicare? I think the chances of that happening are not very good.

Let's not allow the perfect to be the enemy of the good. I urge my colleagues to continue in the bipartisan tradition of the Finance Committee and deliver a balanced bipartisan product that does right by our seniors.

I yield the floor. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Ms. COLLINS. Madam President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mrs. DOLE). Without objection, it is so ordered.

VISION 100—CENTURY OF AVIATION REAUTHORIZATION ACT—CONFERENCE REPORT

Ms. COLLINS. Madam President, I ask unanimous consent that the Senate now proceed to the conference report to accompany H.R. 2115, the FAA authorization bill.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will report.

The legislative clerk read as follows:

The Committee of Conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 2115), to amend title 49, United States Code, to reauthorize programs for the Federal Aviation Administration, and for other purposes, having met, have agreed that the House recede from its disagreement to the amendment of the Senate, and agree to the same with an amendment, signed by a majority of the conferees on the part of both Houses.

The PRESIDING OFFICER. The Senate will proceed to the consideration of the conference report.

(The conference report is printed in the House proceedings of the RECORD of July 25, 2003.)

Ms. COLLINS. Madam President, I ask that the conference report be agreed to, the motion to reconsider be laid upon the table, and any statements relating to the conference report be printed in the RECORD.

Mr. REID. Reserving the right to object, I would like to extend the appreciation of the entire Senate, especially on this side, to those who worked to allow us to be at this point: Senators LAUTENBERG, DORGAN, and ROCKEFELLER, and the ranking member of the committee, Senator HOLLINGS, and the cooperation of Senator LOTT, and others. This is a very important piece of legislation for the State of Nevada but also for the entire country. I underscore the very good work of the individuals I mentioned.

This is not perfect, but it goes a long way to protecting working men and women who make it possible for everyone to fly safely in America today.

Madam President, I ask unanimous consent that copies of a letter from Marion C. Blakey, the Administrator of the Federal Aviation Administration, be printed in the RECORD.

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

DEPT. OF TRANSPORTATION,
FEDERAL AVIATION ADMINISTRATION,
Washington, DC., November 21, 2003.

Hon. ERNEST HOLLINGS,
Russell Senate Office Building,
Washington, DC.

DEAR SENATOR HOLLINGS: I have received your November 13, 2003 letter regarding the issue of contracting out functions performed by Federal Aviation Administration (FAA) employees. Your letter requested clarification on the status of ''contracting out'' of FAA functions related to flight services and the certification or maintenance of air traffic control equipment used in the national airspace system. I understand that you are not advocating that the FAA in-source any functions currently performed by contractors or cease work and analysis already underway. As you know, several months ago the FAA initiated a competitive sourcing process with respect to the FAA's Automated Flight Service Stations (AFSS). Under the FAA's current schedule, the final source selection decision with respect to the AFSS competition will occur early in fiscal year 2005.

During this fiscal year we have no plans to initiate additional competitive sourcing studies, nor will we displace FAA employees by entering into binding contracts to convert to private entities any existing FAA position directly related to our air traffic control system.

I look forward to working with the Committee on the important challenges facing the Federal Aviation Administration. The Conference Report contains many provisions which will provide us with important tools to enhance aviation safety, security, and capacity. Thank you for your efforts on this important piece of legislation.

Sincerely,

MARION C. BLAKEY,
Administrator.

DEPT. OF TRANSPORTATION,
FEDERAL AVIATION ADMINISTRATION,
Washington, DC, November 21, 2003.

Hon. JOHN MCCAIN,
Chairman, Committee on Commerce, Science and Transportation, Russell Senate Office Building, Washington, DC.

DEAR MR. CHAIRMAN: I have received your November 13, 2003 letter regarding the issue of contracting out functions performed by Federal Aviation Administration (FAA) employees. Your letter requested clarification on the status of ''contracting out'' of FAA functions related to flight services and the certification or maintenance of air traffic control equipment used in the national airspace system. I understand that you are not advocating that the FAA in-source any functions currently performed by contractors or cease work and analysis already underway. As you know, several months ago the FAA initiated a competitive sourcing process with respect to the FAA's Automated Flight Service Stations (AFSS). Under the FAA's current schedule, the final source selection decision with respect to the AFSS competition will occur early in fiscal year 2005.

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Sincerely,

MARION C. BLAKEY,
Administrator.

Mr. MCCAIN. Mr. President, I am pleased that the Senate is about to vote on the Conference Report to H.R. 2115, the FAA reauthorization bill. This legislation is critical to our Nation's air transportation system, providing necessary funding for aviation safety and security for fiscal years 2004 to 2007.

CIvil aviation generates more than $900 billion in GDP every year, and we all know that it has faced very difficult economic times. Since September 11, 2001, Congress has passed a number of bipartisan aviation bills to aid the industry and, more importantly, to assure that the air traveling public could continue to rely on this vital transportation mode. Among the many bills enacted, we established the Transportation Security Administration (TSA) to oversee aviation security; we provided grants and loans to help the airline industry through their difficult economic times; and we extended terrorism insurance to the aviation industry. Without these important measures, the aviation industry would be in far worse condition.

The Conference Report pending before us is as important to the health of our aviation system as any of the other bills I just mentioned. This multi-year FAA authorization legislation is needed by airports, so that airport construction projects don't come to a halt and cause layoffs in the construction sector. It is needed by aviation manufacturers and by the airline industry. Above all, it is needed by our air travelers, who rely on a safe and security air transportation system.

The Conference Report on H.R. 2115 authorizes over $60 billion in aviation spending over the next four years to improve our Nation's aviation system. It includes: $14.2 billion for security, safety and capacity projects for the Airport Improvement Program (AIP)—over 50 percent of this funding is likely to be spent on safety projects. In fiscal year 2004 alone, this funding will create approximately 162,000 direct and indirect jobs. However, the AIP funding ONLY becomes available if this Conference Report is signed into law—the passage of the transportation appropriations bill is NOT sufficient to make the funds available; $13.3 billion to modernize the air traffic control system; $31 billion to operate the FAA's air traffic control system and to support the FAA's safety programs; $1.6 billion for aviation research and development; $2 billion for airport security projects, and, $500 million for the Essential Air Service program. The majority of this funding will come from the Aviation Trust Fund, which is supported by taxes paid by the users of the system.

Although this Conference Report provides a great boost for the modernization of the aviation system and for increasing capacity and efficiency, there are also numerous provisions in the Conference Report that will improve aviation safety and security.

In support of improving safety, the Conference Report strengthens FAA enforcement against the users of fraudulent aircraft parts; increases penalties that the FAA may impose for safety violations—fines have not been adjusted since 1947, and as such, are sometimes simply treated as the cost of doing business by the entity being fined; and requires the FAA to update and improve its airline safety oversight program.

In support of improved aviation security, the Conference Report includes $500 million per year to finance security capital improvements at airports—including the installation of explosive detection systems. After September 11, almost $500 million per year in AIP funds were diverted to security projects from safety and capacity projects. Although this may have been justifiable immediately after September 11, in the long run, a continuation of such diversion could be detrimental to the aviation system; extends the Secretary of Transportation's authority to provide War Risk insurance to airlines against terrorism; expands the armed pilot program to include cargo pilots; requires the TSA to improve the security at foreign repair stations that conduct work on U.S. aircraft; authorizes compensation to general aviation entities for losses resulting from security mandates; and provides for certification and better security training for flight attendants.

In order to improve air transportation service, especially to smaller and rural communities, the Conference Report contains a number of provisions. The report reauthorizes the Essential Air Service (EAS) at current funding levels; establishes a number of EAS pilot programs to give communities flexibility in how they receive EAS service; makes permanent the Small Community Air Development program; establishes a National Commission on Small Community Air Service to make recommendations on how to improve air service to such communities; and includes a Sense of Congress that airlines should provide the lowest possible fare for all active duty members of the Armed Forces.

Further, for large airports in Western States and smaller airports in the East, it frees up more takeoff and landing slots at Reagan National Airport.

The Conference Report addresses numerous environmental issues. It streamlines environmental review of projects to increase airport capacity and improve aviation safety and security; authorizes grants to airports to permit them to purchase or retrofit low emission vehicles at airports; and authorizes projects that improve air quality and give airports emission credits for undertaking such projects.

I want to recognize all the hard work that Senator LOTT, as Chairman of the Aviation Subcommittee, has put into the bill this year. Last winter, many in the aviation community predicted that Congress would not enact an aviation reauthorization bill this year. Senator LOTT would not even consider such a scenario and kept us on a schedule where the Conference Report was actually completed before the August recess. This was only possible, as always, due to the work and cooperation on this bill from the ranking Democratic members of the Commerce Committee and its Aviation Subcommittee, Senators HOLLINGS and ROCKEFELLER.

I also wish to thank Senator DORGAN for his work in brokering the compromise that allowed us to move forward with this Conference Report today. And I want to thank the administration, especially Secretary Mineta and FAA Administrator Blakey, in working long and hard with us to get a final compromise on the issue of privatization.

I urge my colleagues to support final passage of the Conference Report and send it to the President.

Mr. HOLLINGS. Mr. President, I rise today to express my support for passage of H.R. 2115, Vision 100—Century of Aviation Reauthorization Act. I am pleased that we have finally reached agreement on this important legislation and can now move forward on enacting this bill into law. This comprehensive reauthorization bill will provide $60 billion in funding for FAA operations, including some $14.2 billion for airport grants that will create an estimated 600,000 jobs and support for key aviation projects in communities across the country.

Achieving consensus on the conference report has not been easy, and while I think all of us should be encouraged by the results of these efforts, we should take this opportunity to fully consider and appreciate the critical role that compromise has played in achieving this positive result. Colleagues on both sides of the aisle have expressed their concerns about the process by which the FAA Conference Report was deliberated and produced. FAA reauthorization bills have always been moved out of Congress with little controversy, but after passing a bill on the Senate floor with unanimous support and cooperating on developing the bulk on the FAA Reauthorization bill, Democrats were cut out of the process. This was an unacceptable development that violated the spirit of this body, and ultimately it led to the creation of flawed legislation.

For three months after it was filed, there was a lack of will in Congress to pass the FAA Conference Report in the form that the Republican leadership demanded. As a result, FAA projects went unauthorized after the fiscal year ended, and in an effort to end the stalemate they had created the House Leadership was forced to recommit the legislation on October 28, 2003. At this time, they stripped out the most troubling provision in the bill—language that allowed for the immediate privatization of 69 of FAA's air traffic control (ATC) towers and the entire ATC system in 2007. However, the Senate remained unsatisfied with the bill's lack of protection for the Nation's ATC system after it was recommitted, and we voted against cloture 45-43 on November 17, 2003.

Prior to the vote, I worked with Senators MCCAIN, ROCKEFELLER, and LOTT

to seek commitment from the Bush administration to impose a 1-year moratorium on the contracting out or privatization of any ATC functions so that the Senate Commerce Committee can properly conduct its oversight responsibilities of this matter. The Committee plans to hold hearings on this subject next year, and we will also request detailed analyses from the Government Accounting Office and the Department of Transportation Inspector General (DOT IG) in an effort to determine how to best enhance safety, the steps that should be taken to keep pace with future growth, and the best way for the Federal Government to get there.

Today, we have received the proper commitment from the Bush administration to proceed in this manner. Under the arrangement, the FAA has agreed not to proceed with the privatization or outsourcing of any FAA air traffic separation and control functions in fiscal year 2004. The written agreement includes a prohibition on contracting out the maintenance and certification of the systems and equipment in the air traffic control system in the National Airspace System. In addition, the Administration has committed to maintaining the existing Federal relationship with the Nation's Flight Service Stations, with the understanding that they will be allowed to continue on-going evaluations of how best to revamp the entire program. The DOT IG's office has estimated that consolidation of the FSSs, combined with a new computer system, could provide a better arrangement and save $500 million over 7 years.

With this understanding in place, I am pleased that we can now move forward with broad support for a multiyear reauthorization of FAA programs. Indeed, H.R. 2115 has many good provisions in it that will go a long way towards improving and enhancing our aviation system as we move into the 21st Century. I would like to add that conservative estimates by the FAA show that the formula funding in this legislation will provide more than $112 million and at least 5,325 jobs in my home State of South Carolina over the next 4 years. I look forward to passing the bill.

Finally, I want to thank Chairman MCCAIN, Senator LOTT, the Aviation Subcommittee Chairman, and Ranking Member ROCKFELLER for all of their hard work over the last several days and for the long months that they put in prior to that. We came together with a common purpose—to pass this Conference Report—and with bipartisan cooperation have developed comprehensive legislation that provides the American people the proper level of safety, security and financial support.

Mr. ROCKEFELLER. Mr. President, I am pleased to finally be able to support the adoption of the Federal Aviation Administration conference report.

The process that allowed us to get to this point has been unlike any other that I have ever experienced in my 19 years in the Senate, but we have secured a commitment from the administration that they will not move forward with contracting out any air traffic control functions, which has prevented the Senate from passing this report. I am pleased that my colleagues have confirmed this commitment.

Over the last year, I have worked closely with Senators MCCAIN, HOLLINGS, and LOTT on developing this important legislation. I thank them for all of their efforts on getting this bill done. It has not gone as easy as any of us would have liked, but the debate on privatization is important as it is fundamentally a debate on safety and security. Senator LAUTENBERG should be commended for his unrelenting commitment to making sure the United States has the safest and most secure air traffic control system in the world.

We have secured an agreement on this issue that all parties can accept, but it does not mean that this debate is over. I know my colleagues have committed to holding hearings on this issue, and we will be closely monitoring the administration's actions in this area.

The reauthorization of the FAA is a vitally important piece of legislation. It would be the first genuine economic stimulus bill that the Senate has passed this year.

No question exists that since the tragedy of September 11, aviation in this country has been permanently changed. Over the last 2 years, we have seen a decrease in the demand for air travel, hundreds of thousands of aerospace and aviation employees have lost their jobs and the economic pain has rippled through the economy. We cannot have a sustained economic recovery in this country until we have a healthy and vibrant aviation industry.

This bill provides the foundation for the resurgence of an essential sector of our economy.

I cannot emphasize the importance of a vibrant and strong aviation industry. It is fundamental to our nation's long-term economic growth. It is also vital to the economic future of countless small and local communities that are linked to the rest of the nation and world through aviation.

Just as the aviation industry is a catalyst of growth for the national economy, airports are a catalyst of growth for their local communities. In my State of West Virginia, aviation represents $3.4 billion of the state's gross domestic product and directly and indirectly employs over 51,000 people.

Aviation also links our Nation's small and rural citizens and communities to the national and world marketplace. My home State of West Virginia has been able to attract firms from Asia and Europe because of reliable access to their West Virginia investments.

Without access to an integrated air transportation network, small communities can not attract the investment necessary to grow or allow home grown businesses to expands. A modern and adequately funded aviation network is fundamental to making sure that all Americans can participate in the global economy. This bill makes sure the United States will continue to have the best aviation system in the world.

This legislation builds upon our commitment to improving the aviation infrastructure of the nation that started with the landmark Aviation Investment and Reform Act for the 21st Century. I believe that this legislation meets the challenges facing the FAA and the aviation industry in the years ahead.

This $60 billion bill focuses on improving our Nation's aviation safety and air service development, and aeronautical research. While my distinguished colleagues have provided an excellent overview of the bill, I would like to highlight some areas for the bill that I believe are particularly important.

No higher goal exists than the safety and security of the Nation's airports and airspace. Over the past 24 months, we have worked every day to improve security in our airports and on our airplanes. However, until this bill, we had fallen short on providing funding to make sure our Nation's airports have the resources available to make the required improvements.

Airports estimate that they have $3 billion in unmet security infrastructure needs. Airports have been forced to tap their expansion and development funds to pay for security. It makes no sense to raid funds for safety improvements for security improvements. The security of our Nation is a Federal responsibility and the Federal Government must pay for it.

One of the most important provisions in this bill is the establishment of a $500 million fund to assist airports with capital security costs. This new fund is intended to stop the diversion of airport development funds meant for safety and capacity enhancements. We will be able to pay for new security requirements while simultaneously improving safety and expanding capacity.

Even in these difficult budgetary times, we were able to modestly increase the Airport Improvement Program funding, which will provide the economy a real stimulus through direct and indirect job creation. Airport development is economic development as airports are economic development for their local communities. It is estimated that U.S. Airports are responsible for nearly $507 billion each year in total economic activity nationwide. Investment in airport infrastructure is a real economic stimulus that creates both immediate jobs and long-term economic development.

In order to facilitate airport development, I am pleased that this bill includes much of the text of the legislation that Senator HUTCHINSON and I worked on last Congress to streamline and expedite the airport development

process. This country needs to expand its airport infrastructure. Without a substantial increase in this area, aviation delays would increase resulting in billions of dollars of costs to the economy.

Finally, we have authorized a significant increase in aeronautical and aviation research in order to preserve America's leadership in these industries.

Today, we also meet the challenge of making sure our small and rural communities have access to the nation's air transportation network. I continue to be very concerned that air carriers are abandoning small and rural markets. We cannot let these communities go without adequate and affordable air service—their future depends upon it.

I am enormously pleased that the bill extends and expands the Small Community Air Service Development Program, which I fought for in AIR 21. In West Virginia, Charleston used funding from this program to attract new service to Houston, which has been a hugh success. Parkersburg was recently awarded a grant and already working on implementing its initiatives to improve air service to new hubs. This program has proven an innovative and flexible tool for communities to address air service needs.

Many of our most isolated and vulnerable communities whose only service is through the Essential Air Service Program have indicated that they would like to develop innovative and flexible programs similar to those communities who received Small Community Air Service Development grants to improve the quality of their air service.

It is for this reason that I, along with Senator LOTT, developed the Small Community and Rural Air Service Revitalization Act of 2003. The FAA conference report incorporates the basic provisions of this legislation. The FAA Bill reauthorizes the Essential Air Service, EAS, program and creates a series of new innovative pilot programs for EAS communities to participate in to stimulate passenger demand for air service in their communities.

By providing communities the ability to design their own air service proposals, a community has the ability to develop a plan that meets its locally determined needs, improves air service choices, and gives the community a greater stake in the EAS program.

Small and rural communities are the first to bear the brunt of bad economic times and the last to see the benefits of good times. The general economic downturn and the dire straits of the aviation industry have placed exceptional burdens on air service to our most isolated communities. The Federal Government must provide additional resources and tools for small communities to help themselves attract adequate air service. The Federal Government must make sure that our most vulnerable towns and cities are linked to the rest of nation. This legislation authorizes the tools and resources necessary to attract air service, related economic development, and most importantly expand their connections to the national and global economy.

This bill meets the challenges facing our aviation system—increasing security, expanding airport safety and capacity, and making sure our smallest communities have access to the network. We can all be proud of this bill.

Again, I thank Senator MCCAIN, Senator LOTT, and Senator HOLLINGS for all their hard work to improve aviation in this country.

Mr. ROCKEFELLER. I have a question for the subcommittee chairman about section 808 of the conference report concerning international air cargo shipped through Alaska.

Mr. LOTT. I am happy to answer the Senator's question. This provision was adopted in the Senate after being offered by the Senator from Alaska.

Mr. ROCKEFELLER. I thank the Chairman. Is it the Chairman's understanding that section 808 only addresses international cargo and does not address the carriage of cargo which first originates in Alaska?

Mr. LOTT. That is correct. Section 808 will allow carriers to interline cargo in Alaska so long as the cargo has an ultimate origin and/or destination outside of the United States. It does not allow foreign carriers to carry or transfer cargo with an ultimate origin and destination both in the United States.

Mr. STEVENS. I thank my colleagues for explaining that this important provision allows carriers to interline cargo in Alaska, with an ultimate origin and/or destination outside of the United States, but does not allow foreign carriers to carry or transfer cargo with an ultimate origin and destination both in the United States.

Mr. BURNS. Mr. President, I come to the floor today in support of the conference report accompanying H.R. 2115, which reauthorizes the Federal Aviation Administration (FAA).

Vision 100—Century of Aviation Reauthorization Act would provide just under $60 billion over the next 4 years for FAA activities. These are much needed funding improvements because we find ourselves in one of the greatest transition periods as a country, and as proponents of the aviation industry, in the history of our nation. With the slow recovery of the industry and the economy since the attacks of 9/11 it is important we pass this legislation immediately.

As a member of the conference, my colleagues and I addressed several important issues and challenges. One of the most important achievements is the progress made in funding the Airport Improvement Program, which is funded at $3.4 billion in 2004 and increases $100 million each year ending at $3.7 billion in 2007. This is a necessary increase, as we need to constantly improve our Nations' airport infrastructure especially in rural and underserved areas.

Mr. President, as you know, several provisions in or absent from the bill have bogged down its passage. As a member of the conference, even I do not support all provisions in this bill, but I understand the importance of the bill as a whole and the potential pitfalls our infrastructure will take if not enacted.

I do not intend to discuss the entire report, but there are several critical provisions I would like to briefly address which greatly affect my State of Montana and my constituents.

The first provision is intended to make additional slots available to improve access to the Nation's Capital for cities located beyond the 1,250 mile service perimeter at Ronald Reagan Washington National Airport, DCA. I am particularly concerned that small and midsized communities in the west, especially in Montana and neighboring states, continue to have far fewer service options to reach DCA than communities located in any other area of the country. This is due to the fact that the most important hub airport serving the northern tier and intermountain region, Salt Lake City, is located outside the DCA perimeter.

Network benefits are critical to improving this situation, and it is very important that the Department of Transportation consider and award these limited opportunities to western hubs that connect the largest number of cities to the national transportation network. Salt Lake City is a prime example. That airport serves as a primary transportation hub for the intermountain west. I was very disappointed that Salt Lake City received only a single flight from the prior AIR–21 allocation, while other hubs servicing the southwest region received two, or even three daily flights. Increased service at Salt Lake City should be a priority, because of the many critically underserved communities in the northern tier and intermountain west that will receive significant network benefits from additional flights at that hub.

The second issue is the Essential Air Service Program, EAS. As you know, the EAS program provides subsidies to carriers for providing service between small communities and hub airports and is, no pun intended, essential to my state. This report authorizes approximately $500 million for EAS, and I am extremely supportive of that level.

Unfortunately, the conference report also contains a provision, which directs the DOT to establish a pilot program for up to 10 EAS communities located within 100 miles of a large hub, and those communities will be required to pay 10 percent match of the EAS subsidy. While this provision does not affect my Montana EAS communities, I am still extremely unsupportive of this provision. If any Montana communities were asked to pay this match, there is no way they could come up with the funds. I want this body to know I will

fight expansion of this pilot program in future authorizations. While we need to work on possible alternatives to EAS, we cannot ask small communities across the Nation to fork out funds they do not have for a service they deserve and need.

Finally, this report contains language based on two amendments I offered on the Senate floor during debate earlier this year. The first asks for a report from the Secretary of Transportation on any actions that should be taken with respect to recommendations made by the National Commission to Ensure Consumer Information and Choice in the Airline Industry. The second amendment authorizes compensation to General aviation businesses for losses incurred after the attacks of 9/11. General aviation is an extremely important piece of this country's aviation backbone and we need to keep their perspective in mind whenever any aviation legislation is addressed whether it deals with security or overall aviation policy.

In summation, we have crafted a fair and necessary piece of legislation that needs immediate passage. I ask my colleagues to support final passage of this critical piece of legislation that will aide all aviation sectors across this Nation.

Mr. JEFFORDS. Mr. President, I have serious concerns about several provisions found in the FAA reauthorization conference report. Before the Senate passed S. 824, the FAA reauthorization bill, we expressly prohibited additional privatization of air traffic controllers. We also eliminated a proposed cost-sharing requirement for local communities that participate in the essential air service program. This requirement would have placed an insurmountable burden on many remote communities struggling to maintain commercial air service. While I understand that Administrator Blakey today has promised our Senate colleagues to forestall privatization until the next fiscal year, I am concerned that the window is nevertheless open for eventual privatization and would not support such a result.

I remain concerned about the provisions in this bill affecting the National Environmental Policy Act, NEPA. As I discussed in my statement of November 17, 2003, the legal obligations of Federal agencies to evaluate aviation projects under Federal environmental laws have not been repealed by the language in this bill, nor should they be. If better coordination is the intent of this legislation, there is ample authority contained in the existing NEPA statute and regulations for coordination among Federal agencies in performing required environmental reviews of these projects. The confusing statutory directions contained in this bill are both unnecessary and counterproductive if the desired result is efficient project completion.

I am disappointed that this conference report contains these provisions, and I will work to ensure that the FAA scrutinizes the potential consequences of privatization of air traffic controllers if that issue arises next year. In addition, as the ranking member of the Environment and Public Works Committee, I will continue to conduct oversight pertaining to the implementation of environmental laws for these and other Federal projects.

Mr. THOMAS. Mr. President, as the Senate considers the final conference report to the FAA reauthorization bill, I would like to take a moment to thank Chairman MCCAIN and subcommittee Chairman TRENT LOTT, for their assistance regarding a provision that is very important to my home State.

For years, I have been working with the FAA and the Jackson Hole Airport to reduce the noise that is produced by older private jets. As some of my colleagues know, the Jackson Hole Airport is the only commercial airport that is located in a national park. Since 1983, the Jackson Hole Airport has operated under a ''land use agreement'' with the Secretary of the Interior. This agreement requires the airport to implement technological advances to reduce aircraft noise.

However, the FAA has prevented the airport from instituting a Stage 2 restriction on older ''noisy'' private jets even though the Air Noise Capacity Act of 1990 includes a provision that allows folks to enforce pre-existing noise control measures. Currently, only a small portion, 2.6 percent, of the airport's operations are conducted by older noisy jet aircraft. However, these old noisy jets have a disproportionately high noise impact on Grand Teton National Park and the National Elk Refuge. Because the FAA has failed to recognize the grandfathered status of the Jackson airport, I offered an amendment to the Senate version of the FAA reauthorization bill.

On June 12 the Senate unanimously agreed to my amendment. I am thankful for Senator MCCAIN's and House Chairman DON YOUNG's understanding regarding the need to protect Grand Teton National Park and the National Elk Refuge from the high levels of noise that older private jets produce. The provision is supported by the Jackson Airport Board, Grand Teton National Park, the Town of Jackson, Teton County, and U.S. Department of the Interior.

Mr. President, the Jackson Hole Airport is a commercial service airport located on Federal land within Grand Teton National Park. It operates under a long-term lease agreement with the Department of the Interior. That agreement contains noise control measures, including cumulative and single event noise limits, and requirements for an airport-adopted noise control plan.

Section 825 of the conference report authorizes a commercial service airport that does not own the airport land and is a party to a long-term lease with a Federal agency, such as the Department of the Interior, to restrict or prohibit Stage 2 aircraft weighing less than 75,000 pounds, to help meet the noise control plan contained in its lease.

It is my understanding that the conferees did not intend to limit application of section 825 to only those noise control measures that are expressly referred to as ''plans,'' but intended the term to refer to the range of noise control requirements and standards imposed by these Federal lease agreements.

Mr. MCCAIN. The Senator from Wyoming is correct. The conferees intended ''plan'' to refer to the range of requirements and standards contained in a Federal lease, which together constitute its plan to limit airport-generated noise. Section 523 of the Senate bill, introduced by the Senator from Wyoming, would have given similar authority to the Jackson Hole Airport Board. The conference substitute will permit the Jackson Hole Airport, and others if subject to similar Federal lease requirements, to adopt these measures.

Mrs. MURRAY. Mr. President, I rise in strong support of the Vision 100–Century of Aviation Reauthorization Act. This bill authorizes critical aviation infrastructure and operations spending for the fiscal years 2004 through 2007. The bill also makes important legislative adjustments for our aviation security program at the Transportation Security Administration.

I represent a State with tens of thousands of aviation workers. I appreciate fully the essential contribution that our Nation's aviation industry makes to our national economic prosperity. As the former chairman and now ranking member of the Transportation Appropriations Subcommittee, I spend a considerable amount of my time seeing to it that the needs of our national aviation enterprise are adequately funded.

As my colleagues are aware, consideration of this FAA authorization bill has been delayed for an extraordinary period of time over the issues surrounding the Bush administration's stated desire to privatize certain aspects of our Nation's air traffic control system.

At one time, this legislation included language that specifically authorized the FAA Administrator to privatize the controller workforce at scores of air traffic control towers, including the air traffic control tower at Boeing Field in Seattle. Senators who are not familiar with the geography of the greater Seattle area may not be aware that Boeing Field sits right between Seattle-Tacoma International Airport and downtown Seattle. It is extraordinarily close to our port, our central business district, our major sporting venues—Safeco Field and the Seahawks Stadium. It is also a major installation for the Boeing Company and a busy general aviation airport.

In the wake of the events of September 11, 2001, I cannot support a proposal to contract out the air traffic control function to the lowest bidder in the heart of this critically important corridor.

Immediately after September 11, this Congress passed legislation to take the air passenger screening function out of the hands of private bidders and place it in the hands of a federalized screening force. For the life of me, I do not understand why the Bush administration wants to take the exact opposite approach when it comes to the highly skilled personnel that actually control the movement of our aircraft.

The administration has also cited an interest in privatizing other aspects of our Nation's national air traffic control enterprise, including the employees at our Nation's flight service stations and the technicians that maintain our Nation's air traffic control equipment.

These privatization ideas have not been adequately explained or adequately justified to the Congress or to the public. It has not been determined that such contracting out activities would actually improve upon the exemplary safety record that we currently enjoy with our air traffic control system. I, along with many of my colleagues, have deep-seated doubts about the safety ramifications, the security ramifications and whether there will be any real financial benefit to the taxpayer as a result of such a privatization scheme. It was for these reasons that I and 42 of my Senate colleagues, both Democrats and Republicans, were required to vote against bringing debate on this bill to a close on November 17, and why I joined 55 of my colleagues in support of a measure to explicitly exclude privatization of our air traffic control towers during the initial debate on the Senate bill. At that time, we did not have what I considered to be adequate assurances from the FAA that they would not be launching into these privatization schemes in the very near future.

I am pleased that we have now overcome this hurdle and the administration has given us assurances that they will not engage in any competition studies or outsourcing activities for air traffic controllers or for maintenance and technician personnel during fiscal year 2004. This will give the Congress some time to review the administration's plans in detail, which I intend to do during next year's appropriations' hearings process. Also, with the written assurance now in hand that no outsourcing activities related to our air traffic control system will take place in 2004, we can, if need be, work on putting sufficient safeguards in the 2005 Transportation Appropriations Act if we feel that the administration is heading in the wrong direction when it comes to protecting safety and security.

It is for these reasons that I am relieved by the administration's new letter on this topic which I understand has already been put into the RECORD. I am glad that we have overcome this hurdle.

This bill will provide investments in critical infrastructure and operations at our Nation's airports. Furthermore, it will allocate needed funding to continue our efforts to improve the security of aviation system.

For these reasons, I support this important conference report today.

The PRESIDING OFFICER. Without objection, the request of the Senator from Maine is so ordered.

The conference report was agreed to.

Ms. COLLINS. Madam President, I see the Senator from North Dakota. If the Senator has a very brief comment to make, I yield to him.

Mr. DORGAN. Madam President, I appreciate the courtesy of the Senator from Maine. Let me say with respect to the unanimous consent she just offered to pass the FAA conference report, I would like to say that Senator LAUTENBERG has led the fight in this Chamber to try to prevent the privatization during this coming fiscal year of those who work for the FAA. That fight required us to go through one cloture vote and the majority did not invoke cloture. As a result, the FAA conference report was not passed.

Since that time, I and Senators LAUTENBERG, HOLLINGS, LOTT, ROCKEFELLER and others have engaged in discussions with the administration. I want to point out that the letter just printed in the RECORD by unanimous consent is from Marion Blakey. She says:

> During this fiscal year we have no plans to initiate additional competitive sourcing studies, nor will we displace FAA employees by entering into binding contracts to convert to private entities any existing FAA position directly related to our air traffic control system.

I point out that the reason we were able to move this conference report tonight was because the administration has agreed they will not, during this fiscal year, privatize those positions in the FAA. That is a very important position, one that my colleague, Senator LAUTENBERG, from New Jersey, fought very hard for. We have achieved that commitment from the administration.

For that reason, we were able to move that FAA reauthorization. Let me say how pleased I am because it is so important to virtually every region of this country. The investment in the Airport Improvement Program and the other things that provide strength to the FAA system is very important to our country.

Let me thank my colleague from Maine. I wanted to explain the circumstances that have led to this point and especially say I have been pleased to work with Senator LOTT, in many contacts over recent days, to try to accomplish this and again say that my colleague from New Jersey, Senator LAUTENBERG, deserves a pat on the back for forcing this result.

I yield the floor.

The PRESIDING OFFICER. The Senator from Maine.

NATIONAL WOMEN'S HISTORY MUSEUM ACT OF 2003

Ms. COLLINS. Madam President, I ask unanimous consent the Senate now proceed to consideration of Calendar No. 404, S. 1741, a bill to provide a site for the National Women's History Museum in the District of Columbia.

The PRESIDING OFFICER. The clerk will report the bill by title.

The assistant legislative clerk read as follows:

> A bill (S. 1741) to provide a site for the National Women's History Museum in the District of Columbia.

There being no objection, the Senate proceeded to consider the bill.

Ms. COLLINS. Madam President, I ask unanimous consent the bill 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 bill (S. 1741) was read the third time and passed, as follows:

S. 1741

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 ''National Women's History Museum Act of 2003''.

SEC. 2. FINDINGS.

Congress finds that—

(1) the National Women's History Museum, Inc., is a nonprofit, nonpartisan, educational institution incorporated in the District of Columbia;

(2) the National Women's History Museum was established—

(A) to research and present the historic contributions that women have made to all aspects of human endeavor; and

(B) to explore and present in a fair and balanced way the contributions that women have made to the Nation in their various roles in family and society;

(3) the National Women's History Museum will collect and disseminate information concerning women, including through the establishment of a national reference center for the collection and preservation of documents, publications, and research relating to women;

(4) the National Women's History Museum will foster educational programs relating to the history and contribution to society by women, including promotion of imaginative educational approaches to enhance understanding and appreciation of historic contributions by women;

(5) the National Women's History Museum will publicly display temporary and permanent exhibits that illustrate, interpret, and demonstrate the contributions of women;

(6) the National Women's History Museum requires a museum site near the National Mall to accomplish the objectives and fulfill the ongoing educational mission of the museum;

(7) the 3-story glass enclosed structure known as the ''Pavilion Annex'' is a retail shopping mall built next to the Old Post Office in 1992 by private developers using no Federal funds on public land in the Federal

Triangle south of Pennsylvania Avenue, N.W.;

(8) the Pavilion Annex came into the possession of the General Services Administration following bankruptcy and default by the private developer of the Old Post Office Pavilion;

(9) the Pavilion Annex has been vacant for 10 years and is in a state of disrepair;

(10) the Pavilion Annex is located near an area that has been identified as an ideal location for museums and memorials in the Memorials and Museums Master Plan developed by the National Capital Planning Commission;

(11) the National Women's History Museum will provide a vibrant, cultural activity in a building currently controlled by the General Services Administration but unused by any Federal agency or activity;

(12) the General Accounting Office has determined that vacant or underutilized properties present significant potential risks to Federal agencies, including—

(A) lost dollars because of the difficulty of maintaining the properties; and

(B) lost opportunities because the properties could be put to more cost-beneficial uses, exchanged for other needed property, or sold to generate revenue for the Government;

(13) the National Women's History Museum will use Government property for which there is no Government use as of the date of enactment of this Act, in order to—

(A) promote utilization, economy, and efficiency of Government-owned assets; and

(B) create an income producing activity;

(14) the National Women's History Museum will attract an estimated 1,500,000 visitors annually to the District of Columbia; and

(15) the National Women's History Museum will promote economic activity in the District of Columbia by—

(A) creating jobs;

(B) increasing visitor spending on hotels, meals, and transportation; and

(C) generating tax revenue for the District of Columbia.

SEC. 3. DEFINITIONS.

In this Act:

(1) ADMINISTRATOR.—The term ''Administrator'' means the Administrator of General Services.

(2) MUSEUM SPONSOR.—The term ''Museum Sponsor'' means the National Women's History Museum, Inc., a nonprofit organization incorporated in the District of Columbia.

(3) PAVILION ANNEX.—The term ''Pavilion Annex'' means the building (and immediate surroundings, including any land unoccupied as of the date of enactment of this Act) in Washington, District of Columbia that is—

(A) known as the ''Pavilion Annex'';

(B) adjacent to the Old Post Office Building;

(C) located on Pennsylvania Avenue, N.W., to the east of 11th Street N.W.; and

(D) located on land bounded on 3 sides by the Internal Revenue Service buildings.

SEC. 4. OCCUPANCY AGREEMENT.

(a) IN GENERAL.—Notwithstanding any other provision of law, the Administrator shall enter into an occupancy agreement to make the Pavilion Annex available to the Museum Sponsor for use as a National Women's History Museum in accordance with this section.

(b) APPRAISAL.—

(1) IN GENERAL.—Not later than 90 days after the date of enactment of this Act, a fair market value for the purpose of determining rent shall be determined by not more than 3 appraisers, operating under a common set of instructions, of whom—

(A) 1 shall be retained by the Administrator;

(B) 1 shall be retained by the Museum Sponsor; and

(C) 1 shall be selected by the first 2 appraisers only if—

(i) the first 2 appraisals are irreconcilable; and

(ii) the difference in value between the first 2 appraisals is greater than 10 percent.

(2) DIFFERENCE OF NOT MORE THAN 10 PERCENT.—If the 2 appraisals differ by not more than 10 percent, the fair market value shall be the average of the 2 appraisals.

(3) IRRECONCILABLE APPRAISALS.—If a third appraiser is selected—

(A) the fee of the third appraiser shall be paid in equal shares by the Administrator and the Museum Sponsor; and

(B) the fair market value determined by the third appraiser shall bind both parties.

(c) TERM OF OCCUPANCY AGREEMENT.—

(1) IN GENERAL.—The term of the occupancy agreement shall be at least 99 years, or any lesser term agreed to by the Museum Sponsor.

(2) FIRST PAYMENT.—The first payment shall be due on the date that is 5 years after the date of execution of the occupancy agreement.

(d) PRIVATE FUNDS.—The terms and conditions of the occupancy agreement shall facilitate raising of private funds for the modification, development, maintenance, security, information, janitorial, and other services that are necessary to assure the preservation and operation of the museum.

(e) SHARED FACILITIES.—The occupancy agreement may include reasonable terms and conditions pertaining to shared facilities to permit continued operations and enable development of adjacent buildings.

(f) RENOVATION AND MODIFICATION.—

(1) IN GENERAL.—The renovation and modification of the Pavilion Annex—

(A) shall be carried out by the Museum Sponsor, in consultation with the Administrator; and

(B) shall—

(i) be commenced as soon as practicable but not later than 5 years after the date of execution of the occupancy agreement;

(ii) sever the walkway to the Old Post Office Building; and

(iii) enhance and improve the Pavilion Annex consistent with the needs of the National Women's History Museum and the adjacent structures.

(2) EXPENSE CREDIT.—Any expenses incurred by the Museum Sponsor under this subsection shall be credited against the payment under subsection (c)(2).

(g) REPORT.—If the Administrator is unable to fully execute an occupancy agreement within 120 days of the date of enactment of this Act, not later than 150 days after the date of enactment of this Act, the Administrator shall submit to the Committee on Governmental Affairs in the Senate and the Committee on Government Reform in the House of Representatives a report summarizing the issues that remain unresolved.

SEC. 5. EFFECT ON OTHER LAW.

Nothing in this Act limits the authority of the National Capital Planning Commission.

Ms. COLLINS. Madam President, I now ask unanimous consent to engage in a colloquy with the Senator from Alaska, and I yield to the Senator from Alaska for that purpose.

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

Ms. MURKOWSKI. Madam President, I appreciate the opportunity to speak today and engage in this colloquy with the Senator from Maine. I thank the Presiding Officer for the opportunity to speak about opening a National Women's History Museum near the National Mall.

Currently, the National Women's History Museum is without a home. It is accessible online, but Americans need a physical location for the National Women's History Museum so a history from every State can be collected, viewed, and analyzed.

Recognizing the Senator from Maine and this Senator from Alaska have a connection, both of us coming from Northern States, both of us coming from States with populations that are relatively small, both States have a history that demonstrates a history of pioneering women. Alaska and Maine have historically afforded opportunities that might not be available to women in other States.

Throughout Alaska's and Maine's history, women have had perhaps more opportunities because our populations are isolated, and you are forced to be a little more self-reliant.

Women of Alaska and Maine, as their male counterparts, are ingrained with the ability to make do with what we have. I ask the Senator from Maine if she would agree with some of my statements?

Ms. COLLINS. Madam President, I certainly do agree with the distinguished Senator from Alaska. Both of us have had the opportunity to serve in public office. Both of us come from States that are small in population but large in the impact that women have had on our Nation's history. We are from States with rich histories of accomplishments by women of all backgrounds and cultures.

For example, the legendary Senator Margaret Chase Smith was the first woman in history to serve in both the U.S. House and the Senate.

Pauline Elizabeth Hopkins, who has been called the dean of African-American Women Writers, and who has been considered one of the most prolific black female writers in the beginning of the 1900s, was born in Portland, ME.

Mary Gabriel, of the Passamaquoddy Tribe, was a famous Native-American basket weaver, largely credited with reviving the art in the State of Maine.

Brenda Commander is the first woman to be elected as chief of Maine's Maliseet Indian Tribe.

Is the Senator from Alaska aware of similar accomplishments by Alaskan women?

Ms. MURKOWSKI. We have a history, as I have said, of pioneering women, women who perhaps have done the unexpected, who have reached out into areas that we would not anticipate, at a time we would not anticipate, women such as Kate Carmack, who is especially important in Alaska's history. Kate was an Athabascan woman who married an American trader. She is actually credited with discovering the first gold in Bonanza Creek, which started the Alaska gold rush in 1896.

As the story is told, when Kate first discovered the gold, it was frozen in

the mud. Kate and her husband did not have the grub stake, if you will. They did not have the cash necessary to do the digout that winter. So they literally were sitting on the largest gold discovery in history. Kate's resourcefulness as a skin sower and her skill as an outdoorsman earned enough cash for the family to pull together that grub stake to hit ''pay dirt'' when the ground thawed the next spring.

When we think of women like Kate Carmack in Alaska, who braved some pretty tough, some pretty difficult conditions, I ask the Senator from Maine if she has any similar stories from her State?

Ms. COLLINS. I certainly do. That is a wonderful story of a truly courageous woman.

We have many women such as that throughout Maine's history. Josephine Peary was one such woman. She was married to the great explorer, Robert E. Peary, who was the first to reach the North Pole, not that far from Alaska. They lived together on Eagle Island in Casco Bay, ME. Josephine began exploring when she accompanied her husband to Greenland on a journey sponsored by the Academy of Natural Sciences that would last for a year and a half. That travel, in 1892, made Josephine the first woman in history to be a member of an Arctic exploration team.

I understand that women in Alaska also have been pioneers in expanding opportunities for women to work outside of the home. I wonder if the Senator from Alaska might expand on that.

Ms. MURKOWSKI. We have a lot of firsts that, again, when we look at Alaska's history and recognize we did not become a State until 1959, it is a very recent history, but yet women's involvement in some very important firsts have gone back so many years prior to statehood it really gets your attention.

Historically, Alaskan women were employed in jobs that women in other areas of the country could only dream about. In 1915, Anchorage employed its first female principal in the Anchorage School District, our largest community now, 3 years before World War I and 5 years before women's suffrage was ratified.

A year later, 1916, and still 4 years before national women's suffrage passed, Lena Morrow Lewis is believed to be the first woman to campaign for Alaska's territorial seat in the U.S. Congress. She did not win, but she was certainly followed by other pioneering women in the workforce.

Marvel Crosson was the first female licensed pilot in Alaska in 1927. Mildred Herman became the first woman admitted to the Alaska Bar Association in 1934. And Barbara Washburn was the first woman to climb Mount McKinley, the tallest mountain in North America.

This is all long before Alaska became a State. Other opportunities for women, as we flip through the history books, become very apparent. A woman by the name of Nell Scott became the first woman to serve in the Alaska State legislature in 1937. This was a year before the National Fair Labor Standards Act of 1938 was passed, which established a minimum wage.

Blanche McSmith was the first Black woman to serve in the Alaska State legislature. Sadie Neakok was the first Native Alaskan woman to serve as a magistrate in Alaska in 1960, during the same time period when the struggle for civil rights was raging in the South. Blanche and Sadie began serving in Alaska in very prominent roles 4 years before the Civil Rights Act was passed.

Could the Senator from Maine describe for me some of the pioneering women in her State.

Ms. COLLINS. I would love to share that information with the Senator from Alaska. It is just fascinating to hear the many firsts that women from her State have established.

The Senator from Alaska obviously has a great deal of pride in the history of women in her State.

In Maine, too, we have women who have played influential roles throughout history, but especially in the field of literature.

I am sure all of my colleagues know well the story of Harriet Beecher. She wrote ''Uncle Tom's Cabin'' in 1850 while pregnant with her seventh child. She began writing the book while residing in Brunswick, ME. Her deep religious faith and dedication to bringing to light the problems with slavery encouraged ''Hattie'' to write with such passion that she quickly finished and continued to write an average of a book a year to support her family.

Another famous Mainer, Martha Ballard, also made important contributions. She lived in Hallowell, ME, and was a midwife and a healer. She faithfully maintained a diary from 1785 to 1812, and her meticulous records have provided us with a rare glimpse into the daily life in Maine in the late 1700s and the early 1800s. Her contributions and life were only recently highlighted when Laurel Ulrich documented her work in a Pulitzer Prize winning book ''The Midwife's Tale.''

America's first female novelist, Sally Sayward Barrell, also known as Madam Wood, was born in York, ME, in the southern tip of our State. She wrote five gothic novels, first under the signature of ''A Lady of Massachusetts,'' and then, later, under the signature of ''A Lady of Maine'' when Maine was granted statehood in 1820.

Another pioneering woman was Dorothea Dix. She was born in Hampden, ME, in 1802, and is considered a groundbreaking reformer in the area of treatment for individuals suffering from mental illness. She traveled the Nation advocating for a more compassionate, holistic approach to the treatment of those suffering from mental illness. She was truly ahead of her time. She also successfully lobbied Congress to establish the first and only national Federal mental health facility which would become a world premiere mental health and research center.

I ask my colleague to further expand on how Alaska has supported women and their accomplishments.

Ms. MURKOWSKI. Well, as the Senator has noted, her home State of Maine and Alaska both have a very rich history of groundbreaking women, women who have been pioneers, women who have reached out. I think our States have demonstrated the very supportive nature of moving women forward in their prosperity.

In Alaska, as a for instance, since we are talking about ''for instances and firsts,'' the very first bill ever passed by the Territory of Alaska was the Shoup women's suffrage bill in 1913.

That was our first bill as it related to women's rights. Seven years before women's suffrage was ratified in the rest of the country and 46 years before Alaska became a State, our territorial legislature's first bill was related to women's rights.

I ask the Senator from Maine, in terms of your role model throughout your political career, who would you cite as that role model, that individual?

Ms. COLLINS. I would reply to my friend and colleague from Alaska that my role model and inspiration was the great Senator Margaret Chase Smith. She served as Senator from Maine the entire time I was growing up. She served in the Senate from 1949 to 1972. I realize how fortunate I was to have as a role model this courageous, smart, and brave woman who did so much and set so many firsts for America. I have often thought that the path for my colleague OLYMPIA SNOWE and myself to the Senate was paved by the remarkable Senator Margaret Chase Smith.

I remember well my very first meeting with Senator Smith. I was a senior in high school. I was in Washington for a special program, and she spent nearly 2 hours talking with me. She talked about national defense, her service on the Armed Services Committee and, most of all, about her decision to speak out against the excesses of Joseph McCarthy. That was an extraordinarily brave thing to do, but it was typical of Senator Smith, who had a courageous and independent spirit.

She was the first to do so many things. She was the first Republican Senator elected to the Senate. I would note that when I was elected to the Senate, Maine became the first State to send two Republican women to the Senate to serve at the same time. She was the first woman to serve in both the House and the Senate. She was the first woman to be backed by a major political party in a Presidential election. Long after it became commonplace for women to serve in the highest ranks of our Government, Senator Smith will always be acknowledged and remembered and honored in Maine for her dignity and her courage.

Although I didn't realize it at the time, when I look back at her meeting with me, I realize that that was the first step in a journey that led me to run for her seat 25 years later. I am so proud to hold the seat once held by the legendary Senator Margaret Chase Smith.

Women such as those the Senator from Alaska has spoken of and whom I have talked about today are the reason we are so proud to sponsor a bill that, at no cost to the taxpayers, directs that the Old Post Office Annex be made available to house the National Women's History Museum. We need a place for our country to honor the contributions of women, particularly for young girls who are coming to Washington to be able to go to this museum and learn about some of the remarkable women who have changed American history, about whom the Senator from Alaska and I have talked today. Women's history needs a place in our capital and in our collective American history.

I ask my colleague from Alaska if she would agree with that sentiment. She has been such a leader in getting this bill through.

Ms. MURKOWSKI. I couldn't agree more with the Senator from Maine. Just in the discussion we have had this evening about some of the women from my State and their pioneering enterprises and hearing the stories about the women of Maine, I would love to be able to go somewhere and spend the time to do more research, to find out more about these pioneering women, not only in Alaska and Maine but all of the States in between. By having the women's history museum here in Washington, DC, we will be able to do that.

Women have played such a crucial role in the development of my State, as you have heard, and certainly in the development of yours. By encouraging women's history of all of our respective States, we can see and celebrate this common history from as far apart as Maine to the east and Alaska in the west.

Those frontier women, women of independent spirit, demonstrated self-reliance, themes that embody all American women and the American spirit. I, too, am most proud to be a cosponsor of this bill and thank the Senator from Maine for her leadership in moving this forward so that we do have a place to house these great collections.

Ms. COLLINS. Madam President, I thank the Senator from Alaska for participating in this discussion tonight. She certainly continues that proud tradition in Alaska of women who have made a real difference. I am honored to serve with her. She does an extraordinary job. I also think we would be remiss in not recognizing the contributions of our Presiding Officer today, the Senator from North Carolina, Mrs. DOLE, who also has established so many firsts in American history. I know that she, too, will be prominently featured in this museum once it comes about.

I think we can take great pride in being here tonight and knowing we have passed this legislation unanimously.

I yield the floor and 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. LAUTENBERG. Madam President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Ms. MURKOWSKI.) Without objection, it is so ordered.

AIR TRAFFIC CONTROL

Mr. LAUTENBERG. Madam President, tonight we got some good news. I want to just say a few words about the FAA bill because we have resolved the issue on air traffic control. The good news is that tonight we scored a victory, a victory for safety and a victory for homeland security.

As many of my colleagues know, I held up the FAA traffic control bill in order to get some assurance that the safety and security of the flying public would not be jeopardized by the privatization of the air traffic control system. I am pleased to announce that we have now received an assurance from the administration regarding fiscal year 2004. Until the end of this fiscal year, the administration has agreed not to privatize any components of our air traffic control system. The controllers are protected, the technicians are protected, the flight service station controllers—all of those units that make up the air traffic control system—are protected. We have a letter stating the administration's assurance.

Some of my colleagues have asked why I was doing this: Why do you feel so strongly about it? I put it in personal terms. I told them: Because I don't want my grandchildren or your grandchildren or the grandchildren of our constituents put in danger by a risky privatization scheme. That is what was at stake here.

I extend my thanks to many of my colleagues for their support in this fight, specifically our Commerce Committee ranking member, Senator HOLLINGS, and the subcommittee ranking member, Senator ROCKEFELLER, Senator DORGAN, and the leader and assistant leader of our caucus, Senators DASCHLE and REID. They always stayed strong and said ''safety first.''

Senator LOTT has been an honest broker throughout this process. He kept the discussions alive.

It was a tough fight. But at the heart of this fight was the reality that it was a bipartisan decision. In June of this year, 11 Republicans voted to prevent privatization, to stand up for safety. I know we often get pressured to vote with our caucus or vote with our party's President, but sometimes you just have to stand up for your constituents' safety, and that is what my Republican friends did here.

Within days of returning to the Senate earlier this year, I learned that the administration intended, through this A–76 process, to privatize air traffic control. In my previous 18 years, I had an active interest in aviation and the air traffic control system. But the moment I learned of the administration's actions, I knew I would spend much of this year fighting to prevent that action from taking place. We won a Senate vote to prevent privatization. We fought off the terrible first conference report. We fought the pending conference report until we received the assurances that we got tonight.

But the fight is not over, and I will continue to push for a permanent prohibition. In the words of California's current Governor, I'll be back. We are going to fight this again, and we will keep fighting it until it goes away for good.

I am reminded, 700 million people fly in our skies every year, roughly 2 million a day. Our system is going to be pushed to the limits of capacity in these next couple of weeks in what will be the busiest travel day of the year. I hope travelers will rest assured knowing that control of the skies will be in the hands of professionals, the Government employees who make up the air traffic control system.

This is the greatest air traffic control system in the world, most safe, most efficient. There are 15,000 Federal air traffic controllers and thousands of professional systems specialists and flight service station controllers. These are the men and women who keep our skies safe and secure.

But there are some obvious lessons we need to heed, those of September 11, when the air traffic control system worked flawlessly to bring home safely some 5,000 airplanes in just a couple of hours. These are the lessons from other countries that have tried this. They were left with just what could be expected: Less safety, more delays, and more cost in the end.

There are lessons from the space program.

I look forward to examining these issues during the policy debate to which our chairman is committed. I hope there can be an adequate discussion for the American people so they can learn how, after next year, the White House proposes to put their safety and security at risk—if they do, all for the benefit of the profit motive.

I would like to mention one other item in this bill that is of particular importance to the State of New Jersey. Our great State has a proud history of aviation with a number of public use airports. Certainly the occupant of the chair understands since aviation in Alaska is the lifeblood of that beautiful State. Our great State has a proud history with a number of public use airports, and now some of these airports are disappearing, giving way to urban sprawl and development. To help stem this problem, a key provision in this bill establishes a pilot program

which offers additional tools to States to enable them to preserve these public use airports. I am hopeful this program will be used to keep these important facilities for general aviation, corporate, and agricultural uses, and the medevac and firefighting uses which depend on sufficient airport facilities to continue to operate.

I commend the chairman of the Commerce Committee, Chairman MCCAIN, for working with me on this provision.

I yield the floor and 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 (Mr. ENSIGN). Without objection, it is so ordered.

OFFICE OF COMPLIANCE MEETING CANCELLATION

Mr. STEVENS. Mr. President, I ask unanimous consent that the attached statement from the Office of Compliance be printed in the RECORD today pursuant to section 303(b) of the Congressional Accountability Act of 1995 (2 U.S.C. 1383(b)).

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

U.S. CONGRESS,
OFFICE OF COMPLIANCE,
Washington, DC, November 20, 2003.

Hon. TED STEVENS,
Speaker of the House, House of Representatives, Washington, DC.

DEAR MR. PRESIDENT: A Notice of Proposed Rulemaking (NPR) for amendments to the Procedural Rules of the Office of Compliance was published in the Congressional Record dated September 4, 2003. Subsequent to the publication of this notice, this office announced a hearing for public comment on the proposed amendments in the Congressional Record on October 15, 2003.

The Board of Directors of the Office of Compliance cancels the hearing regarding the proposed amendments to the Procedural Rules of the Office of Compliance which had been scheduled for December 2, 2003, at 10 a.m. in room SD–342 of the Dirksen Senate Office Building.

We request that this notice of cancellation be published in the Congressional Record. Any inquiries regarding this notice should be addressed to the Office of Compliance at our address below, or by telephone at 202–724–9250, TTY 202–426–1665.

Sincerely,

SUSAN S. ROBFOGEL,
Chair.

TRIBUTE TO CPL RODNEY ''JIMMY'' ESTES II

Mr. MCCONNELL. Mr. President, I rise today to pay tribute to a brave young man who just returned from a tour of duty in Iraq. Rodney ''Jimmy'' Estes II is from my hometown of Louisville, KY. A few months ago, Jimmy was dressed in fatigues fighting the war on terror in the Iraqi desert. But today, you can find him wearing red and white and playing football for the University of Louisville Cardinals—my favorite team.

Jimmy Estes, a 1998 graduate of St. Xavier High School, turned down a football scholarship to Georgetown College to follow in his grandfather's footsteps—to serve in the U.S. Marine Corps. The day after graduation, he left Kentucky for boot camp at Parris Island. And on January 7, 2003, Jimmy was called to active duty.

As a member of the Alpha Company, 8th Tank Battalion, Jimmy was on the front lines in An Nasiriyah, Iraq. During his time in the country, he experienced some of the war's most intense fighting. In his tank, he worked as the loader and operated the 240-millimeter gun on top of the vehicle. Jimmy and his comrades are unsung heroes in one of our troops' finest hours. They were the lead tank in the rescue mission of PVT Jessica Lynch.

To pass the hours in Iraq, Jimmy played football with his fellow soldiers, reminding him of his lifelong dream—to play football for the University of Louisville Cardinals. Following his tour of duty, which ended this past May, Jimmy returned home and enrolled at U of L. Determined to play football, Jimmy spent his summer preparing to try out for one of four walk-on positions. And just like on the battlefield, Jimmy succeeded. Not only is he a wide receiver on his university's football team, he also continues to serve his Nation as a Marine reservist.

Jimmy's bravery, humility, and determination should be commended. On behalf of this grateful Nation, I ask my colleagues to join me in thanking Corporal Estes for his dedicated service. As a proud U of L alum and most importantly, a football fan, I wish Jimmy and his teammates a winning season. Go Cards!

I ask unanimous consent that the article, ''For Jimmy Estes, that was war; this is football'' from my hometown paper, The Courier-Journal, be printed in the RECORD.

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

[From the Louisville Courier-Journal, Oct. 10, 2003]

FOR JIMMY ESTES, THAT WAS WAR; THIS IS FOOTBALL

(By Pat Forde)

The war wasn't so bad until bedtime.

Jimmy Estes spent the dusty desert days in the company of his M1A1 Abrams tank crew or with the other members of Alpha Company, 8th Tank Battalion. On the dull days the Marines opened care packages or talked about family, sports and what they'd give for cold water and hot showers. On the deadly days they went out and killed Iraqis because it was their job, and when the battles around An Nasiriyah were done, the soldiers rehashed them in detached terms.

But at the end of the day, when Cpl. Rodney J. Estes II would lie down and stare up at the inky Arabian night, he was alone with the whole thing. It was just him and the horror: the dead women and children, the dogs tugging at corpses, the Iraqis he personally shot in combat, the bullets they shot at him that pinged off the tank's armor.

It was just him and the heroism: Estes and his mates rode the lead tank on the famous Jessica Lynch rescue mission, laying down fire and securing the perimeter before Army Rangers and Navy SEALs went into Saddam Hussein General Hospital to retrieve America's most famous POW.

He took all of it to bed with him.

''Those were some lonely nights,'' Estes said.

It was during those lonely nights that he made a vow: ''If I get out of here and make it home alive, I'm going to do it. ''

Go to college. And play football. For his hometown team, the University of Louisville.

Today Jimmy Estes is alive and well and a 23-year-old walk-on wide receiver for the Cardinals.

He saw enough death in the desert to learn that dreams can come with an expiration date—probably not one of your choosing. A young man who had drifted along without plan or purpose since graduating from St.Xavier High School in 1998 had an epiphany in Iraq.

''Absolutely, it changed me,'' said Estes, who hadn't played organized football in six years. ''I kind of piddled around at jobs here and there, not anything I'd call a career. If I hadn't gotten deployed, to be honest, I don't know where I'd be right now.

''I don't take things for granted like I used to. I realize how lucky I am. I realize life can end.''

Now his life is just restarting. He is a justice administration major in the classroom, with designs on becoming a football coach. On the field he is a humble freshman who hasn't even dressed out for a game.

Yet there is no bigger hero in the U of L football program.

Said offensive lineman Will Rabatin, Estes' friend since grade school: ''I'm proud to know him.''

No more proud than Estes is to have this long-shot college football experience. Think of all the coddled athletes out there, complaining that a full ride isn't enough. Then listen to Estes, who's been through more than those guys can ever imagine and now cherishes the chance to pay his way through college and play on the scout team.

''He's just a great kid to have around,'' said offensive coordinator and wide receivers coach Paul Petrino. ''Every day when we start out doing ball drills, he has a lot of enthusiasm, a lot of fire. You can tell he loves being here.''

''I look forward to going out there every day,'' Estes said. ''I really appreciate the opportunity. It's just so great to be a part of it.''

In the weeks before the invasion of Iraq, the Marines played touch football in Kuwait all the time. Tankers against tank maintenance. In combat boots. In the desert.

Talk about your sandlot games.

For Estes, this was a continuation of his life long love of sports. When he played flag football in grade school, all the kids on the sidelines were squirting each other with water bottles, oblivious to the game. Jimmy was running the sidelines, keeping pace with the action and imploring his coaches to put him in.

When he was 6 he persuaded his father, Rodney, a retired Louisville police officer, to get him out of school early for the first two days of the NCAA basketball tournament. Jimmy sat in front of the television from noon until midnight each day, transfixed.

At age 7 he was reading Sports Illustrated cover to cover.

Later on he played at St. Martha for Rabatin's father, once catching the winning

touchdown pass in the Toy Bowl. Then it was on to St. X, where he played little his final year after a disagreement with the coaches.

''He just didn't have a positive experience,'' his father said. ''Part of that was his fault.''

Estes' only football option was a partial scholarship to Georgetown College. He turned it down to follow in his grandfather's footsteps—into the Marine Corps and into a tank.

''That broke my heart when he didn't take that scholarship to Georgetown,'' Rodney Estes said. ''You know how you envision going down there on Saturdays to watch your son and walk around campus?''

Instead, a day after graduation from St. X, Estes was off to Parris Island for boot camp as a Marine reservist. Higher education—and football—flickered out of sight.

In 1999 he had talked to UofL assistant Greg Nord and then-coach John L. Smith about walking on, but he never followed through. He worked a job here and a job there and performed his duties with the reserves. Life was standing still.

''He kind of had his head up his—in other words,'' said Lance Cpl. Nick Rassano, a 2000 Trinity graduate who was in the same tank in the Middle East with Estes.

Then last Jan. 7, the phone rang at Ruby Tuesday, where Estes was bartending. The order was expected but still jarring: Report for active duty.

He told his family the news at dinner that night. Two days later he was gone—but not without some prescient final words from his father.

''Remember,'' Rodney Estes told his oldest son, ''the way you handle yourself out there probably says a lot about how you'll handle the rest of your life.''

First stop was Camp Lejeune, N.C. Then he was on a ship 30 days to Kuwait, for a month of preparation, some touch football and the last decent meals for a long time.

Finally, after a month in Kuwait, Estes and the rest of the American military force invaded Iraq.

''I was a policeman 25 years, and I'm not the kind of guy who gets overly worried,'' Rodney Estes said. ''But I tell you, that night he left I thought, 'This could be the last night I ever see him.' When your own kid goes off, that puts you through some changes.

''I'd wake up in the middle of the night and watch CNN. I watched so much TV I was about to drive myself crazy.''

Over in Iraq, the A–8 Marines were pushing hard toward An Nasiriyah and what ultimately would be some of the most intense fighting of the war. The first day of combat was the worst, as Estes watched a rocket-propelled grenade blow up an American vehicle and kill several soldiers.

He said they arrived in the area to find the streets flooded with sewage that stalled half of Alpha Company's 14 tanks—including his, christened the ''Think Tank'' because of the crew's propensity for making maintenance errors.

When the tanks bogged down, the Iraqis lit up. They were firing on foot, from orange-and-white taxis and from SUVs.

Estes was the loader in his tank but also was charged with manning the 240-millimeter gun on top of the vehicle. With the upper half of his body in view, he exchanged fire with the enemy.

Welcome to the terror and exhilaration of warfare, Cpl. Estes.

''It was a heck of an adrenaline rush,'' he said. ''I was scared, excited, all those things. I think of it like going into a big game, only times 100. Obviously, the stakes are much higher.

''You get a sick feeling in the pit of your stomach. I didn't freeze or tense up, but I definitely had butterflies.''

Asked if he personally shot anyone, Estes looked down briefly and answered yes. There was no bravado in his voice.

''The first time you see somebody get hit with a round is a crazy feeling,'' he said. ''It's a sick feeling. But when you sign up to be a Marine, that's something you obviously know can be part of the job.

''I can't sit here and describe the feelings you get. I can tell you what I saw, but in no way does it simulate what it was like.''

There is no simulation. Just late-night assimilation—alone, lying on your back and staring at the sky in a strange and dangerous land.

One day the Think Tank crewmen got the call to be part of a hush-hush mission. They were to be the lead among three tanks escorting a group of Special Ops forces into town. It had the potential to be dangerous. Estes' tank commander had him clear out space inside the tank, in case they needed it to transport bodies.

They originally were told that the target was a Saddam look-alike. They had no idea that they were going to play a part in the most dramatic—and later controversial—event in the war.

In the early hours of April 1, their tank led a group of other vehicles carrying Special Operation Unit Task Force 20 into Nasiriyah, storming into position around the hospital. Night-vision goggles on, Estes laid down suppression fire with the 240-mm gun for a few minutes and set up a perimeter before the Rangers and SEALs went in.

Lynch was rushed out and loaded onto a helicopter, though most involved in the rescue still didn't know the particulars of what happened. Estes' tank remained in position for hours afterward.

At one point he was told to hand some Special Ops soldiers a tank shovel. They used it to dig up a shallow grave outside the hospital, locating the bodies of several Americans from Lynch's 507th Maintenance Company.

It wasn't until days later that the Think Tank crew was able to piece together the story and realize that their mission was the rescue dominating news coverage at home.

''We didn't realize how big a deal it was until we saw it on the cover of Newsweek,'' Rassano said.

To Estes the mission was important for one other reason: He never again discharged his weapon. A series of moves to other cities resulted in nothing more noteworthy than a couple of utterly uneventful weeks guarding a bridge.

With the action centralizing on Baghdad, there wasn't much to do other than reading the Sports Illustrateds and eating the beef jerky sent from home. Finally, Alpha Company pulled out and returned to Kuwait on May 5.

The war was over for Cpl. Estes. It was time to act on his vow.

During the interminable 38-day voyage back to America, Estes e-mailed his father and told him his plans: He was going to enroll at U of L and walk on to the football team. Rodney Estes was thrilled.

Jimmy returned to Kentucky on July 2, and he and the rest of his battalion were feted at Fort Knox. He obviously was thrilled to see his family—his father, mother, stepmother, stepsister and two half-siblings.

Especially his 11-year-old half-sister, Jennifer Estes. He thought of her often when he saw children her age caught in the calamity of war.

''He's crazy about her,'' Jimmy's dad said. ''He's not exactly a sensitive kid by any stretch of the imagination, but I think some of the things he saw over there affected him.''

To help put the war behind, Estes plunged into his future plans. After about a week of acclimation, he began working out six days a week toward his goal of becoming a Cardinal.

A depressing and debilitating diet of MREs—the scarcely edible Meals Ready to Eat—had killed his appetite. By the end of the war Estes could eat barely half an MRE a day, and he lost a significant amount of weight and muscle mass.

But that could be overcome with work, and he was driven. His first couple of calls to U of L graduate assistant Sam Adams, in charge of the walk-on program, went unreturned. Finally, Adams called back.

He said that Estes couldn't walk on until classes started, but in the meantime the coaches wanted to look at some videotape of him. He had nothing significant to show since his days on the St. X junior varsity. Nevertheless, Adams told him to report for a one-day group tryout.

Estes arrived in excellent physical condition, performed well in the fitness tests and was one of four walk-ons chosen for the team. After U of L upset Kentucky to open the season Aug. 31, he reported for his first practice as a Louisville Cardinal.

''It was awesome that first day, just putting on the equipment again,'' he said. ''I was looking around saying, 'I'm playing with a Division I football program. Four months ago I was shooting at Iraqis running around with AK–47s.' ''

Today life is easy. The 18-hour days don't pile up for weeks on end. The food is edible. There are no tank repairs, no missions, no imminent danger.

The load so many student-athletes find so difficult is like vacation to Jimmy Estes.

''All you've got to do is go to class and play football,'' Rassano said. ''That's got to be the easiest thing he's done all year. After going through there, everything's easier.

''The whole experience kind of straightened him out. I'm real proud of Jimmy.''

A good many Cardinals have no idea what Estes was going through while they were in spring practice. But a few have seen the USMC tattoo on the 5-foot-11, 200-pound receiver's left shoulder and inquired, and a few others have heard a story or two about the walk-on soldier.

He doesn't hide his history, but he doesn't broadcast it, either. He's not looking for hero status in the locker room.

''The coaches can't give me any special treatment, and I don't want it,'' he said. ''I'd always heard stories of people coming back (from a war) and thinking the world owed them something, or they were messed up mentally. I didn't want that. I just wanted to make that experience a positive.''

U of L will play Army tomorrow. Estes has been where none of the celebrated West Pointers has gone yet: into combat for his country.

He is a Cardinal worthy of a salute from the Cadets.

Yet he wasn't even supposed to be at the stadium. Instead, he was scheduled for real military work: a reunion with Alpha Company at Fort Knox for their first weekend of reservist training since the war.

But at practice yesterday head coach Bobby Petrino informed Estes that he will be dressing out and joining the squad if he can get a furlough from Marine drills.

Estes plans to wear two uniforms tomorrow; he'll be in Papa John's Cardinal Stadium in the afternoon after meeting up with his mates in the morning. He's looking forward to seeing the men with whom he shared a life-altering experience—and telling them about his college football career.

''I don't think a whole lot of them really believed me,'' he said with a smile.

But it's true. A desert dream that materialized on lonely nights under an inky Arabian sky has come true.

MILITARY SNIPER WEAPON REGULATION ACT

Mr. LEVIN. Mr. President, in the November 3, 2003 edition of Air Safety Week a connection was drawn between airline safety and gun safety. And, while some people may think there is no connection between airline safety and gun safety, the connection is serious. Attention has been paid to potential vulnerabilities of commercial aircraft to terrorists armed with shoulder-fired missiles. A more pedestrian but an equally deadly potential threat looms from terrorists armed with .50 caliber sniper rifles.

The .50 caliber sniper rifle is among the most powerful weapons legally available. These weapons are not only powerful, but they're accurate. According to the House Government Reform staff report, the most common .50 caliber weapon can accurately hit targets a mile away and can inflict damage to targets more than four miles away. The thumb-size bullets, which come in armor-piercing and incendiary variants, can easily punch through aircraft fuselages, fuel tanks, and engines.

These weapons pose a serious threat to planes both in the air and on the ground. According to a recent Violence Policy Center report, aircraft landing are particularly vulnerable, as illustrated by the testimony of Ronnie G. Barrett, President of Barrett Firearms Manufacturing. As an expert witness during a 1999 criminal trial, Barrett was asked about the relative difficulty of hitting a stationary target and a moving target, such as a motorcycle or an airplane. He was asked about shooting at an airplane ''coming in to land . . . descending over 120 miles an hour.'' He testified: ''If it is coming directly at you, it is almost as easy. Just like bird hunting. But yes, it is more difficult if it is horizontally, or moving from left to right . . . '' In other words, according to Barrett, shooting at a moving object coming directly at one is ''almost as easy'' as a stationary target, an answer that is consistent with detailed instructions given in a variety of U.S. Army manuals about engaging aircraft with small arms.

Despite these facts, long-range .50 caliber weapons are less regulated than handguns. Buyers must simply be 18 years old and submit to a Federal background check. In addition, there is no Federal minimum age requirement for possessing a .50 caliber weapon and no regulation on second-hand sales.

I believe the easy availability and the increased popularity of the .50 caliber sniper rifle poses a danger to airline safety, as well as homeland security. That's why last year I cosponsored Senator FEINSTEIN's Military Sniper Weapon Regulation Act. This bill would change the way .50 caliber guns are regulated by placing them under the requirements of the National Firearms Act. This would subject these weapons to the same registration and background check requirements as other weapons of war, such as machine guns. This is a necessary step to protecting the safety of airline travelers.

The .50 caliber sniper rifle is among the most powerful and least regulated firearms legally available. Tighter regulation is needed. I urge my colleagues to support Senator FEINSTEIN's bill.

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.

In San Antonio, TX, on October 26, 2003, Allen Everton, age 74, was beaten to within inches of his life. His assailant believed that Everton was gay, and while hitting the elderly man with a baseball bat, called him a ''freaking faggot.'' Mr. Everton died 11 days later of natural causes, but I can only imagine how scarred he must have felt after being the victim of a senseless attack.

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.

HONORING OUR ARMED FORCES

Mr. GRASSLEY. Mr. President, I rise today in honor of a fellow Iowan and a true American hero PVT Kurt R. Frosheiser. Private Frosheiser was killed while serving our country in Operation Iraqi Freedom on November 8, 2003, when his humvee was struck by an improvised explosive device in Baghdad. Private Frosheiser was only 22 years old at the time of his death.

I ask my colleagues in the Senate, my fellow Iowans, and all Americans to join me today in paying tribute to Private Frosheiser for his bravery and for his dedication to the cause of freedom. Private Frosheiser had a deep desire to serve his country, and we are all indebted to him for his service and for his sacrifice.

In an interview with the Des Moines Register, Private Frosheiser's mother, Jeanie Hudson, said the following about her son: ''He loved this land and its principles. He loved Iowa. It's an honor to give my son to preserve our way of life.''

Throughout our history, we have found extraordinary men and women who are willing to give their lives to defend our country and families willing sacrifice those who they love most to the cause of freedom. It is with great sadness, but also great pride, that I honor one such patriot today on the floor of the Senate, PVT Kurt Frosheiser.

Today we honor a fallen patriot, but we must also remember to pay tribute to the loved ones whose grief we share. My deepest sympathy goes out to the members of Private Frosheiser's family, to his friends, and to all those who have been touched by his untimely passing. May his mother, Jeanie, his father, Chris, his step-father, Daniel, his sister, Erin, and his twin brother, Joel, be comforted with the knowledge that they are in the thoughts and prayers of many Americans, and that they have the eternal gratitude of an entire nation.

Kurt Frosheiser did not die in vain. He died defending the country he loved. May he always be remembered as a true American hero.

SGT ROSS A. PENNANEN

Mr. INHOFE. Mr. President, I rise to pay homage to Sergeant Ross Pennanen, who, in the words of his father, ''gave the ultimate sacrifice for his country—his life.'' Sergeant Pennanen, or ''Penn'', as his friends called him, was a dedicated defender of America who learned the value of serving his country from his father's example in the United States Air Force. For his service and his sacrifice, I am proud to honor him on the Senate floor today.

Sergeant Pennanen was assigned to C Battery, 2nd Battalion, 5th Field Artillery Regiment, III Corps Artillery at Fort Sill, OK. A native Oklahoman whose mother and father live in Ada and Midwest City, respectively, Sergeant Pennanen grew up in McLoud and joined the Army 2 years ago at the age of 34 in hopes of improving himself and emulating his father. He was himself a good father who spent a lot of time with his 7-year-old son, Gage.

Sergeant Pennanen died tragically on November 2 when a CH–47 Chinook helicopter in which he was riding crashed in Fallujah, Iraq. He was a good soldier: he received the Army Commendation Medal two days before his death. Despite questions about his age, Sergeant Pennanen proved a ''gung-ho'' example for his fellow soldiers. According to his stepmother, ''He didn't keep up with them. He set the pace out in front of them.''

On behalf of the U.S. Senate, I ask that we pay tribute to Sergeant Pennanen and the men and women like him, who know the true meaning of service and sacrifice. These men and women have tasted freedom, and wish to ensure that freedom for those who have never experienced it. I honor the memory of our sons and daughters who have died for this noble cause.

We could not have asked for a better soldier or diplomat of humanity than Sergeant Ross Pennanen. I am proud of him, and proud of the commitment he showed to winning the freedom of those he did not know. My prayers are with his family for the loss of such a special man.

PVT JASON M. WARD

Mr. INHOFE. Mr. President, I rise today to honor the memory of a courageous young Oklahoman who died

while defending his Nation. Private Jason M. Ward grew up in the great State of Oklahoma, and was a 1997 graduate of Broken Arrow High School.

Private Ward joined the military in April 2002, although he had been seriously considering military service for years. He married his high school sweetheart after graduating, and when Jason and Jordan welcomed their first son shortly thereafter, the duties of fatherhood took priority. After having another son 4 years later, Jason and Jordan began discussing Jason's longtime military aspirations and decided that it would be a good time for him to pursue a lifelong career in the military.

Private Ward was a member of the 1st Armored Division, stationed at Fort Riley, KS. His unit was sent to the Middle East in March to protect the freedom of this fellow Americans, and he was highly involved in the outstanding and courageous work of that unit. Unfortunately, Private Ward fell ill, and was scheduled to return to the U.S. for treatment when he unexpectedly passed away. His sudden death has left his young family with questions that none of us can answer, but we can tell them with confidence that Private Ward was serving his Nation with honor until this tragedy took his life.

Private Ward was only 25 years old when he died. I hope his friends and family know that he died a true hero, worthy of the respect and gratitude of every American because of his contribution to defending his country. His loved ones will miss him dearly, and our thoughts and prayers are with them today. And though we are all grieved by the loss of this man, we will never cease to be proud of him—Oklahoma's son and America's hero—Private Jason M. Ward.

SPEC DUSTIN K. MCGAUGH

Mr. INHOFE. Mr. President, I stand today to honor the memory of a brave young American who gave his life defending the Nation. He felt a call to serve his country, to be part of something bigger than himself, and ultimately, paid the highest price.

SPEC Dustin K. McGaugh, of Derby, KS, was a firing specialist assigned to the Army's 17th Field Artillery Brigade stationed in Fort Sill, OK. His mother, Marina Hayes, lives in Tulsa, OK, where he graduated from high school in 2001.

On September 30 in Balad, Iraq, he died tragically from a non-hostile gunshot wound. He gave his life for the freedom of millions of Americans, and also for the peace and prosperity of the Iraqi people crippled by a totalitarian regime.

Specialist McGaugh had a heart for the less fortunate. According to his fellow soldiers, he would leave the safety of his Jeep and give candy to the Iraqi children. Imagine an American soldier who truly cared for the least among us, and performed simple acts of kindness to his fellow humans. Imagine an American soldier who represented America with a noble heart, and reminded us all of the freedoms we take for granted. Specialist McGaugh was that soldier.

His compassion is a microcosm of the American spirit, the spirit that drives us to fight oppression around the world. The Iraqi people are an oppressed people, and Specialist McGaugh showed us how our inherent humanity can overcome even the broadest of differences. He refused to sit idly and watch the tyranny in Iraq take place any longer. It is for the sake of these broken, defeated people that Specialist McGaugh risked his life on a daily basis. It is for these people that he gave his life in the end. He was a true American hero.

His twin sister Windy said that her ''kid brother'' became her hero. Specialist McGaugh should not only be his sister's hero, but the Nation's hero as well. He set a high example of what it means to be an American and what it means to be human. It is for men like Specialist McGaugh that I am proud to be a part of this great country. He was a special soldier, but more importantly, a special man.

BUDGET SCOREKEEPING REPORT

Mr. NICKLES. Mr. President, I hereby submit to the Senate the budget scorekeeping report prepared by the Congressional Budget Office under section 308(b) and in aid of section 311 of the Congressional Budget Act of 1974, as amended. This report meets the requirements for Senate scorekeeping of section 5 of S. Con. Res. 32, the First Concurrent Resolution on the Budget for 1986.

This report shows the effects of congressional action on the 2004 budget through November 19, 2003. The estimates of budget authority, outlays, and revenues are consistent with the technical and economic assumptions of the 2004 Concurrent Resolution on the Budget, H. Con. Res. 95, as adjusted.

The estimates show that current level spending is below the budget resolution by $7.0 billion in budget authority and by $11.1 billion in outlays in 2004. Current level for revenues is $57 million below the budget resolution in 2004.

Since my last report, dated November 11, 2003, the Congress has cleared for the President's signature the following acts that changed budget authority, outlays, or revenues for 2004: the National Defense Authorization Act for 2004, H.R. 1588; the Military Construction Appropriations Act, 2004, H.R. 2559; the Energy and Water Development Appropriations Act, 2004, H.R. 2754; and, the District of Columbia Military Retirement Equity Act of 2003, H.R. 3054.

I ask unanimous consent that the budget scorekeeping report be printed in the RECORD.

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

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, November 20, 2003.

Hon. DON NICKLES,
Chairman, Committee on the Budget,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The enclosed tables show the effects of Congressional action on the 2004 budget and are current through November 19, 2003. This report is submitted under section 308(b) and in aid of section 311 of the Congressional Budget Act, as amended.

The estimates of budget authority, outlays, and revenues are consistent with the technical and economic assumptions of H. Con. Res. 95, the Concurrent Resolution on the Budget for Fiscal Year 2004, as adjusted.

Since my last letter dated November 10, 2003, the Congress has cleared for the President's signature the following acts that changed budget authority, outlays, or revenues for 2004: The National Defense Authorization Act for Fiscal Year 2004 (H.R. 1588); the Military Construction Appropriations Act, 2004 (H.R. 2559); the Energy and Water Development Appropriations Act, 2004 (H.R. 2754); and the District of Columbia Military Retirement Equity Act of 2003 (H.R. 3054).

The effects of these actions are detailed on Table 2.

Sincerely,

DOUGLAS HOLTZ-EAKIN
Director.

TABLE 1.—SENATE CURRENT-LEVEL REPORT FOR SPENDING AND REVENUES FOR FISCAL YEAR 2004, AS OF NOVEMBER 19, 2003

[In billions of dollars]

	Budget resolution	Current level [1]	Current level over/under (−) resolution
On-Budget:			
Budget Authority	1,873.5	1,866.4	−7.0
Outlays	1,897.0	1,885.9	−11.1
Revenues	1,331.0	1,330.9	−0.1
Off-Budget:			
Social Security Outlays	380.4	380.4	0
Social Security Revenues	557.8	557.8	0

[1] Current level is the estimated effect on revenue and spending of all legislation that the Congress has enacted or sent to the President for his approval. In addition, full-year funding estimates under current law are included for entitlement and mandatory programs requiring annual appropriations even if the appropriations have not been made.

Source: Congressional Budget Office.

TABLE 2.—SUPPORTING DETAIL FOR THE SENATE CURRENT-LEVEL REPORT FOR ON-BUDGET SPENDING AND REVENUES FOR FISCAL YEAR 2004, AS OF NOVEMBER 19, 2003

[In millions of dollars]

	Budget authority	Outlays	Revenues
Enacted in previous sessions:			
Revenues	n.a.	n.a.	1,466,370
Permanents and other spending legislation [1]	1,081,649	1,054,550	n.a.
Appropriation legislation	0	345,754	n.a.

TABLE 2.—SUPPORTING DETAIL FOR THE SENATE CURRENT-LEVEL REPORT FOR ON-BUDGET SPENDING AND REVENUES FOR FISCAL YEAR 2004, AS OF NOVEMBER 19, 2003—Continued

[In millions of dollars]

	Budget authority	Outlays	Revenues
Offsetting receipts	−366,436	−366,436	n.a.
Total, enacted in previous sessions	715,213	1,033,868	1,466,370
Enacted this session:			
Authoriziang Legislation:			
American 5-Cent Coin Design Continuity Act of 2003 (P.L. 108–15)	−1	−1	0
Postal Civil Service Retirement System Funding Reform Act of 2003 (P.L. 108–18)	2,746	2,746	0
Clean Diamond Trade Act (P.L. 108–19)	0	0	*
Prosecutorial Remedies and Other Tools to End Exploitation of Children Today Act (P.L. 108–21)	0	0	*
Unemployment Compensation Amendments of 2003 (P.L. 108–26)	4,730	4,730	145
Jobs and Growth Tax Relief Reconciliation Act of 2003 (P.L. 108–27)	13,312	13,312	−135,370
Veterans' Memorial Preservation and Recognition Act of 2003 (P.L. 108–29)	0	0	*
Welfare Reform Extension Act of 2003 (P.L. 108–40)	99	108	0
Burmese Freedom and Democracy Act (P.L. 108–61)	0	0	−10
Smithsonian Facilities Authorization Act (P.L. 108–72)	1	1	0
Family Farmer Bankruptcy Relief Act of 2003 (P.L. 108–73)	0	0	*
An act to amend Title XXI of the Social Security Act (P.L. 108–74)	1,325	100	0
Chile Free Trade Agreement Implementation Act (P.L. 108–77)	0	0	−5
Singapore Free Trade Agreement Implementation Act (P.L. 108–78)	0	0	−55
First Continuing Resolution, 2004 (P.L. 108–84)	−2,222	1	−2
Surface Transportation Extension Act of 2003 (P.L. 108–88)	6,405	0	0
An act to extend the Temporary Assistance for Needy Families block grant program (P.L. 108–89)	15	−36	33
An act to amend chapter 84 of title 5 of the United States Code (P.L. 108–92)	1	1	0
An act to amend the Immigration and Nationality Act (P.L. 108–99)	0	0	2
The Check Clearing Act for the 21st Century (P.L. 108–100)	0	0	*
An act to amend Title 44 of the United States Code (P.L. 108–102)	0	0	*
Second Continuing Resolution, 2004 (P.L. 108–104)	1	0	*
Partial-Birth Abortion Act of 2003 (P.L. 108–105)	0	0	*
Third Continuing Resolution, 2004 (P.L. 108–107)	0	0	−1
Military Family Tax Relief Act of 2003 (P.L. 108–121)	−599	−599	−169
An act to amend Title XXI of the Social Security Act (P.L. 108–127)	0	9	0
Total, authorizing legislation	25,813	20,372	−135,432
Appropriations Acts:			
Emergency Wartime Supplemental Appropriations Act, 2003 (P.L. 108–11)	215	27,349	0
Legislative Branch Appropriations (P.L. 108–83)	3,539	3,066	0
Defense Appropriations (P.L. 108–87)	368,694	251,486	0
Homeland Security Appropriations (P.L. 108–90)	30,216	18,192	0
Emergency Supplemental Appropriations Act for Defense and Reconstruction of Iraq and Afghanistan (P.L. 108–106)	3,555	1,133	0
Interior Appropriations (P.L. 108–108)	19,673	13,202	0
Total, appropriation acts	425,892	314,428	0
Passed Pending Signature:			
National Defense Authorization Act for Fiscal Year 2004 (H.R. 1588)	4,418	960	4
Military Construction Appropriations (H.R. 2559)	9,316	2,567	0
Energy and Water Appropriations (H.R. 2754)	27,328	18,143	0
District of Columbia Military Retirement Equity Act of 2003 (H.R. 3054)	1	1	1
An act to reauthorize certain school lunch and child nutrition programs (H.R. 3232)	7	7	0
Total, passed pending signature	41,070	21,678	5
Continuing Resolution Authority: Continuing Resolution, 2004 (P.L. 108–107)	300,025	157,423	0
Entitlements and mandatories: Difference between enacted levels and budget resolution estimates for appropriated entitlements and other mandatory programs	358,395	338,102	n.a.
Total Current Level [1 2]	1,866,408	1,885,871	1,330,943
Total Budget Resolution	1,873,459	1,896,973	1,331,000
Current Level Over Budget Resolution	n.a.	n.a.	n.a.
Current Level Under Budget Resolution	7,051	11,102	57

[1] Per section 502 of H. Con. Res. 95, the concurrent Resolution on the Budget for Fiscal Year 2004, provisions designated as emergency requirements are exempt from enforcement of the budget resolution. As a result, the current level excludes the following items: outlays of $262 million from funds provided in the Emergency Supplemental Appropriations for Disaster Relief Act of 2003 (P.L. 108–69); outlays of $456 million from funds provided in the Legislative Branch Appropriations Act, 2004 (P.L. 108–83); budget authority of $400 million and outlays of $67 million provided in the Interior Appropriations Act, 2004 (P.L. 108–108); and budget authority of $83,992 million and outlays of $35,970 million provided in the Emergency Supplemental Appropriations Act for Defense and for the Reconstruction of Iraq and Afghanistan, 2004 (P.L. 108–106).

[2] Excludes administrative expenses of the Social Security Administration, which are off-budget.

Source: Congressional Budget Office.

Notes: n.a. = not applicable; P.L. = Public Law; * = less than $500,000.

TERRORIST APPREHENSION ACT

Mr. LEVIN. Mr. President, earlier this week, an article in the Washington Post highlighted concerns about limits on the Federal Bureau of Investigation's ability to pursue terrorists who try to buy guns. After September 11, 2001, the FBI launched an initiative to notify Federal law enforcement officials and other national security officials when suspects on the FBI's terrorist watch list attempt to purchase a firearm. However, according to the Washington Post article, an interpretation of current law by the Attorney General has precluded Federal agents from obtaining any details about gun purchase transactions unless the purchaser is identified by the National Instant Criminal Background Check System as a prohibited buyer.

The Post article cited situations in which law enforcement officials have not been able to pursue known terrorists armed with a firearm. According to the Washington Post, as many as 21 suspects on the FBI's terrorist watch list have attempted to buy guns since the spring of 2003. According to Justice Department officials cited in the Post article, the rules established by the Attorney General prevent Federal officials from sharing information with investigators about legal gun buyers, even if these gun buyers are suspected terrorists.

Law enforcement officials told the Post that the FBI frequently does not know the whereabouts of suspected terrorists on its watch lists. In such cases, learning where a suspected terrorist bought a firearm and what address they provided could be extremely helpful to counterterrorism investigators.

To assist the FBI in monitoring and apprehending suspected terrorists, Senator LAUTENBERG introduced the Terrorist Apprehension Act. This bill would require NICS to alert the FBI, Department of Homeland Security, and local law enforcement officials anytime an individual on a terrorist watch list attempts to buy a firearm.

I believe this is common sense homeland security legislation, and I hope the Congress will enact it quicky.

S. 1896, THE TAX RELIEF EXTENSION ACT, AND H.R. 1664, THE ARMED FORCES TAX FAIRNESS ACT

Mr. WYDEN. Mr. President, consistent with my policy of publishing in the RECORD a statement whenever I place a hold on legislation, I am announcing my intention to object to any unanimous consent request on S. 1896, the Tax Relief Extension Act, and to H.R. 1664, the Armed Forces Tax Fairness Act. I am doing so because these bills are the only relevant amendable legislation expected to be taken up in the Senate before the end of the current session and, therefore, they provide the only opportunity to extend unemployment benefits before they expire at the end of the year.

Oregon currently has the highest unemployment rate in the Nation with an

unemployment rate of 8 percent. Extension of unemployment benefits is critical for many Oregonians who are in jeopardy of running out of benefits if they are not extended before the end of the year. In order to ensure unemployed workers in Oregon and many other states will not be left without benefits, I am objecting to unanimous consent on S. 1896 or H.R. 1664, unless extension of unemployment benefits and reform of a lookback rule that affects Oregon and other high unemployment states is included as part of the legislation.

REPEALING THE MEDICARE PHYSICIAN FEE CUT

Mr. GRAHAM of South Carolina. Mr. President, I express my support for repealing the Medicare physician fee cut. The issue of reimbursements for physicians who treat Medicare patients has been an ongoing battle. Currently, these reimbursements are inadequate and inefficiently paid through a bureaucratic system. Some physicians have been even been forced to refuse Medicare recipients due to these inappropriate reimbursement levels. With so many Medicare recipients who need medical services in South Carolina, the situation with low reimbursements poses a challenge to both physicians and patients.

I have supported updating and increasing the reimbursements physicians receive under the Medicare program. The schedule of fee cuts for these reimbursements has been temporarily suspended due to the actions of Congress. I supported legislation to repeal physician fee cuts for both fiscal year 2002 and 2003. However, in October 2003, the Centers for Medicare and Medicaid Services, CMS, reported that the physician fee cut for 2004 would be 4.5 percent. This necessitates a further repeal to ensure this fee cut does not move forward.

While annual repeals of the physician fee cuts are vital, I also support a substantive change to the reimbursement calculations so physicians are not held in limbo each year regarding their fee updates. I am hopeful that Congress will address this issue in a comprehensive manner.

Since I support legislative action to make sure this cut is repealed and to ensure future repeals are dealt with effectively, I am exceedingly concerned that the most current repeal in the Medicare physician fee cut is contained within the mammoth Medicare prescription drug bill. This blocks me voting solely on the merit of the repeal.

I have many reasons a to why I plan to oppose the Medicare prescription drug bill conference report. None of my reasons are concerns with the Medicare physician fee cut repeal. Rather, my opposition stems from the lack of real cost containment of the program, exclusion of true Medicare reform, the weakening of the premium support issue, the treatment of ''dual eligibles'' coverage, and other issues related to oncology drugs, durable medical equipment, DME, and local pharmacies.

It frustrates me that this latest repeal is in a bill with literally dozens of other Medicare provisions in a $400 billion dollar bill. While I cannot support the Medicare prescription drug bill, I will continue to support the repeal of next year's Medicare physician fee cut and addressing the ongoing issue of fee cuts in a comprehensive manner. I am hopeful that our leadership will give us a vehicle for a straight up or down vote on this issue.

A TRIBUTE TO RALPH BUNCHE

Mr. SARBANES. Mr. President, it is difficult to know exactly how to pay tribute to Ralph J. Bunche for his extraordinary contributions to scholarship, diplomacy, civil rights, social justice and international cooperation and development. The Senate has approved H. Con. Res 71, ''Recognizing the importance of Ralph Bunche as one of the great leaders of the United States . . . The year-long centennial commemoration of his birth, which is now well underway, involves many more professional societies, educational institutions and public-policy organizations than it is possible to list; among them are the American Political Science Association, the Association of Black American Ambassadors, the American Library Association, the Council on Foreign Relations, Facing History and Ourselves, national foundation, the NAACP, the National Urban League, the New York Public Library, numerous United Nations Associations and dozens of colleges and universities in this country and abroad. At UCLA, Ralph Bunche's alma mater, the African American Studies center has been renamed in his honor. I am especially pleased to note that the American Academy of Diplomacy has chosen to honor Ralph Bunche by sponsoring the two-year Philip Merrill Fellowship for the two-year M.A. program at the Paul H. Nitze School of Advanced International Studies of Johns Hopkins University.

Among his many accomplishments, Ralph Bunche received the first doctoral degree in government and international relations ever awarded by Harvard University, thereby earning the title ''Dr. Bunche.'' But Benjamin Rivlin, who is Co-Chair of the Ralph Bunche Centenary Committee, has told us that he was specifically instructed to ''cut out this doctor business'' when as a young soldier he was assigned to work for Ralph Bunche in the OSS sixty years ago.

The vast array of tributes now being paid to Ralph Bunche reflects just how extraordinary a person he was. Born in Detroit and orphaned at eleven, he went to live with his grandmother, Lucy Johnson, in what is today the Watts neighborhood of Los Angeles.

By all accounts, Lucy Johnson was as extraordinary as her illustrious grandson. Writing in the Reader's Digest many years after her death, Dr. Bunche called her ''My Most Unforgettable Character . . . Caucasian 'on the outside' and 'all black fervor inside.' '' One of his teachers said of her, ''I have never forgotten the emanation of power from that tiny figure.'' Ms. Johnson's remark to the principal of Jefferson High School, where Dr. Johnson was valedictorian of his class and a varsity athlete, is especially memorable. In a disastrously misguided effort at flattery, the principal is reported to have said, ''We never thought of Ralph as a Negro,'' to which Ms. Johnson replied: ''Why haven't you thought of him as a Negro? He is a Negro and he is proud of it. So am I.''

From his grandmother Ralph Bunche learned the fundamental lessons of self-respect and respect for others. He also took from her a passion for education. It was she who insisted that he go to UCLA, where he majored in international relations and was valedictorian of the Class of 1927. Upon his graduation from UCLA, Bunche received a fellowship for graduate study in political science at Harvard. Shortly after enrolling he received what was to be his grandmother's last letter. Writing just a week before her death, she asked, ''Will you finish at Harvard this year?''

Ralph Bunche did indeed receive his Master's degree at the end of that year, but he did much more. In the small African American community at Harvard at that time he made lifelong friendships with, among others, the future Judge William Hastie and the future cabinet member Robert Weaver. He completed his Ph.D. in 1934, receiving the government department's annual award for the best dissertation. And while working toward his degree he also taught at Howard University—America's ''black Athens'' —where he helped organize the political science department at a time when, according to Kenneth Clark, the distinguished psychologist who was a student at the time, ''the seeds of a legal and constitutional attack on racial segregation were being sown in the intellectual soil of Howard University.''

Although bent on an academic career, Ralph Bunche postponed research in South Africa to work closely with Gunnar Myrdal on Myrdal's historic and highly influential study of race in this country, ''An American Dilemma.'' With the outbreak of World War II he was brought into the newly-established OSS for his expertise on Africa, and in 1944 he moved on to the State Department. The following year he served as an advisor to the American delegation at the San Francisco Conference, where the Charter establishing the United Nations was signed, and in 1946 he joined the U.N. Secretariat, where he remained until shortly before his death. As Brian Urquhart, who first went to work for Ralph Bunche in the U.N. Secretariat in 1954, later observed, ''Public service had

called him, and he responded with all of his ability and strength.''

Ralph Bunche went on to become the U.N. Undersecretary-General, but he is probably best remembered as the recipient of the 1950 Nobel Peace Prize, which he was awarded for negotiating the armistice that ended military hostilities between the new State of Israel and its enemies. He was not only the first African American to receive the prize, he was also the first person of color; as an American, he joined the distinguished community of U.S. laureates that included Presidents Theodore Roosevelt and Woodrow Wilson, Jane Adams and Nicholas Murray Butler.

In his own view, however, the Nobel Prize was not at all his most significant accomplishment, and his initial reaction upon being informed of the award was to decline it: ''Peacemaking at the U.N. was not done for prizes,'' he explained. He agreed to accept only when the argument was put to him that it would be good for the United Nations. Rather, Ralph Bunche gave a quarter-century of dedicated service to the United Nations, working day in and day out to build and secure harmonious relations among free and prosperous nations.

Ralph Bunche touched the life of everyone who knew him. He is remembered as ''brilliant,'' with ''an uncanny ability to produce stupendous amounts of work over long sustained periods of application;'' as someone who ''play(ed) to win, but always played fair;'' as ''a man of extraordinary kindness and compassion (who) never turned his back on those in trouble;'' as a person. Kenneth Clark has paid him an eloquent and enduring tribute as ''above all the model of a human being who by his total personality demonstrated that disciplined human intelligence and courage were most effective instruments in the struggle for social justice.''

CBO SUMMARY OF S. 1522

Ms. COLLINS. I ask unanimous consent that the following CBO summary of the cost estimate regarding S. 1522 be printed in the RECORD.

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

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

S. 1522—GAO Human Capital Reform Act of 2003

Summary: S. 1522 would authorize the General Accounting Office (GAO) to modify its personnel and workforce practices to allow greater flexibility in determining pay increases, pay retention rules, and other compensation matters. The bill also would permanently extend GAO's authority to offer separation (buyout) payments and early retirement to employees who voluntarily leave GAO. Finally, S. 1522 would rename GAO as the Government Accountability Office.

CBO estimates that enacting S. 1522 would increase direct spending for retirement annuities and related health benefits by about $1 million in fiscal year 2004, by $19 million over the 2004–2008 period, and by $40 million over the 2004–2013 period. Several provisions of S. 1522 could affect GAO employee compensation costs, but the net budgetary effect of such provisions would depend on how GAO exercises its new authorities and on whether future agency appropriations are adjusted to reflect any savings or costs. Finally, we expect that any additional discretionary costs associated with changing the agency's name would not be significant.

S. 1522 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandate Reform Act (UMRA) and would not affect the budgets of state, local, or tribal governments.

Estimated costs to the Federal Government: The estimated impact of S. 1522 on direct spending is shown in the following table. The costs of this legislation fall within budget function 800 (general government).

	By fiscal year, in millions of dollars—									
	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013
CHANGES IN DIRECT SPENDING										
Estimated budget authority	1	3	5	5	5	5	4	4	4	4
Estimated outlays	1	3	5	5	5	5	4	4	4	4

Basis of estimate

Direct spending

S. 1522 would give GAO permanent authority to offer retirement to employees who voluntarily leave the agency early. GAO's existing buyout authority, which will expire on December 31, 2003, allows the agency to offer certain employees a lump sum payment of up to $25,000 to voluntarily leave the agency. In addition, certain qualified employees who leave (whether they collect a separation payment or not) are entitled to receive immediate retirement annuities earlier than they would have otherwise. CBO estimates that extending this authority would increase direct spending by $1 million in 2004, by $19 million over the 2004–2008 period, and by $40 million over the 2004–2013 period.

Based on information provided by GAO about use of its early retirement authority over the past several years, CBO estimates that each year about 35 agency employees would begin receiving retirement benefits three years earlier than they would have under current law. Inducing some employees to retire early results in higher-than-expected benefits from the Civil Service Retirement and Disability Fund (CSRDF). CBO estimates that the additional retirement benefits would increase direct spending by $1 million in 2004, by $16 million over the 2004–2008 period, and by $32 million over the 2004–2013 period.

Extending GAO's buyout and early retirement authority also would increase direct spending for federal retiree health benefits. Many employees who retire early would continue to be eligible for coverage under the Federal Employees' Health Benefits (FEHB) program. The government's share of the premium for retirees is classified as mandatory spending. Because many of those accepting the buyouts under the bill would have retired later under current law, mandatory spending on FEHB premiums would increase. CBO estimates these additional benefits would increase direct spending by less than $500,000 in 2004, by $3 million over the 2004–2008 period, and by $8 million over the 2004–2013 period.

Spending subject to appropriation

The authorities provided by S. 1522 would allow GAO to create a performance-based employee compensation system to govern basic pay adjustments, pay retention for employees affected by reductions in force, relocation reimbursements, and annual leave accruals beginning in fiscal year 2006. (Under existing law, GAO is required to follow personnel management policies determined by the Office of Personnel Management.) Implementing the new authorities that would be provided by S. 1522 could affect GAO's total costs of providing employee compensation, but CBO cannot predict any cost or saving associated with these new authorities, or the net effect of all such changes on the Federal budget. Ultimately, the net budgetary effect of the proposed authorities would depend on the features of the compensation system adopted by GAO and on how the agency applies that new system to individual employees. Moreover, any resulting savings or costs would only be realized if the agency's annual appropriations are adjusted accordingly.

Providing GAO with the option of providing voluntary separation payments could also increase GAO's costs, but CBO estimates that any new costs would average less than $500,000 annually over the 2004–2013 period. Section 2 of the bill would allow GAO to offer certain employees payments of up to $25,000 to voluntarily leave the agency. The bill also requires that GAO make a deposit amounting to 45 percent of each buyout recipient's basic salary toward the CSRDF. Unlike an increase in retirement benefits, these two payments would be from the agency's discretionary budget and are thus subject to appropriation. Since GAO's current buyout authority was first authorized in October 2000, no one at the agency has received a buyout payment. As such, CBO expects that relatively few employees would receive a buyout payment over the next 10 years and that the cost of any buyout payments and required deposits toward the CSRDF would be negligible in any given year.

Intergovernmental and private-sector impact: S. 1522 contains no intergovernmental or private-sector mandates as defined in UMRA and would not affect the budgets of State, local, or tribal governments.

Estimate prepared by: Federal Costs: Ellen Hays, Geoffrey Gerhardt, and Deborah Reis. Impact on State, Local, and Tribal Governments: Sarah Puro. Impact on the Private Sector: Paige Piper/Bach.

Estimate approved by: Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.

GROUP OF EIGHT

Mr. LIEBERMAN. Mr. President, I rise today to discuss a matter of great importance related to Russia's continued participation in the Group of Eight, or G–8. Senator MCCAIN and I submitted today a resolution calling on the President of the United States and the Secretary of State to work with our partners in the G–8 to condition Russia's continued involvement on its meetings the basic norms and standards of a democratic government.

The G–8 is a gathering of the world's wealthiest industrial democracies. It is

important that we do not lose sight of this world. It is well and good that all of the G–8 members are wealthy industrialized nations, but the real thing that binds us, the real thing that makes it a club worth joining is the fact that all of the participants are democracies. It is for this reason that China is not a member.

When President Clinton discussed Russia's joining the G–8 back in 1997 when Russia participated in the summit in Denver, he attributed Russia's participation to ''President Yeltsin's leadership and to the commitment of the Russian people to democracy and reform.''

But the actions of President Yeltsin's successor, President Putin, over the past 3 years raise serious concerns about Russia's continued commitment to democracy. This drift away from democratic practices cannot and should not be ignored. The list of offending actions is long and disturbing. Since 2000, President Putin has seized control of national television networks and otherwise limited the freedom of expression to the point that the group ''Reporters without Borders'' ranks Russia 121st out of 139 countries in its worldwide press freedom index. The recent arrest of Mikhail Khodorkovsky set off alarm bells because of its blatant political motives, despite claims otherwise. President Putim's government has attempted to control the activities of nongovernmental organizations, religious organizations, and other pluralistic elements of Russian society in an attempt to mute criticism of the government. Russian troops in Chechnya have been allowed to suppress the rights of Russian citizens with impunity, including in the conduct of recent elections that fell far short of minimal international standards of freedom and fairness. And the list could go on.

Continued membership in the G–8 is very important to Russia and to President Putin personally. We should use this leverage to get Russia back on the democratic track. Allowing Russia to continue its involvement in the G–8 and to host the 2006 G–8 Summit while continuing to undermine democracy makes mockery of the very principles that bind the G–8 countries together. We need to take steps not to ensure that Russia lives up to the commitments it made when it joined this club of industrialized democracies. To do otherwise would be to shirk our responsibilities as a leader of the democratic world. I urge my fellow Senators to support this resolution.

NATIONAL RETIREMENT PLANNING WEEK

Mr. AKAKA. Mr. President, I rise today to illuminate the merits of National Retirement Planning Week, which is currently underway. National Retirement Planning Week is organized by a coalition of financial industry and advocacy organizations to raise the awareness of the importance of retirement planning. I applaud the coalition for its efforts to increase public awareness of this critical topic.

The need to adequately prepare for retirement has significantly increased due to the growth in life expectancy and reduction in employer-provided retirement health benefits. In addition, increasing debt burdens confronting many families will make a comfortable retirement more difficult to achieve.

Americans are living longer. According to the U.S. National Center for Health Statistics, in 1950, an individual 65 years of age was expected to live an additional 13.9 years. This grew to 17.9 years by 2000. These additional years, many or most in retirement, will require Americans to have saved and invested additional financial resources to help meet their living expenses in retirement. Furthermore, the fastest growing segment of the population is made up of those 85 years and older, according to the Bureau of Labor Statistics.

While Americans have been living longer, employers have been reducing the health benefits provided to retirees. According to the Kaiser Family Foundation and Health Research and Education Trust, 38 percent of all large firms offer retirement benefits in 2003. This is a significant reduction from the 66 percent that offered retiree coverage in 1988. As employers continue to stop providing coverage and as health care costs continue to increase, proper planning is imperative for individuals to pay for healthcare expenses that may not be covered by Medicare.

In addition, another important component of preparing for retirement is to effectively manage and pay down debt. According to the Federal Reserve, consumer borrowing through auto loans, credit cards, and other debt increased by $15.1 billion in September, which brings the total consumer debt to $1.97 trillion. Substantial consumer debt will likely result in individuals having to work additional years beyond their preferred retirement age in order to pay off their credit cards and other consumer debts.

Obtaining home equity loans and refinancing mortgages to take cash out of homes may make it harder for working Americans to retire at the age and with quality of life they desire. Thirty-two percent of all mortgage refinancings in the third quarter of this year involved cash-outs of additional money beyond the existing loan balance, according to Freddie Mac. Although this is significantly lower than the record 93 percent in 1989, the additional debt brought on by these refinancings can significantly extend the time and cost of paying off a mortgage.

There is a greater need for larger nest eggs and better debt management. Unfortunately, defined benefit pension plans have become much less common and are not available for most working Americans to help meet these increasing costs. According to the Congressional Research Service, 72 percent of pension plan assets were held by defined benefit plans in 1975. Unfortunately, by 1998, this percentage fell to 48 percent. Changes in the contributions to pension plans and benefit payments between 1975 and 1998 also reflect the significant shift towards defined contribution retirement plans. Defined contribution plans require that employees be much more involved in their preparation for retirement. Employees must be aware of their alternatives in participating in their employer's plan. The matching contributions made by employers can provide employees with an immediate return on their investment. Employees must fully understand the importance of planning for retirement and the significance of participating in tax-advantaged employer plans and investment options that can be used, such as Individual Retirement Accounts, IRAs, to ensure that they will have sufficient resources for retirement. In addition, defined contribution plans require employees to manage their investments and make important asset allocation decisions. If employees do not have a sufficient level of financial literacy they will not be able to adequately manage their retirement portfolio.

Despite the need to ensure that employees have adequate resources for retirement, fewer employers are sponsoring plans and fewer employees are participating in employer-sponsored plans. According to a Congressional Research Service analysis of the Census Bureau's Current Population survey, the number of 25-to 64-year old, full-time employees in the private sector whose employer sponsored a retirement plan fell from 45.1 million in 2001 to 42.8 million in 2002. The survey also indicated that, among this population, participation in an employer sponsored retirement plan fell from 55.8 percent in 2001 to 53.5 percent in 2002. More employers must sponsor retirement plans and more employees need to participate in them. Working Americans will be in a better position to retire on their terms by starting to prepare for retirement early and utilizing investment vehicles that have preferential tax treatment such as 401(k) plans and Individual Retirement Accounts. A long-term time horizon allows investors to reap greater benefit from the compounding of their returns.

An important component of retirement security is financial and economic literacy, which should be at higher levels in our country. We must do more throughout the lives of individuals to ensure that they are financially and economically literate and can make informed financial decisions and participate effectively in the modern economy. Without a sufficient understanding of economics and personal finance, individuals will not be able to appropriately manage their finances, evaluate their credit opportunities, and successfully invest for their long-term financial goals.

Starting with our youth, it is necessary to fund the Excellence in Economic Education, EEE, Act, which provides resources for teacher training, evaluations, research, and other activities in K–12 education. There is no better time to instill in individuals the knowledge and skills that they need to make good decisions throughout their lives than during their years in elementary and secondary education.

I have also introduced S. 1800, the College LIFE, or Literacy in Finance and Economics Act, to address needs in this area for the college population. We must give students access to the tools that they need to make sound economic and financial decisions once they are on campus. Without an understanding of finance and economics, college students are not able to effectively evaluate credit alternatives, manage their debt, and prepare for long-term financial goals, such as saving for a home or retirement. I am working with my colleagues on both sides of the aisle to come up with a package based on S. 1800 that can be included in the Higher Education Act.

I also appreciate the work done by my colleague from New Jersey, Senator CORZINE, in developing and introducing S. 386, the Education for Retirement Security Act of 2003. The legislation authorizes grants for financial education programs targeted towards mid-life and older Americans to increase financial and retirement knowledge and reduce their vulnerability to financial abuse and fraud. I am a cosponsor of this legislation which will help Americans prepare for retirement.

I look forward to continuing to work with my colleagues to improve economic and financial literacy. I also want to express my appreciation for the significant efforts made by Senators SARBANES, ENZI, CORZINE, ALLEN, STABENOW, and FITZGERALD to improve economic and financial literacy. Our efforts need to continue so that individuals will be able to make informed decisions and be able to pursue their long-term financial goals, particularly into their golden years of retirement.

NATIONAL ADOPTION MONTH

Mr. JOHNSON. Mr. President. As we approach this holiday season of Thanksgiving, I want to draw attention to National Adoption Month as we celebrate it this month.

I am joining my colleagues on the Congressional Coalition for Adoption this month to increase awareness and knowledge of the obstacles that children in foster care face while waiting to be adopted and to encourage more families to consider adopting.

Currently, there are 580,000 children in the foster care system in America, 126,000 of whom are waiting to be adopted. Yet, only 20 to 25 percent of foster children waiting for adoption will ever find an adoptive family before aging out of government care. The foster care system has been extremely important in rescuing abused and neglected children. However, the foster care system was designed to be a temporary situation, but it is increasingly becoming a permanent guardian for many children. This is particularly true for children who are not adopted in their early years or who find themselves in foster care at an older age. Of the 126,000 children waiting to be adopted approximately half are 9 years of age or older.

Every year an average of 100 children in South Dakota, and 25,000 children nationally, age out of the foster care system at the age of 18, often with very little if any support system in pace. These children often face the challenges of homelessness, college noncompletion, unemployment, and a lack of health care. Transitional living and mentoring program can alleviate some of these concerns but programs face the strains of staff shortages and underfunding. I must commend the South Dakota Coalition for Children for working to secure Medicaid coverage for children that age out of the foster care system until they reach the age of 22. This eliminates one serious concern many former foster care youths face with they are no longer in Government care, but it does not replace the support of a loving family.

On November 22, 2003, courts across the country joined State agencies, children in foster care and hopeful parents to finalize adoptions and demonstrate the large number of children waiting for safe, stable, permanent homes.

As we approach the Thanksgiving holiday and gather with our families, we should not forget those children still waiting for a loving, permanent family to be thankful for.

ADDITIONAL STATEMENTS

HONORING ARVILLA ''BILLIE'' CAMPBELL ON HER 100TH BIRTHDAY

• Mr. CRAPO. Mr. President, I honor Arvilla ''Billie'' Campbell of Meridian, ID, who is approaching her 100th birthday on January 21, 2004. Arvilla's impressive longevity is matched by her positive contributions to home and country. I am sure that her six children, 19 grandchildren, and 48 great-grandchildren join me in paying tribute to this great women.

Arvilla was born and raised in Preston, ID, where she attended high school at the Preston Academy. In 1923, she married Elgin Campbell, and the couple had six children together. Her children report that Arvilla set a great foundation for each of their lives through the principles she taught. Arvilla recognized the important of a strong work ethic, telling her children that you only get what you work for. Arvilla herself was a hard worker, doing all she could during the Great Depression to ensure that her family had what they needed. She was known to comment that though the family may have been broke, they were never poor. Arvilla taught her children to have pride in their appearance and made sure they had impeccable decorum and proper speech at all times. Arvilla was also active in the Church of Jesus Christ of Latter Day Saints, and she taught many children over the occurs of many years of service.

Arvilla also taught love of country, a fact reflected in the lives of her children. Remarkably, all six of her children have served or are affiliated with the Armed Forces. She encouraged them to serve in the military because she believes freedom is a privilege that deserves effort and sacrifice. All four of Arvilla's sons have served in combat. E. Stewart Campbell served in the Navy, starting in World War II through the Vietnam War, attaining the rank of lieutenant colonel. Garth K. Campbell served in the Pacific Theatre of World War II as a petty officer in the Navy. Bruce E. Campbell served in the Korean War as a corporal in the Army. Doug Campbell served in both the Korean and Vietnam wars as an Army platoon sergeant. Helen Campbell Harden, one of the Arvilla's daughters, is married to John Harden, an Army warrant officer in the Army. Ruth Campbell Rivers, another daughter, is also closely connected to the military: her husband Gerald is a lance corporal in the Marine Corps. America has benefited from the efforts of each of these individuals, and Arvilla is to be commended for her children's unselfish service to the United States.

I wish Arvilla a Happy Birthday. She has been a great teacher, example, and citizen of Idaho. I wish her health and happiness on this exciting day, and join with family and friends in honoring her contribution to Idaho.•

GENE BOYT

• Mr. INHOFE. Mr. President, I stand today to pay tribute to a great American and a great Oklahoman. Gene Boyt was a member of our Nation's ''Greatest Generation'' and served his country during World War II in the United States Army. He died at the age of eighty-six in Chickasha, OK.

After being assigned to the Philippines as a lieutenant in the Engineering Corps, he was taken captive by the Japanese on April 9, 1942. As a prisoner, he was forced to march 90 miles in 6 days in what has become known as the Bataan Death March. The prisoners marched without food or water, and many were executed or died along the way from exhaustion and dehydration. After surviving the grueling journey, Lieutenant Boyt spent 3½ years in Japanese prisons.

Gene Boyt knew what persecution meant. He knew what it meant to stand up for the cause of freedom, for the honor and integrity of the United States. Gene Boyt knew what it meant to defend this country from enemies determined to destroy it. He knew

what it meant to suffer for what he believed.

I stand today proud to be an American because men like Gene Boyt lived and died protecting that right. He was awarded the Purple Heart, the Bronze Star, three Presidential Citations, the Philippines's Presidential Citation Medal, and the Oklahoma Medal of Valor. He deserves to be honored once again today on the Senate floor.

Today I stand in tribute to one of Oklahoma's favorite sons, a great American hero and devoted family man. Gene Boyt sacrificed everything for his country, and I am sure that his family is proud of this great man, and the legacy he left behind. The thoughts and prayers of a grateful Nation are with them during this difficult time.●

(At the request of Mr. DASCHLE, the following statement was ordered to be printed in the RECORD.)

HONORING MILITARY RESERVISTS AND THEIR SMALL BUSINESS EMPLOYERS DURING NATIONAL EMPLOYER SUPPORT OF THE GUARD AND RESERVE WEEK

● Mr. KERRY. Mr. President, as this is National Employer Support of the Guard and Reserve Week, it seems an appropriate time to speak on the honorable Americans serving in our National Guard and Reserve.

To fight our wars and to meet our military responsibilities, the United States supplements its regular, standing military with a capable band of citizen soldiers, reservists who serve nobly and continue to make the ultimate sacrifice for this country. At present, there are about 165,000 national guardsmen and reservists on active duty—more than half of the 300,000 called to active duty since September 11. They serve admirably around the world, performing critical wartime functions in Iraq, Afghanistan, and elsewhere. This country does not go into battle without members of the National Guard and Reserve, and we should be grateful for their service.

Instead of gratitude, members of the Guard and Reserve find the Bush administration's military agenda leaving them behind. In addition, earlier this year, the Republican majority in the U.S. House of Representatives sought to cut reservist pay by 40 percent for normal peacetime training requirements. The Republican majority in the U.S. Senate blocked efforts to extend health care benefits to Guard and Reserve members. Just this month, the Republican majority in Congress voted against legislation by Senator DURBIN that would have provided supplemental income for Federal employees who are called up to active duty. These efforts are wrong and demonstrate the misplaced priorities of the Republican Party.

To make matters worse, the Bush administration recently announced that it would require thousands of National Guard and Army Reserve troops to extend their tours of duty up for an additional six months. This extension will cause significant economic difficulties for the reservists, their families, their employers, and our national economy.

Beyond the hardship of leaving their families, their homes and their regular employment, more than one-third of military reservists and National Guard members face a pay cut when they're called for active duty. Many of these reservists have families who depend upon that paycheck and can least afford a substantial reduction in pay.

The United States Chamber of Commerce estimates that 70 percent of military reservists called to active duty work in small- or medium-size companies. The continued activation of military reservists to serve in Iraq and the broader war on terrorism has imposed a tremendous burden on many of our country's small businesses. Too many of these businesses, when their employees are asked to leave their jobs and serve the Nation, are unable to continue operating successfully—resulting in severe financial difficulty and even bankruptcy. Large businesses have the resources to provide supplemental income to reservist employees called up for active duty and to replace them with a temporary employee. However, many small businesses are unable to provide this assistance or temporarily cover the reservist's duties.

The Federal Government has an obligation to help small businesses weather the loss of an employee to a call-up and a duty to protect small business employees and their families from suffering a pay cut to serve our Nation. It is imperative that we help families of reservists maintain their standard of living while their loved one protects our country abroad.

That is why I have proposed creating a Small Business Military Reservist Tax Credit, which does two things. First, it provides an immediate Federal income tax credit to any small business to help with the cost of temporarily replacing a reservist employee that has been called up to active duty. Second, it provides a tax credit to small businesses that pay any difference in salary for an employee who is called up. This tax credit is worth up to $12,000 to any small business and up to $20,000 for small manufacturers.

It is common knowledge that small businesses continue to be our most effective tool at creating new jobs and spurring economic growth nationwide. Small businesses employ over 50 percent of the Nation's work force. Across the country, small businesses are currently creating 75 percent of new jobs. Furthermore, many of these small businesses provide quality goods and services that are a vital link in the supply chain for national defense. Many of these small companies need immediate help to keep their business going while their employees encounter tremendous personal sacrifice in service of our country.

This assistance will immediately help struggling entrepreneurs keep their small businesses running during the loss of an employee to temporary military service. It will also help the families of military reservists cope with the financial burden of their absence. In this way we ensure that we preserve our great tradition of citizen soldiers at such a critical time in the Nation's history.

In his speech designating this week National Employer Support of the Guard and Reserve Week, President Bush recognized several large businesses for their support of the Guard and Reserve. I, too, commend these big corporations for their support of our reservists and guardsmen, but the President has again showed that he doesn't understand the plight of our military reservists and their smaller employers. The fact is big businesses, like those the President recently honored, aren't going out of business if one of their reservist employees is called up. Small businesses may.

My legislation provides a real solution—helping small businesses maintain productivity and helping make up the difference for reservists who face pay cuts when they're deployed—not just a pat on the back that this week provides. I urge the President and all of my colleagues to support my proposal.●

HONORING NOR-LEA GENERAL HOSPITAL

● Mr. DOMENICI. Mr. President, today I recognize the outstanding achievement of a hospital in my home State of New Mexico. Nor-Lea General Hospital, which is located in Lovington, New Mexico, was recently honored as one of the Nation's ''Top 100'' Hospitals by Solucient Corporation, a healthcare information company, in their 10th National Benchmarks for Success study. Nor-Lea was recognized because they have demonstrated superior clinical, operational, and financial performance in overall service.

I am proud to recognize Nor-Lea Hospital for its strong commitment to help the community. Too often we hear about hospitals that are struggling; hospitals asserting they can not save money and improve patient services and thus are not able to meet the needs of their communities.

Nor-Lea represents the exception. They represent the value of management, not only to save money, but also to improve efficiency. Nor-Lea is demonstrating what kind of performance is possible when this is done and they are setting new targets for performance improvement across the industry.

Nor-Lea General Hospital is a 25-bed Medicare-certified facility. Medicare, Medicaid, private insurance and private pay are accepted for services rendered. Nor-Lea General Hospital offers comprehensive outpatient services, which include a state-of-the-art laboratory facility with national lab affiliations, radiology services, MRI, bone densitometry, fluoroscopy, x-ray, ultrasound, and respiratory services.

The hospital also has a newly enlarged emergency room which is open 24 hours a day, 7 days a week. Each month about 385 individuals utilize this emergency room.

Nor-Lea was recognized as a top performing ''Small Community Hospital'' because of their higher survival rate and because they spend less money, release patients from the hospital faster, and have fewer employees. In short, Nor-Lea treats more of the sickest patients, while maintaining high customer service and preserving profits in a difficult marketplace.

Congratulations, Nor-Lea General Hospital. I hope that your success will be a catalyst for continuous hospital performance improvement.●

HONORING LINDA BARKER

● Mr. JOHNSON. Mr. President, today I wish to publicly commend Linda Barker, a resident of Sioux Falls, SD, on her selection as the recipient of the Sioux Falls Development Foundation's annual Spirit of Sioux Falls Award.

The Spirit of Sioux Falls Award is given annually in memory of the eight people who were killed when then South Dakota Gov. George Mickelson's plane crashed in 1993. This year, the recipient was Linda Barker, a member of the community who has shown leadership and commitment to the economic development in Sioux Falls. Dan Scott, President of the Sioux Falls Development Foundation, said that Linda, who is currently a member of the Board of Directors for the Development Foundation, was chosen because she ''has been an incredibly valuable member of the Board of Directors. Not just because she has attended the meetings, but because she has been in our office on a weekly basis offering any kind of help the staff needed.''

During her service with the South Dakota Development Foundation, she was instrumental in a number of ways. In addition to her work with the Forward Sioux Falls program, her leadership helped the Development Foundation acquire enough land to serve as development parks for the next fifteen years. According to Mr. Scott, they are now well prepared to handle the needs in the development park arena for the future. She was also instrumental in serving as chairman of the membership committee—essentially revitalizing and reenergizing their membership effort, raising the number from 350 to 400 members.

Linda's involvement in the Sioux Falls area comes from her love of the community. In her thirteen years as part owner of Business Aviation Services in Sioux Falls, she was instrumental in helping the company more than quadruple its business, increasing sales from $4 million to $18 million annually. The company has also added 100 employees and it now owns or manages 48 aircraft, compared with six in 1990, when Linda joined the ownership team. Dale Froehlich, president and chief executive officer of Business Aviation, said Linda's success is ''because of her unwillingness to give up, even in the dreariest of situations.'' It is this type of hard work and dedication that led Linda to her success and her subsequent recognition with the Spirit of Sioux Falls Award.

This prestigious award is a reflection of her extraordinary leadership, skill and commitment to South Dakota. I am pleased that her success is being publicly recognized, and I am confident that her achievements will serve as an exemplary model for talented South Dakotans throughout our state. People of all ages need to think more about how we, as individual citizens, can work together at the local level to ensure the health and vitality of our towns and neighborhoods. Citizens such as Linda Barker are examples to all of us. She is an extraordinary individual who richly deserves this distinguished recognition. I strongly commend her hard work and dedication, and I am very pleased that her efforts are being publicly honored and celebrated.

It is with great honor that I share her impressive accomplishments with my colleagues.●

IN REMEMBRANCE OF THE REVEREND DR. AVERY ALDRIDGE

● Mr. LEVIN. Madam President, I want to call my colleagues' attention to the loss of one of the most influential civic and religious leaders in Flint, MI, Dr. Avery Aldridge, who passed away at the age of 78 on November 1, 2003. He is greatly mourned by his wife and family, his church community, and people in my home State of Michigan who knew and loved him as a man of great faith, devoted to his family, and a voice for justice and equality in the African American community.

Dr. Aldridge was born in Widener, AR on February 9, 1925, the fourth of nine children. He completed his secondary education in Memphis, TN, and from there was inducted in the Army in 1943. He served as a Sergeant during World War II, defending the cause of freedom for his country until his honorable discharge in 1946. He then settled in Flint, MI where he married Mildred Light and had two children, Karen and Derrick. Dr. Aldridge and his wife were dedicated members of Antioch Baptist Church where he served as General Superintendent of the Sunday School and was later ordained into the ministry.

In December, 1956, Dr. Aldridge founded Foss Avenue Missionary Baptist Church with his wife, Mildred, and two others. The church has grown through the years to a congregation of two thousand families, with 50 auxiliaries and committees, an elementary and secondary school, a credit union, an activity center and a free clothing center. Dr. Aldridge also led Foss Avenue to initiate a small business center to train youth for employment, provide food baskets to those in need, organize a prison ministry and annually provide Thanksgiving Day dinner to all incarcerated in the Genessee County Jail. Dr. Aldridge's vision and leadership also supported four missionaries to Africa, and led to the founding of Concerned Pastors for Social Action (CPSA), the CPSA Courier, a weekly community and religious publication, and Faith Access to Community Economic Development (FACED), a community development organization.

Dr. Aldridge was a lifelong learner and furthered his education at Moody Bible Institute in Chicago and the University of Michigan-Flint. He believed strongly in the value of education and supported black colleges across the country, as well as scholarships for local youth. Because of his work, he was awarded several honorary degrees through the years.

Dr. Avery was committed to serving the needs of people and improving the quality of community life. He rose to prominence in Flint during the civil rights movement of the 1960s, and was a calming influence in the city during tensions in the wake of the Detroit riots in 1967. He became known as ''The Rights Activist,'' serving on local, State, and national commissions, including the Flint Human Relations Commission, the Flint Housing Commission, the Michigan AIDS Policy Commission, and the National Holiday for Martin Luther King, Jr. Commission.

I know my colleagues join me in paying tribute to the life and ministry of Reverend Dr. Avery Aldridge who will be missed by the many people whose lives he touched. I hope his family takes comfort in knowing that his legacy will stand as an inspiration for generations to come.●

PRINCIPAL OF THE YEAR FINALIST

● Mr. CORZINE. Mr. President, it is my distinct honor and pleasure to recognize Richard Roberto of John F. Kennedy High School in Paterson, NJ as one of six finalists for the National High School Principal of the Year.

The impact that Mr. Roberto has made on the students and faculty at John F. Kennedy High School cannot be overstated. His leadership has produced remarkable results for students—indeed, test scores are higher at John F. Kennedy, in part, I am sure, because he created an extended year program for juniors and established freshman houses to personalize the learning environment. He also administered the expansion of eight career academies. These academies provide small learning communities in which students can explore diverse interests. As you can see, students have thrived under Mr. Roberto because of his efforts to develop opportunities for their success.

Not only has his work affected students, but his staff development program, which includes a focus on core curriculum content, has fostered collaboration among all the teachers at

John F. Kennedy High School. Through newsletters, needs assessments, teachers surveys, and collaborative groups Mr. Roberto has instituted whole school reform that concentrates on the needs of all members of his faculty.

I congratulate Mr. Roberto on his success in building a school environment that facilitates communication and creates a learning environment enabling student success. His dedication, innovation, and leadership are qualities that every principal in our Nation should have. It is with great admiration that I acknowledge Mr. Roberto as a 2003 Principal of the Year finalist.●

MESSAGES FROM THE PRESIDENT

Messages from the President of the United States were communicated to the Senate by Mr. Thomas, one of his secretaries.

EXECUTIVE MESSAGES REFERRED

As in executive session the Presiding Office laid before the Senate messages from the President of the United States submitting sundry nominations which were referred to the appropriate committees.

(The nominations received today are printed at the end of the Senate proceedings.)

MESSAGES FROM THE HOUSE

At 10:57 a.m., a message from the House of Representatives, delivered by Ms. Niland, one its reading clerks, announced that the House has passed the following bills, without amendment:

S. 189. An act to authorize appropriations for nanoscience, nanoengineering, and nanotechnology research, and for other purposes; and

S. 1895. An act to temporarily extend the programs under the Small Business Act and the Small Business Investment Act of 1958 through March 15, 2004, and for other purposes.

The message also announced that the House has passed the following bill, with an amendment:

S. 686. An act to provide assistance for poison prevention and to stabilize the funding of regional poison control centers.

The message further announced that the House passed the following bills in which it requests the concurrence of the Senate:

H.R. 253. An act to amend the National Flood Insurance Act of 1968 to reduce losses to properties for which repetitive flood insurance claim payments have been made; and

H.R. 3521. An act to amend the Internal Revenue Code of 1986 to extend certain expiring provisions, and for other purposes.

The message also announced that the House agree to the amendments of the Senate to the bill (H.R. 1828) to halt Syrian support for terrorism, end its occupation of Lebanon, and stop its development of weapons of mass destruction, and by so doing hold Syria accountable for the serious international security problems it has caused in the Middle East, and for other purposes.

The message further announced that the House agree to the amendments of the Senate to the resolution (H. Con. Res. 209) commending the signing of the United States-Adriatic Charter, a charter of partnership among the United States, Albania, Croatia, and Macedonia.

ENROLLED BILLS SIGNED

The message also announced that the Speaker has signed the following enrolled bills:

S. 117. An act to authorize the Secretary of Agriculture to sell or exchange certain land in the State of Florida, and for other purposes;

S. 286. An act to revise and extend the Birth Defects Prevention Act of 1998;

S. 650. An act to amend the Federal Food, Drug, and Cosmetic Act to authorize the Food and Drug Administration to require certain research into drugs used in pediatric patients;

S. 1685. An act to extend and expand the basic pilot program for employment eligibility verification, and for other purposes.

S. 1720. An act to provide for Federal court proceedings in Plano, Texas;

S. 1824. An act to amend the Foreign Assistance Act of 1961 to reauthorize the Overseas Private Investment Corporation, and for other purposes; and

H.R. 3182. An act to reauthorize the adoption incentive payments program under part E of title IV of the Social Security Act, and for other purposes.

The enrolled bills were signed subsequently by the President pro tempore (Mr. STEVENS).

At 12:12 p.m., a message from the House of Representatives, delivered by Mr. Hays, one of its reading clerks, announced that the House has passed the following bill in which it requests the concurrence of the Senate:

H.R. 135. An act to establish the ''Twenty-First Century Water Commission'' to study and develop recommendations for a comprehensive water strategy to address future water needs.

At 3:17 p.m., a message from the House of Representatives, delivered by Ms. Niland, one of its reading clerks, announced that the House agree to the report of the committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H.R. 1904) to improve the capacity of the Secretary of Agriculture and the Secretary of the Interior plan and conduct hazardous fuels reduction projects on National Forest System lands and Bureau of Land Management lands aimed at protecting communities, watersheds, and certain other at-risk lands from catastrophic wildfire, to enhance efforts to protect watersheds and address threats to forest and rangeland health, including catastrophic wildfire, across the landscape, and for other purposes.

At 5:20 p.m., a message from the House of Representatives, delivered by Ms. Niland, one of its reading clerks, announced that the House has passed the following bills, without amendment:

S. 1152. An act to reauthorize the United States Fire Administration, and for other purposes.

S. 1156. An act to amend title 38, United States Code, to improve and enhance provision of health care for veterans, to authorize major construction projects and other facilities matters for the Department of Veterans Affairs, to enhance and improve authorities relating to the administration of personnel of the Department of Veterans Affairs, and for other purposes.

At 9:43 p.m., a message from the House of Representatives, delivered by Ms. Niland, one of its reading clerks, announced that the House has passed the following joint resolution, in which it requests the concurrence of the Senate:

H.J. Res. 79. Joint resolution making further continuing appropriations for the fiscal year 2004, and for other purposes.

MEASURES PLACED ON THE CALENDAR

The following bill was read the second time, and placed on the calendar:

H.R. 1274. An act to direct the Administrator of General Services to convey to Fresno County, California, the existing Federal courthouse in that county.

ENROLLED BILLS PRESENTED

The Secretary of the Senate reported that on today, November 21, 2003, she had presented to the President of the United States the following enrolled bills:

S. 117. An act to authorize the Secretary of Agriculture to sell or exchange certain land in the State of Florida, and for other purposes;

S. 286. An act to revise and extend the Birth Defects Prevention Act of 1998;

S. 650. An act to amend the Federal Food, Drug, and Cosmetic Act to authorize the Food and Drug Administration to require certain research into drugs used in pediatric patients;

S. 1685. An act to extend and expand the basic pilot program for employment eligibility verification, and for other purposes.

S. 1720. An act to provide for Federal court proceedings in Plano, Texas;

S. 1824. An act to amend the Foreign Assistance Act of 1961 to reauthorize the Overseas Private Investment Corporation, and for other purposes; and

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. BENNETT, from the Committee on Joint Economic Committee:

Special Report entitled ''The 2003 Joint Economic Report'' (Rept. No. 108–206).

By Ms. COLLINS, from the Committee on Governmental Affairs, with amendments:

S. 1522. A bill to provide new human capital flexibility with respect to the GAO, and for other purposes.

EXECUTIVE REPORTS OF COMMITTEES

The following executive reports of committees were submitted:

By Mr. WARNER for the Committee on Armed Services.

Air Force nomination of Maj. Gen. William Welser III.

Air Force nominations beginning Colonel Paul F. Capasso and ending Colonel Robert M. Worley II, which nominations were received by the Senate and appeared in the Congressional Record on January 9, 2003.

Air Force nomination of Col. Stephen L. Lanning.

Air Force nomination of Brigadier General Robin E. Scott.

Army nomination of Maj. Gen. Larry J. Dodgen.

Army nomination of Maj. Gen. John M. Curran.

Army nomination of Brig. Gen. Keith M. Huber.

Army nomination of Brig. Gen. Dennis E. Hardy.

Army nominations beginning Brig. Gen. James R. Sholar and ending Col. Henry J. Ostermann, which nominations were received by the Senate and appeared in the Congressional Record on August 1, 2003.

Navy nomination of Rear Adm. Walter B. Massenburg.

Navy nominations beginning Rear Adm. (1h) Robert E. Cowley III and ending Rear Adm. (1h) Steven W. Maas, which nominations were received by the Senate and appeared in the Congressional Record on March 19, 2003.

Navy nomination of Capt. Brian G. Brannman.

Navy nomination of Capt. Raymond K. Alexander.

Navy nominations beginning Rear Adm. (1h) Donald K. Bullard and ending Rear Adm. (1h) John J. Waickwicz, which nominations were received by the Senate and appeared in the Congressional Record on October 16, 2003.

Mr. WARNER. Mr. President, for the Committee on Armed Services I report favorably the following nomination lists which were printed in the RECORDS on the dates indicated, and ask unanimous consent, to save the expense of reprinting on the Executive Calendar that these nominations lie at the Secretary's desk for the information of Senators.

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

Air Force nomination of Gary H. Sharp.

Air Force nomination of Jeffrey N. Leknes.

Air Force nomination of Samuel B. Echaure.

Air Force nominations beginning Thomas E. Jahn and ending Rodney D. Lewis, which nominations were received by the Senate and appeared in the Congressional Record on October 23, 2003.

Air Force nominations beginning Samuel C. Fields and ending Kevin C. Zeeck, which nominations were received by the Senate and appeared in the Congressional Record on October 23, 2003.

Air Force nomination of Robert G. Cates III.

Air Force nomination of Mary J. Quinn.

WITHDRAWALS

Executive message transmitted by the President to the Senate on November 21, 2003, withdrawing from further Senate consideration the following nominations:

April H. Foley, of New York, to be a Member of the Board of Directors of the Export-Import Bank of the United States for a term expiring January 20, 2007, which was sent to the Senate on April 10, 2003.

April H. Foley, of New York, to be a Member of the Board of Directors of the Export-Import Bank of the United States for a term expiring January 20, 2007, which was sent to the Senate on May 14, 2003.

DISCHARGED NOMINATIONS

The Senate Committee on Health, Education, Labor, and Pensions was discharged from further consideration of the following nominations and the nominations were:

James McBride, of New York, to be a Member of the National Council on the Arts for a term expiring September 3, 2008.

David Eisner, of Maryland, to be Chief Executive Officer of the Corporation for National and Community Service.

Read Van de Water, of North Carolina, to be a Member of the National Mediation Board for a term expiring July 1, 2006.

Raymond Simon, of Arkansas, to be Assistant Secretary for Elementary and Secondary Education, Department of Education.

Jose Antonio Aponte, of Colorado, to be a Member of the National Commission on Libraries and Information Science for a term expiring July 19, 2007.

Sandra Frances Ashworth, of Idaho, to be a Member of the National Commission on Libraries and Information Science for a term expiring July 19, 2004.

Edward Louis Bertorelli, of Massachusetts, to be a Member of the National Commission on Libraries and Information Science for a term expiring July 19, 2005.

Carol L. Diehl, of Wisconsin, to be a Member of the National Commission on Libraries and Information Science for a term expiring July 19, 2005.

Allison Druin, of Maryland, to be a Member of the National Commission on Libraries and Information Science for a term expiring July 19, 2006.

Beth Fitzsimmons, of Michigan, to be a Member of the National Commission on Libraries and Information Science for a term expiring July 19, 2006.

Patricia M. Hines, of South Carolina, to be a Member of the National Commission on Libraries and Information Science for a term expiring July 19, 2005.

Colleen Ellen Huebner, of Washington, to be a Member of the National Commission on Libraries and Information Science for a term expiring July 19, 2007.

Stephen M. Kennedy, of New Hampshire, to be a Member of the National Commission on Libraries and Information Science for a term expiring July 19, 2007.

Bridget L. Lamont, of Illinois, to be a Member of the National Commission on Libraries and Information Science for a term expiring July 19, 2008.

Mary H. Perdue, of Maryland, to be a Member of the National Commission on Libraries and Information Science for a term expiring July 19, 2008.

Herman Lavon Totten, of Texas, to be a Member of the National Commission on Libraries and Information Science for a term expiring July 19, 2008.

Public Health Service nomination beginning with Vincent A. Berkley and ending with James Syms.

Drew R. McCoy, of Massachusetts, to be a Member of the Board of Trustees of the James Madison Memorial Fellowship Foundation for a term of six years.

Carol Kinsley, of Massachusetts, to be a Member of the Board of Directors of the Corporation for National and Community Service for a term expiring October 6, 2006.

Susan K. Sclafani, of the District of Columbia, to be Assistant Secretary for Vocational and Adult Education, Department of Education.

Laurie Susan Fulton, of Virginia, to be a Member of the Board of Directors of the United States Institute of Peace for a term expiring January 19, 2007.

Steven J. Law, of the District of Columbia, to be Deputy Secretary of Labor.

J. Robinson West, of the District of Columbia, to be a Member of the Board of Directors of the United States Institute of Peace for a term expiring January 19, 2007.

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. JEFFORDS (for himself, Ms. SNOWE, and Mr. HATCH):

S. 1912. A bill to amend the Internal Revenue Code of 1986 to expand pension coverage and savings opportunities and to provide other pension reforms; to the Committee on Finance.

By Mr. MCCAIN (for himself and Mr. FEINGOLD):

S. 1913. A bill to amend the Internal Revenue Code of 1986 to reform the system of public financing for Presidential elections, and for other purposes; to the Committee on Finance.

By Ms. STABENOW (for herself and Mr. LEVIN):

S. 1914. A bill to prohibit the closure or realignment of impatient services at the Aleda E. Lutz Department of Veterans Affairs Medical Center in Saginaw, Michigan, as proposed under the Capital Asset Realignment for Enhanced Services initiative; to the Committee on Veterans' Affairs.

By Mr. LIEBERMAN:

S. 1915. A bill to ensure that the Government fully accounts for both its explicit liabilities and implicit commitments and adopts fiscal and economic policies that enable it to finance and manage these liabilities and commitments, to honor commitments to the Baby Boom and subsequent generations with regard to social insurance programs, and to provide for the national defense, homeland security, and other critical governmental responsibilities; to the Committee on the Budget and the Committee on Governmental Affairs, jointly, pursuant to the order of August 4, 1977, with instructions that if one Committee reports, the other Committee have thirty days to report or be discharged.

By Ms. LANDRIEU:

S. 1916. 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; to the Committee on Armed Services.

By Mrs. HUTCHISON:

S. 1917. A bill to amend the Internal Revenue Code of 1986 to permit the issuance of tax-exempt bonds for certain air and water pollution control facilities, and to provide that the volume cap for private activity bonds shall not apply to bonds for facilities for the furnishing of water, sewage facilities, and air or water pollution control facilities; to the Committee on Finance.

By Mr. SANTORUM (for himself and Mrs. FEINSTEIN):

S. 1918. A bill to amend the Internal Revenue Code of 1986 to provide that qualified homeowner downpayment assistance is a charitable purpose; to the Committee on Finance.

By Mr. ALLEN:

S. 1919. A bill to designate a portion of the United States courthouse located at 2100 Jamieson Avenue, in Alexandria, Virginia, as the ''Justin W. Williams United States Attorney's Building''; to the Committee on Environment and Public Works.

By Mr. GRASSLEY (for himself and Mr. LEAHY):

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; to the Committee on the Judiciary.

By Mr. GRASSLEY (for himself and Mr. SESSIONS):

S. 1921. A bill to amend chapter 3 of title 28, United States Code, to provide for 11 circuit judges on the United States Court of Appeals for the District of Columbia Circuit; to the Committee on the Judiciary.

By Mr. SMITH (for himself and Mr. BREAUX):

S. 1922. A bill to amend the Internal Revenue Code of 1986 to comply with the World Trade Organization rulings on the FSC/ETI benefit in a manner that preserves manufacturing jobs and production activities in the United States, and for other purposes; to the Committee on Finance.

By Mr. LEAHY:

S. 1923. A bill to reauthorize and amend the National Film Preservation Act of 1996; to the Committee on the Judiciary.

By Mr. JEFFORDS:

S. 1924. A bill to provide for the coverage of milk production under the H-2A nonimmigrant worker program; to the Committee on the Judiciary.

By Mr. KENNEDY (for himself, Mr. SCHUMER, Mr. DODD, Mr. HARKIN, Ms. MIKULSKI, Mrs. MURRAY, Mr. EDWARDS, Mrs. CLINTON, Mr. INOUYE, Mr. LEAHY, Mr. LEVIN, Mr. KERRY, Mr. BIDEN, Mr. ROCKEFELLER, Mr. LIEBERMAN, Mr. AKAKA, Mrs. BOXER, Mr. FEINGOLD, Mr. DURBIN, Mr. BAYH, Mr. CORZINE, Mr. DAYTON, and Mr. LAUTENBERG):

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; to the Committee on Health, Education, Labor, and Pensions.

By Ms. STABENOW (for herself, Mr. GRAHAM of Florida, Mrs. CLINTON, Mrs. MURRAY, Mr. LEAHY, Mr. DASCHLE, Mr. PRYOR, Mr. LEVIN, Mr. SCHUMER, and Ms. CANTWELL):

S. 1926. A bill to amend title XVIII of the Social Security Act to restore the medicare program and for other purposes; to the Committee on Finance.

By Mrs. CLINTON:

S. 1927. A bill to establish an award program to encourage the development of effective bomb-scanning technology; to the Committee on Commerce, Science, and Transportation.

By Mr. SARBANES (for himself, Mr. SCHUMER, Ms. STABENOW, Mr. CORZINE, Mr. DURBIN, Mr. KERRY, Ms. MIKULSKI, Mrs. CLINTON, Mr. LEVIN, Mr. LEAHY, Mr. AKAKA, Mr. KENNEDY, Mr. LAUTENBERG, Mr. DAYTON, and Mr. DODD):

S. 1928. A bill to amend the Truth in Lending Act to protect consumers against predatory practices in connection with high cost mortgage transactions, to strengthen the civil remedies available to consumers under existing law, and for other purposes; to the Committee on Banking, Housing, and Urban Affairs.

By Mr. GREGG (for himself and Mr. KENNEDY):

S. 1929. A bill to amend the Employee Retirement Income Security Act of 1974 and the Public Health Service Act to extend the mental health benefits parity provisions for an additional year; considered and passed.

By Mr. BROWNBACK (for himself, Mr. ENSIGN, Mr. ENZI, Mr. HAGEL, Mr. INHOFE, Mr. NICKLES, Mr. SANTORUM, and Mr. SESSIONS):

S. 1930. A bill to provide that the approved application under the Federal Food, Drug, and Cosmetic Act for the drug commonly known as RU–486 is deemed to have been withdrawn, to provide for the review by the Comptroller General of the United States of the process by which the Food and Drug Administration approved such drug, and for other purposes; to the Committee on Health, Education, Labor, and Pensions.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

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

By Mr. COLEMAN (for himself, Mr. CORZINE, Mr. VOINOVICH, and Mr. LAUTENBERG):

S. Res. 271. A resolution urging the President of the United States diplomatic corps to dissuade member states of the United Nations from supporting resolutions that unfairly castigate Israel and to promote within the United Nations General Assembly more balanced and constructive approaches to resolving conflict in the Middle East; to the Committee on Foreign Relations.

By Ms. SNOWE (for herself, Mrs. MURRAY, Mr. WARNER, Mr. BREAUX, Mr. CRAPO, Mr. CONRAD, Mr. DASCHLE, Mr. EDWARDS, Mr. KENNEDY, Mr. JOHNSON, and Mr. GRASSLEY):

S. Res. 272. A resolution designating the week beginning November 16, 2003, as American Education Week; considered and agreed to.

By Mr. DASCHLE (for Mr. KERRY):

S. Con. Res. 84. A concurrent resolution recognizing the sacrifices made by members of the regular and reserve components of the Armed Forces, expressing concern about their safety and security, and urging the Secretary of Defense to take immediate steps to ensure that the reserve components are provided with the same equipment as regular components; to the Committee on Armed Services.

By Mr. MCCAIN (for himself and Mr. LIEBERMAN):

S. Con. Res. 85. A concurrent resolution expressing the sense of Congress that the continued participation of the Russian Federation in the Group of 8 nations should be conditioned on the Russian Government voluntarily accepting and adhering to the norms and standards of democracy; to the Committee on Foreign Relations.

ADDITIONAL COSPONSORS

S. 665

At the request of Mr. GRASSLEY, the name of the Senator from Alaska (Ms. MURKOWSKI) was added as a cosponsor of S. 665, a bill to amend the Internal Revenue Code of 1986 to provide tax relief for farmers and fisherman, and for other purposes.

S. 1136

At the request of Mr. SPECTER, the name of the Senator from Georgia (Mr. MILLER) was added as a cosponsor of S. 1136, a bill to restate, clarify, and revise the Soldiers' and Sailors' Civil Relief Act of 1940.

S. 1245

At the request of Ms. COLLINS, the name of the Senator from Rhode Island (Mr. REED) was added as a cosponsor of S. 1245, a bill to provide for homeland security grant coordination and simplification, and for other purposes.

S. 1431

At the request of Mr. LAUTENBERG, the name of the Senator from Massachusetts (Mr. KERRY) was added as a cosponsor of S. 1431, a bill to reauthorize the assault weapons ban, and for other purposes.

S. 1549

At the request of Mr. JOHNSON, his name was added as a cosponsor of S. 1549, a bill to amend the Richard B. Russell National School Lunch Act to phase out reduced price lunches and breakfasts by phasing in an increase in the income eligibility guidelines for free lunches and breakfasts.

S. 1586

At the request of Mr. DAYTON, his name was withdrawn as a cosponsor of S. 1586, a bill to authorize appropriate action if the negotiations with the People's Republic of China regarding China's undervalued currency and currency manipulations are not successful.

S. 1700

At the request of Mr. LEAHY, the name of the Senator from New Mexico (Mr. BINGAMAN) was added as a cosponsor of S. 1700, a bill to eliminate the substantial backlog of DNA samples collected from crime scenes and convicted offenders, to improve and expand the DNA testing capacity of Federal, State, and local crime laboratories, to increase research and development of new DNA testing technologies, to develop new training programs regarding the collection and use of DNA evidence, to provide post-conviction testing of DNA evidence to exonerate the innocent, to improve the performance of counsel in State capital cases, and for other purposes.

S. 1755

At the request of Mr. LEAHY, the name of the Senator from Washington (Ms. CANTWELL) 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. 1792

At the request of Mr. DOMENICI, the name of the Senator from Mississippi (Mr. COCHRAN) was added as a cosponsor of S. 1792, a bill to amend the Internal Revenue Code of 1986 to provide the same capital gains treatment for art and collectibles as for other investment property and to provide that a deduction equal to fair market value shall be allowed for charitable contributions of literary, musical, artistic, or scholarly compositions created by the donor.

S. 1825

At the request of Mr. DEWINE, the name of the Senator from California

(Mrs. FEINSTEIN) was added as a cosponsor of S. 1825, a bill to amend title 18, United States Code, to provide penalties for the sale and use of unauthorized mobile infrared transmitters.

S. 1853

At the request of Mr. KENNEDY, the name of the Senator from South Dakota (Mr. JOHNSON) was added as a cosponsor of S. 1853, a bill to provide extended unemployment benefits to displaced workers.

S. 1858

At the request of Mr. COCHRAN, the names of the Senator from Kansas (Mr. ROBERTS), the Senator from Georgia (Mr. MILLER) and the Senator from Michigan (Ms. STABENOW) were added as cosponsors 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 New Hampshire (Mr. GREGG) 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. 1907

At the request of Mr. DASCHLE, the name of the Senator from North Dakota (Mr. DORGAN) was added as a cosponsor of S. 1907, a bill to promote rural safety and improve rural law enforcement.

S. CON. RES. 77

At the request of Mr. SESSIONS, the names of the Senator from Utah (Mr. HATCH), the Senator from Iowa (Mr. GRASSLEY), the Senator from Kentucky (Mr. BUNNING), the Senator from Oklahoma (Mr. INHOFE) and the Senator from Georgia (Mr. CHAMBLISS) were added as cosponsors of S. Con. Res. 77, a concurrent resolution expressing the sense of Congress supporting vigorous enforcement of the Federal obscenity laws.

S. CON. RES. 81

At the request of Mrs. FEINSTEIN, the name of the Senator from Ohio (Mr. VOINOVICH) was added as a cosponsor of S. Con. Res. 81, a concurrent resolution expressing the deep concern of Congress regarding the failure of the Islamic Republic of Iran to adhere to its obligations under a safeguards agreement with the International Atomic Energy Agency and the engagement by Iran in activities that appear to be designed to develop nuclear weapons.

S. CON. RES. 83

At the request of Mr. BIDEN, the name of the Senator from Connecticut (Mr. LIEBERMAN) was added as a cosponsor of S. Con. Res. 83, a concurrent resolution promoting the establishment of a democracy caucus within the United Nations.

S. RES. 120

At the request of Mr. JEFFORDS, the name of the Senator from Vermont (Mr. LEAHY) was added as a cosponsor of S. Res. 120, a resolution commemorating the 25th anniversary of Vietnam Veterans of America.

S. RES. 253

At the request of Mr. CAMPBELL, the name of the Senator from Massachusetts (Mr. KERRY) was added as a cosponsor of S. Res. 253, a resolution to recognize the evolution and importance of motorsports.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. JEFFORDS (for himself, Ms. SNOWE, and Mr. HATCH):

S. 1912. A bill to amend the Internal Revenue Code of 1986 to expand pension coverage and savings opportunities and to provide other pension reforms; to the Committee on Finance.

Mr. JEFFORDS. Mr. President, today, together with Senators HATCH and SNOWE, I am introducing, the Retirement Account Portability and Improvement Act of 2003. This legislation improves the portability of retirement savings by eliminating unnecessary complexities and barriers in the retirement savings system, and helps preserve retirement savings by giving American workers tools that will help them consolidate their retirement savings into one easily managed account.

In brief, this bill will make a number of improvements in the retirement savings system to help families preserve retirement assets. It will, for example, enhance the portability of retirement savings by expanding rollover options in traditional IRAs, Roth IRAs, and SIMPLE Plans. The bill also clarifies that when employees are permitted to make after-tax contributions to retirement plans, those after-tax amounts may be rolled over into other retirement plans eligible to receive such rollovers. This clarification will make it easier for workers to move all elements of their 401(k) of 403(b) savings when they change jobs and move between private sector and the tax-exempt sector.

In addition, the bill builds on defined contribution plan reforms enacted in 2001 by requiring a shortened vesting schedule for employer non-elective contributions, such as profit-sharing contributions, to defined contribution plans. As a result, employer contributions will become employee property more quickly, helping workers to build more meaningful retirement benefits. This new vesting schedule corresponds to rules for 401(k) matching contributions enacted in 2001.

Another provision in the bill would end an unfair tax penalty faced by non-spouse beneficiaries. Today, when an employee dies, the benefits in that employee's retirement account are paid out to a non-spouse beneficiary in one payment. The beneficiary must pay tax on the entire amount, and is often forced into a higher tax bracket as a result of the payment. A provision in this bill would allow non-spouse beneficiaries—siblings, children, domestic partners, parents—to roll over the money from the plan to an IRA. This will prevent an immediate tax bite to grieving beneficiaries and allow them to withdraw the money from their IRA over five years or over their own life expectancy.

The bill also helps preserve retirement savings by allowing plans to designate default IRAs or annuity contracts to which employee rollovers may be directed. Employers should be more willing to establish default IRA and annuity rollover options as a result, making it easier for employees to keep savings in the retirement system when they change jobs.

For workers who leave a job without claiming their retirement benefits, the bill improves on the automatic rollover provisions enacted in 2001, by allowing certain small distributions from retirement plans to be sent to the Pension Benefit Guaranty Corporation (PBGC), ensuring that participants are ultimately reunited with their earned benefits. The bill also expands the scope of the PBGC's successful Missing Participants program that matches workers with lost pension benefits.

Employees of state and local governments, including teachers, will benefit from a number of this bill's technical corrections that will facilitate the purchase of service credits in public pension programs, allowing state and local employees to more easily attain a full pension in the jurisdiction where they conclude their career. The bill also contains provisions that would clarify eligibility rights of certain state and local employees who participate in a Section 457 deferred compensation plan.

Congress must take every opportunity to encourage American workers not only to save for retirement, but also to preserve those hard-earned retirement savings. These portability improvements offer one set of tools for making it easier to navigate the retirement savings system and reach retirement with an adequate nest egg. There are many pressing and complex retirement issues that demand attention, but I am hopeful that this legislation, narrowly focused on portability, can be considered quickly and on its own merits.

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

S. 1912

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 1986 CODE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the ''Retirement Acount Portability Act of 2003''.

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

(c) TABLE OF CONTENTS.—The table of contents of this Act is as follows:

Sec. 1. Short title; amendment of 1986 Code; table of contents.
TITLE I—BUILDING AND PRESERVING RETIREMENT ASSETS AND ENHANCING PORTABILITY
Sec. 101. Allow rollovers by nonspouse beneficiaries of certain retirement plan distributions.
Sec. 102. Facilitation under fiduciary rules of certain rollovers and annuity distributions.
Sec. 103. Faster vesting of employer nonelective contributions.
Sec. 104. Allow rollover of after-tax amounts in annuity contracts.
TITLE II—EXPANDING RETIREMENT PLAN COVERAGE TO EMPLOYEES OF SMALL BUSINESSES
Sec. 201. Elimination of higher penalty on certain Simple distributions.
Sec. 202. Simple plan portability.
TITLE III—EXPANDING RETIREMENT SAVINGS FOR TAX-EXEMPT ORGANIZATION AND GOVERNMENT EMPLOYEES
Sec. 301. Clarifications regarding purchase of permissive service credit.
Sec. 302. Eligibility for participation in retirement plans.
TITLE IV—SIMPLIFICATION AND EQUITY
Sec. 401. Allow direct rollovers from retirement plans to Roth IRAs.
Sec. 402. Transfers to the PBGC.

TITLE I—BUILDING AND PRESERVING RETIREMENT ASSETS AND ENHANCING PORTABILITY

SEC. 101. ALLOW ROLLOVERS BY NONSPOUSE BENEFICIARIES OF CERTAIN RETIREMENT PLAN DISTRIBUTIONS.

(a) IN GENERAL.—

(1) QUALIFIED PLANS.—Section 402(c) (relating to rollovers from exempt trusts) is amended by adding at the end the following new paragraph:

''(11) DISTRIBUTIONS TO INHERITED INDIVIDUAL RETIREMENT PLAN OF NONSPOUSE BENEFICIARY.—

''(A) IN GENERAL.—If, with respect to any portion of a distribution from an eligible retirement plan of a deceased employee, a direct trustee-to-trustee transfer is made to an individual retirement plan described in clause (i) or (ii) of paragraph (8)(B) established for the purposes of receiving the distribution on behalf of an individual who is a designated beneficiary (as defined by section 401(a)(9)(E)) of the employee and who is not the surviving spouse of the employee—

''(i) the transfer shall be treated as an eligible rollover distribution for purposes of this subsection,

''(ii) the individual retirement plan shall be treated as an inherited individual retirement account or individual retirement annuity (within the meaning of section 408(d)(3)(C)) for purposes of this title, and

''(iii) section 401(a)(9)(B) (other than clause (iv) thereof) shall apply to such plan.

''(B) CERTAIN TRUSTS TREATED AS BENEFICIARIES.—For purposes of this paragraph, to the extent provided in rules prescribed by the Secretary, a trust maintained for the benefit of one or more designated beneficiaries shall be treated in the same manner as a trust designated beneficiary.''.

(2) SECTION 403(a) PLANS.—Subparagraph (B) of section 403(a)(4) (relating to rollover amounts) is amended by inserting ''and (11)'' after ''(7)''.

(3) SECTION 403(b) PLANS.—Subparagraph (B) of section 403(b)(8) (relating to rollover amounts) is amended by striking ''and (9)'' and inserting '', (9), and (11)''.

(4) SECTION 457 PLANS.—Subparagraph (B) of section 457(e)(16) (relating to rollover amounts) is amended by striking ''and (9)'' and inserting '', (9), and (11)''.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to distributions after December 31, 2003.

SEC. 102. FACILITATION UNDER FIDUCIARY RULES OF CERTAIN ROLLOVERS AND ANNUITY DISTRIBUTIONS.

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

''(4)(A) In the case of a pension plan which makes a transfer under section 401(a)(31)(A) of the Internal Revenue Code of 1986 to an individual retirement plan (as defined in section 7701(a)(37) of such Code) in connection with a participant or beneficiary or makes a distribution to a participant or beneficiary of an annuity contract described in subparagraph (B), the participant or beneficiary shall, for purposes of paragraph (1), be treated as exercising control over the transfer or distribution if—

''(i) the participant or beneficiary elected such transfer or distribution, and

''(ii) in connection with such election, the participant or beneficiary was given an opportunity to elect any other individual retirement plan (in the case of a transfer) or any other annuity contract described in subparagraph (B) (in the case of a distribution).

''(B) An annuity contract is described in this subparagraph if it provides, either on an immediate or deferred basis, a series of substantially equal periodic payments (not less frequently than annually) for the life of the participant or beneficiary or the joint lives of the participant or beneficiary and such individual's designated beneficiary. Annuity payments shall not fail to be treated as part of a series of substantially equal periodic payments because the amount of the periodic payments may vary in accordance with investment experience, reallocations among investment options, actuarial gains or losses, cost of living indices, or similar fluctuating criteria. The availability of a commutation benefit, a minimum period of payments certain, or a minimum amount to be paid in any event shall not affect the treatment of an annuity contract as an annuity contract described in this subparagraph.

''(C) Under regulations prescribed by the Secretary, this paragraph shall apply without regard to whether the particular individual retirement plan receiving the transfer or the particular annuity contract being distributed is specifically identified by the pension plan as available to the participant or beneficiary.

''(D) Notwithstanding the preceding provisions of this paragraph, paragraph (1)(B) shall not apply with respect to liability under section 406 in connection with the specific identification of any individual retirement plan or annuity contract as being available to the participant or beneficiary.''.

(b) EFFECTIVE DATE AND RELATED RULES.—

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

(2) ISSUANCE OF FINAL REGULATIONS.—Final regulations under section 404(c)(4) of the Employee Retirement Income Security Act of 1974 (added by this section) shall be issued no later than 1 year after the date of the enactment of this Act.

SEC. 103. FASTER VESTING OF EMPLOYER NONELECTIVE CONTRIBUTIONS.

(a) AMENDMENTS TO THE INTERNAL REVENUE CODE OF 1986.—

(1) IN GENERAL.—Paragraph (2) of section 411(a) (relating to employer contributions) is amended to read as follows:

''(2) EMPLOYER CONTRIBUTIONS.—

''(A) DEFINED BENEFIT PLANS.—

''(i) IN GENERAL.—In the case of a defined benefit plan, a plan satisfies the requirements of this paragraph if it satisfies the requirements of clause (ii) or (iii).

''(ii) 5-YEAR VESTING.—A plan satisfies the requirements of this clause if an employee who has completed at least 5 years of service has a nonforfeitable right to 100 percent of the employee's accrued benefit derived from employer contributions.

''(iii) 3 TO 7 YEAR VESTING.—A plan satisfies the requirements of this clause if an employee has a nonforfeitable right to a percentage of the employee's accrued benefit derived from employer contributions determined under the following table:

''Years of service:	The nonforfeitable percentage is:
3	20
4	40
5	60
6	80
7 or more	100.

''(B) DEFINED CONTRIBUTION PLANS.—

''(i) IN GENERAL.—In the case of a defined contribution plan, a plan satisfies the requirements of this paragraph if it satisfies the requirements of clause (ii) or (iii).

''(ii) 3-YEAR VESTING.—A plan satisfies the requirements of this clause if an employee who has completed at least 3 years of service has a nonforfeitable right to 100 percent of the employee's accrued benefit derived from employer contributions.

''(iii) 2 TO 6 YEAR VESTING.—A plan satisfies the requirements of this clause if an employee has a nonforfeitable right to a percentage of the employee's accrued benefit derived from employer contributions determined under the following table:

''Years of service:	The nonforfeitable percentage is:
2	20
3	40
4	60
5	80
6	100.''.

(2) CONFORMING AMENDMENT.—Section 411(a) (relating to general rule for minimum vesting standards) is amended by striking paragraph (12).

(b) AMENDMENTS TO THE EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974.—

(1) IN GENERAL.—Paragraph (2) of section 203(a) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1053(a)(2)) is amended to read as follows:

''(2)(A)(i) In the case of a defined benefit plan, a plan satisfies the requirements of this paragraph if it satisfies the requirements of clause (ii) or (iii).

''(ii) A plan satisfies the requirements of this clause if an employee who has completed at least 5 years of service has a nonforfeitable right to 100 percent of the employee's accrued benefit derived from employer contributions.

''(iii) A plan satisfies the requirements of this clause if an employee has a nonforfeitable right to a percentage of the employee's accrued benefit derived from employer contributions determined under the following table:

''Years of service:	The nonforfeitable percentage is:
3	20
4	40
5	60
6	80
7 or more	100.

''(B)(i) In the case of an individual account plan, a plan satisfies the requirements of this paragraph if it satisfies the requirements of clause (ii) or (iii).

''(ii) A plan satisfies the requirements of this clause if an employee who has completed at least 3 years of service has a nonforfeitable right to 100 percent of the employee's accrued benefit derived from employer contributions.

''(iii) A plan satisfies the requirements of this clause if an employee has a nonforfeitable right to a percentage of the employee's accrued benefit derived from employer contributions determined under the following table:

"Years of service:	The nonforfeitable percentage is:
2	20
3	40
4	60
5	80
6	100.''.

(2) CONFORMING AMENDMENT.—Section 203(a) of such Act is amended by striking paragraph (4).

(c) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section shall apply to contributions for plan years beginning after December 31, 2003.

(2) COLLECTIVE BARGAINING AGREEMENTS.—In the case of a plan maintained pursuant to one or more collective bargaining agreements between employee representatives and one or more employers ratified before the date of the enactment of this Act, the amendments made by this section shall not apply to contributions on behalf of employees covered by any such agreement for plan years beginning before the earlier of—

(A) the later of—

(i) the date on which the last of such collective bargaining agreements terminates (determined without regard to any extension thereof on or after such date of the enactment); or

(ii) January 1, 2004; or

(B) January 1, 2006.

(3) SERVICE REQUIRED.—With respect to any plan, the amendments made by this section shall not apply to any employee before the date that such employee has 1 hour of service under such plan in any plan year to which the amendments made by this section apply.

SEC. 104. ALLOW ROLLOVER OF AFTER-TAX AMOUNTS IN ANNUITY CONTRACTS.

(a) IN GENERAL.—Subparagraph (A) of section 402(c)(2) (maximum amount which may be rolled over) is amended by striking ''and which'' and inserting ''or to an annuity contract described in section 403(b) and such plan or contract''.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to taxable years beginning after December 31, 2003.

TITLE II—EXPANDING RETIREMENT PLAN COVERAGE TO EMPLOYEES OF SMALL BUSINESSES

SEC. 201. ELIMINATION OF HIGHER PENALTY ON CERTAIN SIMPLE DISTRIBUTIONS.

(a) IN GENERAL.—Subsection (t) of section 72 (relating to 10-percent additional tax on early distributions from qualified retirement plans) is amended by striking paragraph (6) and redesignating paragraphs (7), (8), and (9) as paragraphs (6), (7), and (8), respectively.

(b) CONFORMING AMENDMENTS.—

(1) Section 72(t)(2)(E) is amended by striking ''paragraph (7)'' and inserting ''paragraph (6)''.

(2) Section 72(t)(2)(F) is amended by striking ''paragraph (8)'' and inserting ''paragraph (7)''.

(3) Section 408(d)(3)(G) is amended by striking ''applies'' and inserting ''applied on the day before the date of the enactment of the Retirement Account Portability Act of 2003)''.

(4) Section 457(a)(2) is amended by striking ''section 72(t)(9)'' and inserting ''section 72(t)(8)''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to years beginning after December 31, 2003.

SEC. 202. SIMPLE PLAN PORTABILITY.

(a) REPEAL OF LIMITATION.—Paragraph (3) of section 408(d) (relating to rollover contributions), as amended by this Act, is amended by striking subparagraph (G) and redesignating subparagraph (H) as subparagraph (G).

(b) Section 402(c)(8)(B) is amended by adding at the end the following new sentence: ''Individual retirement accounts and individual retirement annuities described in clauses (i) and (ii) shall be treated as eligible retirement plans without regard to whether they are part of a simplified employee pension (within the meaning of section 408(k)) or a simplified retirement account (within the meaning of section 408(p)).''.

(c) EFFECTIVE DATE.—The amendment made by this section shall apply to years beginning after December 31, 2003.

TITLE III—EXPANDING RETIREMENT SAVINGS FOR TAX-EXEMPT ORGANIZATION AND GOVERNMENT EMPLOYEES

SEC. 301. CLARIFICATIONS REGARDING PURCHASE OF PERMISSIVE SERVICE CREDIT.

(a) IN GENERAL.—Subparagraph (A) of section 457(e)(17) (relating to trustee-to-trustee transfers to purchase permissive service credit), and subparagraph (A) of section 403(b)(13) (relating to trustee-to-trustee transfers to purchase permissive service credit), are both amended by striking ''section 415(n)(3)(A)'' and inserting ''section 415(n)(3) (without regard to subparagraphs (B) and (C) thereof)''.

(b) DISTRIBUTION REQUIREMENTS.—Section 457(e)(17) and section 403(b)(13) are both amended by adding at the end the following sentence: ''Amounts transferred under this paragraph shall be distributed solely in accordance with section 401(a) as applicable to such defined benefit plan.''.

(c) SERVICE CREDIT.—Clause (ii) of section 415(n)(3)(A) is amended to read as follows:

''(ii) which relates to benefits with respect to which such –participant is not otherwise entitled, and''.

(d) EFFECTIVE DATE.—The amendments made by this section shall take effect as if included in the amendments made by section 647 of the Economic Growth and Tax Relief Reconciliation Act of 2001.

SEC. 302. ELIGIBILITY FOR PARTICIPATION IN RETIREMENT PLANS.

An individual shall not be precluded from participating in an eligible deferred compensation plan by reason of having received a distribution under section 457(e)(9) of the Internal Revenue Code of 1986, as in effect prior to the enactment of the Small Business Job Protection Act of 1996.

TITLE IV—SIMPLIFICATION AND EQUITY

SEC. 401. ALLOW DIRECT ROLLOVERS FROM RETIREMENT PLANS TO ROTH IRAS.

(a) IN GENERAL.—Subsection (e) of section 408A (defining qualified rollover contribution) is amended to read as follows:

''(e) QUALIFIED ROLLOVER CONTRIBUTION.—For purposes of this section, the term 'qualified rollover contribution' means a rollover contribution—

''(1) to a Roth IRA from another such account,

''(2) from an eligible retirement plan, but only if—

''(A) in the case of an individual retirement plan, such rollover contribution meets the requirements of section 408(d)(3), and

''(B) in the case of any eligible retirement plan (as defined in section 402(c)(8)(B) other than clauses (i) and (ii) thereof), such rollover contribution meets the requirements of section 402(c), 403(b)(8), or 457(e)(16), as applicable.

For purposes of section 408(d)(3)(B), there shall be disregarded any qualified rollover contribution from an individual retirement plan (other than a Roth IRA) to a Roth IRA.''.

(b) CONFORMING AMENDMENTS.—

(1) Section 408A(c)(3)(B) is amended—

(A) in the text by striking ''individual retirement plan'' and inserting ''an eligible retirement plan (as defined by section 402(c)(8)(B))'', and

(B) in the heading by striking ''IRA'' and inserting ''ELIGIBLE RETIREMENT PLAN''.

(2) Section 408A(d)(3) is amended—

(A) in subparagraph (A) by striking ''section 408(d)(3)'' inserting ''sections 402(c), 403(b)(8), 408(d)(3), and 457(e)(16)'',

(B) in subparagraph (B) by striking ''individual retirement plan'' and inserting ''eligible retirement plan (as defined by section 402(c)(8)(B))'',

(C) in subparagraph (D) by striking ''or 6047'' after ''408(i)'',

(D) in subparagraph (D) by striking ''or both'' and inserting ''persons subject to section 6047(d)(1), or all of the foregoing persons'', and

(E) in the heading by striking ''IRA'' and inserting ''ELIGIBLE RETIREMENT PLAN''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to distributions after December 31, 2003.

SEC. 402. TRANSFERS TO THE PBGC.

(a) MANDATORY DISTRIBUTIONS TO PBGC.—Clause (i) of section 401(a)(31)(B) (relating to general rule for certain mandatory distributions) is amended by inserting ''to the Pension Benefit Guaranty Corporation in accordance with section 4050(e) of the Employee Retirement Income Security Act of 1974 or'' after ''such transfer''.

(b) TAX TREATMENT OF DISTRIBUTIONS.—Subparagraph (B) of section 401(a)(31) is amended by adding at the end the following new clause:

''(iii) INCOME TAX TREATMENT OF TRANSFERS TO PBGC.—For purposes of determining the income tax treatment relating to transfers to the Pension Benefit Guaranty Corporation under clause (i)—

''(I) the transfer of amounts to the Pension Benefit Guaranty Corporation pursuant to clause (i) shall be treated as a transfer to an individual retirement plan under such clause, and

''(II) the distribution of such amounts from the Pension Benefit Guaranty Corporation shall be treated as a distribution from an individual retirement plan.''.

(c) MISSING PARTICIPANTS AND BENEFICIARIES.—

(1) IN GENERAL.—Section 4050 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1350) is amended by redesignating subsection (c) as subsection (f) and by inserting after subsection (b) the following new subsections:

''(c) MULTIEMPLOYER PLANS.—The corporation shall prescribe rules similar to the rules in subsection (a) for multiemployer plans covered by this title that terminate under section 4041A.

''(d) PLANS NOT OTHERWISE SUBJECT TO TITLE.—

''(1) TRANSFER TO CORPORATION.—The plan administrator of a plan described in paragraph (4) may elect to transfer the benefits of a missing participant or beneficiary to the corporation upon termination of the plan.

''(2) INFORMATION TO THE CORPORATION.—To the extent provided in regulations, the plan administrator of a plan described in paragraph (4) shall, upon termination of the plan, provide the corporation information with respect to benefits of a missing participant or beneficiary if the plan transfers such benefits—

''(A) to the corporation, or

''(B) to an entity other than the corporation or a plan described in paragraph (4)(B)(ii).

''(3) PAYMENT BY THE CORPORATION.—If benefits of a missing participant or beneficiary were transferred to the corporation under paragraph (1), the corporation shall, upon location of the participant or beneficiary, pay to the participant or beneficiary the amount transferred (or the appropriate survivor benefit) either—

''(A) in a single sum (plus interest), or

''(B) in such other form as is specified in regulations of the corporation.

''(4) PLANS DESCRIBED.—A plan is described in this paragraph if—

''(A) the plan is a pension plan (within the meaning of section 3(2))—

''(i) to which the provisions of this section do not apply (without regard to this subsection), and

''(ii) which is not a plan described in paragraphs (2) through (11) of section 4021(b), and

''(B) at the time the assets are to be distributed upon termination, the plan—

''(i) has one or more missing participants or beneficiaries, and

''(ii) has not provided for the transfer of assets to pay the benefits of all missing participants and beneficiaries to another pension plan (within the meaning of section 3(2)).

''(5) CERTAIN PROVISIONS NOT TO APPLY.—Subsections (a)(1) and (a)(3) shall not apply to a plan described in paragraph (4).

''(e) INVOLUNTARY CASHOUTS.—

''(1) PAYMENT BY THE CORPORATION.—If benefits under a plan described in paragraph (2) were transferred to the corporation under section 401(a)(31)(B) of the Internal Revenue Code of 1986, the corporation shall, upon application filed by the participant or beneficiary with the corporation in such form and manner as may be prescribed in regulations of the corporation, pay to the participant or beneficiary the amount transferred (or the appropriate survivor benefit) either—

''(A) in a single sum (plus interest), or

''(B) in such other form as is specified in regulations of the corporation.

''(2) INFORMATION TO THE CORPORATION.—To the extent provided in regulations, the plan administrator of a plan described in paragraph (3) shall, upon transferred to the corporation under section 401(a)(31)(B) of such Code, provide the corporation information with respect to benefits of the participant or beneficiary so transferred.

''(3) PLANS DESCRIBED.—A plan is described in this paragraph if the plan is a pension plan (within the meaning of section 3(2))—

''(A) which provides for mandatory distributions under section 401(a)(31)(B) of the Internal Revenue Code of 1986, and

''(B) which is not a plan described in paragraphs (2) through (11) of section 4021(b).

''(4) CERTAIN PROVISIONS NOT TO APPLY.—Subsections (a)(1) and (a)(3) shall not apply to a plan described in paragraph (2).''.

(2) CONFORMING AMENDMENTS.—Section 206(f) of such Act (29 U.S.C. 1056(f)) is amended—

(A) by striking ''title IV'' and inserting ''section 4050''; and

(B) by striking ''the plan shall provide that,''.

(d) EFFECTIVE DATE.—

(1) INTERNAL REVENUE CODE OF 1986 PROVISIONS.—The amendments made by subsections (a) and (b) shall take effect as if included in the amendments made by section 657 of the Economic Growth and Tax Relief Reconciliation Act of 2001.

(2) EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974 PROVISIONS.—The amendments made by subsection (c) shall apply to distributions made after final regulations implementing subsections (c), (d), and (e) of section 4050 of the Employee Retirement Income Security Act of 1974 (as added by subsection (c)), respectively, are prescribed.

(3) REGULATIONS.—The Pension Benefit Guaranty Corporation shall issue regulations necessary to carry out the amendments made by subsection (c) not later than December 31, 2004.

By Mr. MCCAIN (for himself and Mr. FEINGOLD):

S. 1913. A bill to amend the Internal Revenue Code of 1986 to reform the system of public financing for Presidential elections, and for other purposes; to the Committee on Finance.

Mr. MCCAIN. Mr. President, along with Senator RUSS FEINGOLD, I am proud today to introduce the Presidential Funding Act of 2003. This legislation will improve and reform the presidential public financing system. With major presidential candidates opting out of public financing for their 2004 primary campaigns, reform of the system of financing presidential nominations is needed more than ever.

The presidential public financing system has been in place for three decades and has achieved broad public acceptance. From 1976 to 2000, every major party presidential nominee has accepted public financing for the general election and, nearly all of the nominees have also accepted it for their primary elections. A total of 46 Democrats and 29 Republicans have accepted public financing for the presidential primaries during this period.

Since its creation, the presidential financing system has worked non-ideologically, with victories for three Republicans and two Democrats. It has also provided for competitive elections. In the five races that have been run under the system involving an incumbent president, challengers have won in three of those elections. This system of voluntary spending limits in exchange for public funding has been a nonpartisan success.

Last year's enactment of a ban on soft money addressed what had become a basic problem for the effectiveness and credibility of the presidential system. For the system to continue serving the nation effectively, its remaining problems now must be solved. This legislation will repair and revitalize the presidential campaign finance system in the following ways.

First, our legislation increases the overall spending limit for the presidential primaries and provide more public matching funds for presidential primary candidates.

The overall spending limit in the primaries for publicly financed candidates has failed to keep pace with reality. This was demonstrated when in 2000, public financing and spending limits for the primaries were rejected and a record $100 million in private contributions was spent to gain the Republican party's nomination—more than twice the amount that the publicly financed candidates were allowed to spend. During the 2004 presidential primary period, it is expected that Republicans will raise and spend as much as $200 million.

Our legislation increases the individual contribution limit from $1,000 to $2,000. Therefore, it will be easier over time for other candidates to reject public financing and raise private money in excess of the overall primary spending limit, thereby worsening the competitive disadvantage of publicly-financed candidates.

In addition, the ''front-loading'' of presidential primaries has created a much shorter nominating period—now likely to end by early March—and a longer actual general election period than existed when the presidential financing system was created in 1974. As a result, a potential ''gap'' exists in funds available for a publicly financed nominee to spend between gaining the party nomination in March and the party's summer nominating convention, when the nominee receives public funds for the general election. This creates a further competitive disadvantage.

To address these problems, our legislation increases the overall spending limit for the presidential primaries to $75 million from the $45 million limit in effect for the 2004 presidential election. This would equal the $75 million spending limit in effect for the general election, which applies to a much shorter period than the primaries.

The amount of public matching funds for individual contributions in the primaries is also increased from the current one-to-one match to a four-to-one match for up to $250 of each individual contribution. This would greatly increase the value of smaller contributions in the presidential nominating process, as was intended by the presidential financing system. It would decrease the reliance on larger contributions, provide more public funds to meet the higher spending limit, and improve the ability of publicly financed candidates to run competitive elections.

When the $1000 individual contribution limit was doubled last year, increasing the potential role of private contributions in the presidential financing system, no similar adjustment was made to increase the role of public matching funds. A new four-to-one multiple match for up to $250 of each individual contribution would accomplish that goal.

In addition, the threshold for qualifying for matching public funds in the primary has not changed since the system was established. Our legislation increases the qualifying threshold should be increased by more than doubling the threshold to require candidates to raise $15,000 in each of 20 states in amounts of no more than $250 per individual donor. Although the existing threshold has worked well during the history of the current system, a higher qualifying amount is appropriate for the future, especially since candidates would now be eligible to receive greater amounts of matching funds.

Second, our legislation requires a candidate to opt in or out of the public financing system for the entire presidential election, including both the primary and general election.

The purpose of the presidential public financing system is to allow candidates to run competitive races for the presidency without becoming dependent on or obligated to campaign donors. That purpose is undermined when a candidate opts out of the system to raise and spend large amounts of private money for a primary or general election race. Such candidates should not be able to reject public financing and then get the system's benefits when it suits their tactical advantage. A candidate should have to opt in or out of the system for the whole election.

Third, our legislation repeals the state-by-state primary spending limits and allows publicly financed primary candidates to receive their public matching funds before January 1st of the presidential election year.

The State-by-State primary spending limits have not worked. The limits have proven to be ineffective and have served to unjustifiably micromanage presidential campaigns.

Under current law, primary candidates can begin to raise private contributions eligible to be matched beginning on January 1 of the year before a presidential election year. They are not eligible, however, to receive any of the matching public funds until January 1 of the presidential election year. With the current ''front-loaded'' primary system, and with the nomination likely to be decided in the early months of a presidential election year, primary candidates need to be able to spend more funds at an earlier period than before. As a result, under our legislation, presidential primary candidates will be eligible to start receiving matching public funds on July 1 of the year before a presidential election year.

Fourth, our legislation provides additional public funds in the presidential general election for a publicly financed candidate facing a privately financed candidate who has substantially outspent the combined primary and general election spending limits.

As more wealthy individuals decide to spend their personal wealth to run for public office, the potential grows for an individual to spend an enormous amount of personal wealth to seek the presidency. There already have been candidates for the U.S. Senate and in mayoral races, for example, who have spent as much in personal wealth on their races as each major party presidential nominee received in public funds in 2000 to run their general election campaign.

In addition, with the increased individual contribution limit, a presidential candidate could decide to forgo public funding and raise and spend private contributions far in excess of the spending limits for publicly financed candidates.

To address this potential problem, our legislation makes a publicly financed major party nominee eligible to receive an additional $75 million for the general election race, when a privately financed general election candidate has spent more than 50 percent above the total primary and general election spending limit for the publicly financed candidate.

In other words, once a presidential general election candidate has spent more than a total of $225 million to seek the presidency, a publicly financed major party nominee, subject to a spending limit of $75 million for the primaries and $75 million for the general election, would receive an additional $75 million for the general election race.

Fifth, our legislation increases the funds available to finance the presidential public financing system.

Currently, the public financing system is funded by a voluntary $3 check-off available to taxpayers on their tax forms on an annual basis. This mechanism will not raise sufficient resources in the long term to finance the costs of a revised presidential system.

The $3 tax check-off is increased to $6 and indexed for inflation to help ensure there are sufficient funds available for future presidential elections. In addition, the Federal Election Commission (FEC) is authorized to conduct a public education campaign to explain to citizens why the check-off exists and how it works, including the fact that it does not increase the tax liability of taxpayers.

The current presidential public financing law creates a priority system that allocates available public funds from the check-off to the nomination conventions, the presidential general election and the presidential primaries in that order. This order of priority does not make sense.

Our legislation revises the order of priority for use of public funds to make funding of the general election candidates the first priority, funding of the primary election candidates the second priority, and funding of the nomination conventions the third priority.

Furthermore, a U.S. Department of the Treasury ruling prohibits taking into account the tax check-off revenues that will be received in April of the presidential election year in determining at the start of each presidential election year the total amount of funds available to be given to eligible candidates from the fund. This has had the effect of artificially lowering the amount of funds available and creating temporary shortfalls for primary candidates during the opening months of the presidential election year at the time when they need the funds the most.

Our legislation revises the law to require the U.S. Department of the Treasury (as it used to do) to estimate at the end of the year prior to a presidential election year the amount of check-off funds that will be received in the presidential election year and to take these funds into account in determining the total amount of funds available under the presidential system.

Finally, our legislation implements the soft money ban to ensure that the parties and federal officeholders and candidates do not raise or spend soft money in connection with the presidential nominating conventions.

Despite the passage of the new campaign finance law and its ban on soft money, federal officeholders and national party officials have continued to raise soft money to finance the national nomination conventions on the fictional premise that such funds are not in connection with a ''federal election'' but rather are for municipal or civic purposes.

The reality is that a presidential nominating convention is defined as a ''federal election'' election under the campaign finance law. Furthermore, federal officeholders and candidates and national party officials who raise soft money for the conventions are subject to precisely the same kind of problems of corruption and the appearance of corruption that the new law prevents by banning soft money.

To reaffirm that the soft money ban applies to the presidential nominating conventions, our legislation explicitly prohibits the national parties and federal officeholders and candidates from raising and spending soft money to pay for the presidential nominating conventions, including for a host committee, civic committee or municipality.

The highly expensive, front-loaded, nationalized, primary system requires that we more than ever fix the presidential public funding system. We must continue to promote competition in order to give voters choices. Our legislation not only saves the existing system but improves it as well. It not only shores up the financial foundations of the system but it would also bring more donors into the system, making financial participation more democratic. It would give our citizens a stake in their government. It is our hope that with the enactment of this legislation, candidates will no longer take small donors for granted and finally hear their voices. In return, all of our citizens will feel reconnected to the presidential financing process that at times, has left them behind.

Mr. FEINGOLD. Mr. President, it is pleasure to join my friend and colleague Senator MCCAIN in introducing a bill to repair and strengthen the presidential public financing system. The Presidential Funding Act of 2003 will ensure that this system that has served our country so well for over a generation will continue to fulfill its promise in the 21st century.

The presidential public financing system was put into place in the wake of the Watergate scandals as part of the Federal Election Campaign Act of 1974. It was held to be constitutional by the Supreme Court in Buckley v. Valeo. Every major party nominee for President since 1976 has participated in the

system for the general election. The system, of course, is voluntary, as the Supreme Court required. In the last election, then-Governor George W. Bush opted out of the system for the presidential primaries, but elected to take the taxpayer funded grant in the general election. He appears ready to make the same choice in this election, and so far two of the Democratic presidential candidates have decided not to seek federal matching funds in the primaries. Before 2000, almost all serious candidates for President had participated in the system.

It is unfortunate that the matching funds system for the primaries is becoming less viable. The system reduces the fundraising pressures on candidates and levels the playing field between candidates. It allows candidates to run viable campaigns without becoming overly dependent on private donors. The system has worked well in the past, and its advantages for candidates and for the country make it worth repairing so that it can work in the future. If we don't repair it, the pressures on candidates to opt out because their opponents are opting out will increase until the system collapse from disuse.

At the outset, I want to emphasize that this bill is not designed to have any impact on the ongoing presidential race. It will take effect only after the 2004 elections. Therefore, there is no partisan purpose here. Once again, Senator MCCAIN and I are working together to try to improve the campaign finance system, regardless of any partisan impact that these reforms might have. Second, we do not expect Congress to take action on this bill during an election year. Instead, our hope is that by introducing a bill now we can begin a conversation with our colleagues and with the public that will allow us to take quick action beginning in 2005 so that a new system can be in place for the 2008 election.

The bill makes changes to both the primary and general election system to address the weaknesses and problems that have been identified by both participants in the system and experts on the presidential election financing process. First and most important, it eliminates the state-by-state spending limits in the current law and substantially increases the overall spending limit from the current limit of approximately $45 million to $75 million. This should make the system more viable for serious candidates facing opponents who are capable of raising significant sums outside the system. The bill also makes available significantly more public money for participating candidates by increasing the match of small contributions from 1:1 to 4:1. Thus, significantly more public money will be available to those candidates who choose to participate in the system.

One very important provision of this bill ties the primary and general election systems together and requires candidates to make a single decision on whether to participate. Candidates who opt out of the primary system and decide to rely solely on private money cannot return to the system for the general election. And candidates must commit to participate in the system in the general election if they want to receive federal matching funds in the primaries. The bill also increases the spending limits for participating candidates in the primaries who face a non-participating opponent if that opponent raises more than 33 percent more than the spending limit. This provides some protection against being far outspent by a non-participating opponent.

The bill also sets the general election spending limit at $75 million, indexed for inflation, which is about what it is projected to be in 2008. And if a general election candidate does not participate in the system and spends more than 33 percent more than the combined primary and general election spending limits, a participating candidate will receive a grant equal to twice the general election spending limit.

This bill also addresses what some have called the ''gap'' between the primary and general election seasons. Presumptive presidential nominees have emerged earlier in the election year over the life of the public financing system. This had led to some nominees being essentially out of money between the time that they nail down the nomination and the convention where they are formally nominated and become eligible for the general election grant. For a few cycles, soft money raised by the parties filled in that gap, but the Bipartisan Campaign Reform Act of 2002 thankfully has now closed that loophole. This bill doubles the amount of hard money that parties can spend in coordination with their candidates, allowing them to fill the gap once the party has a presumptive nominee.

Fixing the presidential public financing system will obviously cost money, but our best calculations at the present time indicate that the changes to the system in this bill can be paid for by doubling the income tax check-off on an individual return from $3 to just $6. The total cost of the changes to the system is projected to be around $175 million over the four-year election cycle. Of course, these projections may change as we get more data from the 2004 elections. But even a somewhat larger cost would be a very small investment to make to protect the health of our democracy and integrity of our presidential elections. The American people do not want to see a return to the pre-Watergate days of unlimited spending on presidential elections and candidates entirely beholden to private donors. We must act now to preserve the crown jewel of the Watergate reforms and assure the fairness of our elections and the confidence of our citizens in the process.

By Ms. STABENOW (for herself and Mr. LEVIN):

S. 1914. A bill to prohibit the closure or realignment of inpatient services at the Aleda E. Lutz Department of Veterans Affairs Medical Center in Saginaw, Michigan, as proposed under the Capital Asset Realignment for Enhanced Services initiatives; to the Committee on Veterans' Affairs.

Ms. STABENOW. Mr. President, I rise today to introduce legislation that would prevent the closure of the Saginaw Veterans Administration Medical Center in Saginaw, MI.

As of August 2003, there were almost one million veterans in lower Michigan and Northwestern Ohio. These one million veterans are served by four V.A. Medical Centers—Saginaw, Detroit, Ann Arbor and Battle Creek—and 12 Community Based Outpatient Clinics (CBOCs), all located in lower Michigan or Toledo, OH.

Regrettably, the Department of Veterans Affairs' Capitol Asset Realignment for Enhanced Services (CARES) Commission is recommending closing all acute care beds at the Aleda E. Lutz Department of Veterans Affairs Medical Center in Saginaw, MI. The geographic range for the acute services in Saginaw is vast. The facility essentially covers half of Michigan's Lower Peninsula. Therefore, closing these inpatient beds in Saginaw would have a devastating impact on veterans who live in Central and Northern Michigan.

If the Saginaw facility were to close, a veteran who lived in Mackinaw City would have to drive 281 miles to the Detroit facility or 272 miles to the Ann Arbor facility for medical care. Under ideal conditions these trips would take six hours instead of the current two hour trip that it would take to reach the existing Saginaw facility. Asking a veteran to go from Mackinaw City to Detroit is like asking a veteran to go from southeast Michigan to Buffalo, New York to get acute care.

How can we ask veterans, many of whom are sick and frail, to travel six hours to get necessary inpatient services? Going through a major illness is tough enough for our veterans. The closing of this hospital would add insult to injury.

This bill seeks to stop this closure and ensure that the thousands of veterans who live in central and northern Michigan have access to the medical services they deserve. I urge my colleagues to support this bill.

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. 1914

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

SECTION 1. PROHIBITION ON CLOSURE OR REALIGNMENT OF INPATIENT SERVICES AT ALEDA E. LUTZ DEPARTMENT OF VETERANS AFFAIRS MEDICAL CENTER IN SAGINAW, MICHIGAN.

The Secretary of Veterans Affairs shall not carry out the closure or realignment of inpatient services at the Aleda E. Lutz Department of Veterans Affairs Medical Center in Saginaw, Michigan, as proposed under the Capital Asset Realignment for Enhanced Services (CARES) initiative.

By Mrs. HUTCHISON:

S. 1917. A bill to amend the Internal Revenue Code of 1986 to permit the issuance of tax-exempt bonds for certain air and water pollution control facilities, and to provide that the volume cap for private activity bonds shall not apply to bonds for facilities for the furnishing of water, sewage facilities, and air or water pollution control facilities; to the Committee on Finance.

Mrs. HUTCHISON. Mr. President, I am proud to offer the Clean Air and Water Investment and Infrastructure Act.

Texas, like many States, faces increasingly difficult challenges in improving air and water quality.

The Clean Air Act requires the Environmental Protection Agency to set air quality standards and establishes deadlines for State and local governments to achieve those levels. Today, more than 90 communities across the country are out of compliance with the Clean Air Act. These so-called ''non-attainment'' areas are threated with regulatory sanctions, such as loss of federal highway funding, if they do not meet mandated ozone levels by 2007.

Texas has four non-attainment areas: Beaumont-Port Arthur, Dallas-Fort Worth, El Paso and Houston. The Houston area alone needs an estimated $4.1 billion annually in order to meet Federal air quality standards.

These communities will not achieve compliance without assistance. Too many industrial plants need to install expensive equipment. If these environmental investments do not become more affordable, communities will either suffer sanctions or force industrial facilities to close and move offshore, causing substantial economic hardship.

Texas and many areas of the country, especially in the Southwest and West, also face critical water and wastewater problems. Investments in sources of clean water must be made or we will face shortages in the coming decades. However, necessary water infrastructure improvements are extremely expensive. According to the Texas State water plan, the cost of water supply acquisition projects, water and wastewater treatment, and other infrastructure projects in Texas through 2050 will be more than $100 billion.

Currently, air and water pollution control facilities cannot be financed by tax-exempt bonds. Even if they could, they would be limited by a cap which sets the total amount of tax-exempt private activity bonds issued by a state. Given the demands of other projects, such as housing, relatively few of the air and water pollution projects would have an opportunity to access this financing option.

In order to help us meet the challenges, I am introducing the Clear Air and Water Investment and Infrastructure Act. My bill will allow federal tax-exempt bonds to be used by private firms for air and water pollution control projects. Given the importance of these critical projects, these bonds also would be issued outside the constraints of the private-activity bond caps. The Texas Water Development Board estimates this could save 30 percent in financing costs for water projects.

For example, this bill would allow tax-exempt debt to be used to finance private systems along the Gulf Coast that desalinate seawater and brackish groundwater, and to install air pollution facilities on electric utility plants. States and communities would have an important new tool for addressing air and water pollution control needs.

Pollution control is a problem for all of us. It is to everyone's benefit to develop ways to promote public and private partnerships which can finance projects to improve air and water quality. I hope my colleagues will support this effort.

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. 1917

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 ''Clean Air and Water Investment and Infrastructure Act''.

SEC. 2. TAX-EXEMPT BONDS FOR AIR AND WATER POLLUTION CONTROL FACILITIES.

(a) IN GENERAL.—Subsection (a) of section 142 of the Internal Revenue Code of 1986 (defining exempt facility bond) is amended by striking ''or'' at the end of paragraph (12), by striking the period at the end of paragraph (13) and inserting '', or'', and by adding at the end the following new paragraph:

''(14) air or water pollution control facilities.''.

(b) AIR OR WATER POLLUTION CONTROL FACILITIES.—Section 142 of the Internal Revenue Code of 1986 (relating to exempt facility bond) is amended by adding at the end the following new subsection:

''(l) POLLUTION CONTROL FACILITIES ACQUIRED BY REGIONAL POLLUTION CONTROL AUTHORITIES.—

''(1) IN GENERAL.—For purposes of paragraph (14) of subsection (a), a bond shall be treated as described in such paragraph if it is part of an issue substantially all of the proceeds of which are used by a qualified regional pollution control authority to acquire existing air or water pollution control facilities which the authority itself will operate in order to maintain or improve the control of pollutants.

''(2) RESTRICTIONS.—Paragraph (1) shall apply only if—

''(A) the amount paid, directly or indirectly, for a facility does not exceed the fair market value of the facility,

''(B) the fees or charges imposed, directly or indirectly, on the seller for any use of the facility after the sale of such facility are not less than the amounts that would be charged if the facility were financed with obligations the interest on which is not exempt from tax, and

''(C) no person other than the qualified regional pollution control authority is considered after the sale as the owner of the facility for the purposes of Federal income taxes.

''(3) QUALIFIED REGIONAL POLLUTION CONTROL AUTHORITY.—For purposes of this subsection, the term 'qualified regional pollution control authority' means an authority which—

''(A) is a political subdivision created by State law to control air or water pollution,

''(B) has within its jurisdictional boundaries all or part of at least 2 counties (or equivalent political subdivisions), and

''(C) operates air or water pollution control facilities.''.

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

SEC. 3. EXEMPTION FROM VOLUME CAP FOR FACILITIES FURNISHING WATER, SEWAGE FACILITIES, AND AIR OR WATER POLLUTION CONTROL FACILITIES.

(a) IN GENERAL.—Paragraph (3) of section 146(g) of the Internal Revenue Code of 1986 (relating to exception for certain bonds) is amended—

(1) by inserting ''(4), (5),'' after ''(2),'',

(2) by striking ''or (13)'' and inserting ''(13), or (14)'',

(3) by inserting ''facilities for the furnishing of water, sewage facilities,'' after ''wharves,'',

(4) by striking ''and'' before ''qualified'', and

(5) by inserting '', and air or water pollution control facilities'' after ''educational facilities''.

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

By Mr. SANTORUM (for himself and Mrs. FEINSTEIN):

S. 1918. A bill to amend the Internal Revenue Code of 1986 to provide that qualified homeowner downpayment assistance is a charitable purpose; to the Committee on Finance.

Mr. SANTORUM. Mr. President, I am please to introduce today, along with my colleague from California, Senator FEINSTEIN, legislation that will further one of the most important public policy goals we have as a Nation—the goal of homeownership. Homeownership is a significant part of the American dream. It has been called the backbone of our economy. It is widely considered the primary means by which American families create middle-class wealth and build financial security.

Homeownership is all those things and more. It is the cornerstone of healthy communities across our Nation. It is good for families, good for our schools, good for our neighborhoods. Equity in homes is the leading source for collateral for small business start-up borrowing, and home equity loans are the leading provider of funds for a college education. Some experts even say home owners are more likely to vote.

Despite the many benefits, there are still too many Americans for whom the

American dream of homeownership is unreachable. There are too many American families who pay rent month after month, never accumulating equity, never experiencing the joy of raising their children in a home they own, and look forward to passing along to future generations. That is especially true among Americans from minority populations. Though nationwide nearly 70 percent of Americans own their own home, homeownership rates among African-Americans and Hispanics is less than 50 percent.

There are any number of obstacles to homeownership, but there is one problem that is widely considered the single biggest obstacle: the lack of funds for a down payment. Again, this is disproportionately true among minority families, which frequently have less accumulated wealth that can be used for a down payment.

President Bush has proposed creating the American Dream Down Payment Fund, which would provide down payment assistance to 40,000 families every year. I support that effort, and I applaud President Bush for proposing this bold new initiative. The President has set a goal of increasing the number of minority homeowners by at least 5.5 million by the end of this decade, which the Department of Housing and Urban Development estimates would create $256 billion in economic activity. I believe that is an important goal for us as a Nation.

I also believe that as we work to find ways for the Federal Government to increase homeownership, we need to encourage the private sector to do the same. There are a number of non-profit organizations in our country doing just that by providing a gift of down payment assistance to potential homeowners. These gifts of down payment assistance go to families and individuals who have the income to afford a mortgage, but who would otherwise be prevented from buying a home because they lack funds for a down payment. Last year non-profit organizations provided gifts of down payment assistance to over 85,000 home buyers—and the number will likely be much higher this year. One organization alone has helped over 160,000 individuals and families become homeowners, by providing a gift of funds for a down payment. And all without collecting a single dime of government funding.

That is why I am so pleased to be introducing this legislation today. I want to be sure the private sector can continue playing such a vital role in increasing homeownership by providing down payment assistance. Although many charities holding tax exemptions under section 501(c)(3) of the Internal Revenue Code provide down payment assistance, IRS regulations do not clearly address down payment assistance programs.

Our legislation will clarify that, under certain circumstances, the provision of down payment assistance to American families for use in purchasing low or moderate price homes constitutes charitable activity. Rather than developing our own standard for eligible home purchases, we have relied on the National Housing Act rule for FHA-insured loans. Our provision applies to purchases of a principal residence if the amount of the mortgage is less than the maximum mortgage amount eligible for FHA insurance in the geographic area in which the home is located. That will ensure that a charitable down payment assistance program is not used to support the purchase of rental properties or expensive homes.

Our legislation also includes one other provision designed to protect the Treasury. Home sellers often contribute to charitable down payment assistance providers in connection with the sale of a home. Those contributions are used to replenish the pool to make available gift assistance for other home buyers. Although the contributions are being made to a charity, they are not charitable in nature; they are expenses of selling a home. The legislation clarifies that a party to a home sale transaction may not claim a charitable contribution deduction for a contribution to a down payment assistance provider made in connection with the sale.

Although IRS regulations do not clearly address down payment assistance programs, our legislation merely codifies current practice. As a result, I do not anticipate that the legislation will result in a significant change in tax revenues.

Non-profit providers of down payment assistance help tens of thousands of Americans every year become homeowners. These organizations are changing lives, changing families, changing our communities—and they are doing it all without a single dime of taxpayer funds. I am pleased my colleague from California, Senator FEINSTEIN, has joined me in introducing this legislation. I ask all of my colleagues to join us in this important effort.

Mrs. FEINSTEIN. Mr. President, I am pleased to join with the distinguished Senator from Pennsylvania, Senator SANTORUM, to introduce legislation that will promote the American dream of homeownership.

Our legislation will specify that providing homeownership down payment assistance to American families constitutes a charitable activity under the regulations of the Internal Revenue Service.

As the cornerstone of middle-class wealth in our nation, we should be doing everything possible to promote broad investment in owner-occupied housing. Today, we have that chance.

It should not be a surprise that homeownership among low to moderate income families is lower than for those with higher incomes. The single biggest obstacle to achieving this dream is the lack of a downpayment.

Across America there are organizations that assist low to moderate income families with that first important step toward homeownership. In California, one of these groups, the Nehemiah Corporation, helps literally thousands of families each year by providing down payments.

While the Federal Government provides tax incentives for increased homeownership, we should make it easier for the private sector to provide their own brand of incentives. Importantly, this legislation will do several things to ensure that the private sector continues to have the tools it needs to provide this important assistance.

One, our legislation will specify that homeownership down payment assistance to American families constitutes a charitable activity.

Currently, Internal Revenue Service regulations do not clearly address the special circumstances of those organizations that provide downpayment assistance to families.

Two, our bill is structured to ensure that a charitable down payment assistance program is not used to support the purchase of rental properties or expensive homes.

Three, our legislation is designed so that the taxpayers do not pick-up the tab. Since, home sellers often contribute to charitable down payment assistance providers in connection with the sale of a home, those contributions are not charitable in nature; they are an expense related to selling a home.

This legislation clarifies that a party to a home sale transaction may not claim a charitable contribution deduction for a contribution to a down payment assistance organization made in connection with the sale.

And, although Internal Revenue Service regulations do not specifically address down payment assistance programs, our legislation merely codifies current practice.

This legislation will ensure the continued growth of this essential segment of the financial services market at no cost to the taxpayers.

And, as my friend from Pennsylvania has said, equity in homes is the leading source for collateral for small business start-up borrowing.

At a time when the economy still fails to produce jobs, the expansion of small business and the employment they provide is essential to the health of our economy.

It is a win-win situation in the truest sense of the term and I urge my colleagues to support it.

By Mr. SMITH (for himself and Mr. BREAUX):

S. 1922. A bill to amend the Internal Revenue Code of 1986 to comply with the World Trade Organization rulings on the FSC/ETI benefit in a manner that preserves manufacturing jobs and production activities in the United States, and for other purposes; to the Committee on Finance.

Mr. SMITH. Mr. President, I rise today to introduce The American Manufacturing Jobs Bill of 2003—which will

provide a tax rate cut for all manufacturers who employ American workers. I am pleased to be joined in this effort by Senator JOHN BREAUX. On October 1, 2003, the Senate Finance Committee approved on a bipartisan basis S. 1673, the centerpiece of which resolves the FSC/ETI issue by replacing the export tax benefit with a reduction in the tax burden on domestic manufacturing companies.

I applaud S. 1673, a balanced piece of legislation crafted by Chairman CHARLES GRASSLEY, R–IA, and ranking member Senator MAX BAUCUS, D–MT. I am, however, concerned that the domestic manufacturing benefit in S. 1673 is not applied equally to all U.S. manufacturers. This bill includes a provision—a ''haircut''—that provides less of a benefit to companies that also manufacture abroad.

For example, a company that has 55 percent of its manufacturing in the United States and 45 percent abroad will calculate its benefit under the bill and then reduce that benefit by a fraction—the numerator of which is the gross receipts from domestic manufacturing over the same derived from worldwide manufacturing.

This company thus suffers twice. First, the domestic manufacturing benefit in S. 1673 is less valuable than the benefit currently provided under FSC/ETI. Second, this company's manufacturing benefit is further reduced by the ''haircut'' merely because it also has overseas manufacturing operations in order to be closer to their markets.

The ''haircut'' is a discriminatory measure that hurts both foreign-owned and U.S.-owned companies alike. It is structured so that the more a company manufactures abroad, the less of a manufacturing rate cut it gets. The ''haircut'' makes the United States a less competitive location for current and future investment because multinational companies will believe they are being ''cheated'' and discriminated against.

At a time when American manufacturing jobs are leaving our country in record numbers, Congress should support all companies that employ Americans. U.S. companies with global operations employ more than 23 million Americans—9 million of which are in manufacturing jobs—this is tantamount to three out of every five manufacturing jobs in this country. Foreign-owned companies with U.S. operations employ more than 2 million manufacturing workers in the United States. It is these many of millions of manufacturing workers who will suffer if the ''haircut'' remains and companies are therefore discouraged to invest in the United States.

Moreover, the ''haircut'' is inconsistent with historic tax and trade policies to encourage U.S. companies to open up facilities outside the United States. In fact, there is an entire department—the Department of Commerce—set up to assist U.S. companies going global and then to promote and facilitate those same companies' efforts once they have established themselves in-country. I am also concerned that the ''haircut'' invites mirror legislation in other countries and may invite another WTO challenge to this legislation.

I believe we have a duty to encourage the retention and creation of manufacturing jobs in the United States. We must not treat U.S. jobs created by multinational companies as ''less worthy'' than U.S. jobs created by strictly domestic manufacturers. Congress should be in the business of rewarding all well-paid, manufacturing jobs that are created in the United States, not just those created by domestic manufacturers. I believe that by eliminating the ''haircut'' and providing a tax rate cut for all manufacturers who employ American workers, we can help to revitalize the U.S. manufacturing sector. I ask unanimous consent that the full text of this important legislation be printed in the RECORD.

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

S. 1922

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 1986 CODE.

(a) SHORT TITLE.—This Act may be cited as the ''American Manufacturing Jobs Act of 2003''.

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

SEC. 2. REPEAL OF EXCLUSION FOR EXTRATERRITORIAL INCOME.

(a) IN GENERAL.—Section 114 is hereby repealed.

(b) CONFORMING AMENDMENTS.—

(1)(A) Subpart E of part III of subchapter N of chapter 1 (relating to qualifying foreign trade income) is hereby repealed.

(B) The table of subparts for such part III is amended by striking the item relating to subpart E.

(2) The table of sections for part III of subchapter B of chapter 1 is amended by striking the item relating to section 114.

(3) The second sentence of section 56(g)(4)(B)(i) is amended by striking ''or under section 114''.

(4) Section 275(a) is amended—

(A) by inserting ''or'' at the end of paragraph (4)(A), by striking ''or'' at the end of paragraph (4)(B) and inserting a period, and by striking subparagraph (C), and

(B) by striking the last sentence.

(5) Paragraph (3) of section 864(e) is amended—

(A) by striking:

''(3) TAX-EXEMPT ASSETS NOT TAKEN INTO ACCOUNT.—

''(A) IN GENERAL.—For purposes of''; and inserting:

''(3) TAX-EXEMPT ASSETS NOT TAKEN INTO ACCOUNT.—For purposes of'', and

(B) by striking subparagraph (B).

(6) Section 903 is amended by striking ''114, 164(a),'' and inserting ''164(a)''.

(7) Section 999(c)(1) is amended by striking ''941(a)(5),''.

(c) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by this section shall apply to transactions occurring after the date of the enactment of this Act.

(2) BINDING CONTRACTS.—The amendments made by this section shall not apply to any transaction in the ordinary course of a trade or business which occurs pursuant to a binding contract—

(A) which is between the taxpayer and a person who is not a related person (as defined in section 943(b)(3) of such Code, as in effect on the day before the date of the enactment of this Act), and

(B) which is in effect on September 17, 2003, and at all times thereafter.

(d) REVOCATION OF SECTION 943(e) ELECTIONS.—

(1) IN GENERAL.—In the case of a corporation that elected to be treated as a domestic corporation under section 943(e) of the Internal Revenue Code of 1986 (as in effect on the day before the date of the enactment of this Act)—

(A) the corporation may, during the 1-year period beginning on the date of the enactment of this Act, revoke such election, effective as of such date of enactment, and

(B) if the corporation does revoke such election—

(i) such corporation shall be treated as a domestic corporation transferring (as of such date of enactment) all of its property to a foreign corporation in connection with an exchange described in section 354 of such Code, and

(ii) no gain or loss shall be recognized on such transfer.

(2) EXCEPTION.—Subparagraph (B)(ii) of paragraph (1) shall not apply to gain on any asset held by the revoking corporation if—

(A) the basis of such asset is determined in whole or in part by reference to the basis of such asset in the hands of the person from whom the revoking corporation acquired such asset,

(B) the asset was acquired by transfer (not as a result of the election under section 943(e) of such Code) occurring on or after the 1st day on which its election under section 943(e) of such Code was effective, and

(C) a principal purpose of the acquisition was the reduction or avoidance of tax (other than a reduction in tax under section 114 of such Code, as in effect on the day before the date of the enactment of this Act).

(e) GENERAL TRANSITION.—

(1) IN GENERAL.—In the case of a taxable year ending after the date of the enactment of this Act and beginning before January 1, 2007, for purposes of chapter 1 of such Code, a current FSC/ETI beneficiary shall be allowed a deduction equal to the transition amount determined under this subsection with respect to such beneficiary for such year.

(2) CURRENT FSC/ETI BENEFICIARY.—The term ''current FSC/ETI beneficiary'' means any corporation which entered into one or more transactions during its taxable year beginning in calendar year 2002 with respect to which FSC/ETI benefits were allowable.

(3) TRANSITION AMOUNT.—For purposes of this subsection—

(A) IN GENERAL.—The transition amount applicable to any current FSC/ETI beneficiary for any taxable year is the phaseout percentage of the base period amount.

(B) PHASEOUT PERCENTAGE.—

(i) IN GENERAL.—In the case of a taxpayer using the calendar year as its taxable year, the phaseout percentage shall be determined under the following table:

Years:	The phaseout percentage is:
2004	80

Years:	The phaseout percentage is:
2005	80
2006	60.

(ii) SPECIAL RULE FOR 2003.—The phaseout percentage for 2003 shall be the amount that bears the same ratio to 100 percent as the number of days after the date of the enactment of this Act bears to 365.

(iii) SPECIAL RULE FOR FISCAL YEAR TAXPAYERS.—In the case of a taxpayer not using the calendar year as its taxable year, the phaseout percentage is the weighted average of the phaseout percentages determined under the preceding provisions of this paragraph with respect to calendar years any portion of which is included in the taxpayer's taxable year. The weighted average shall be determined on the basis of the respective portions of the taxable year in each calendar year.

''(C) SHORT TAXABLE YEAR.—The Secretary shall prescribe guidance for the computation of the transition amount in the case of a short taxable year.

(4) BASE PERIOD AMOUNT.—For purposes of this subsection, the base period amount is the FSC/ETI benefit for the taxpayer's taxable year beginning in calendar year 2002.

(5) FSC/ETI BENEFIT.—For purposes of this subsection, the term ''FSC/ETI benefit'' means—

(A) amounts excludable from gross income under section 114 of such Code, and

(B) the exempt foreign trade income of related foreign sales corporations from property acquired from the taxpayer (determined without regard to section 923(a)(5) of such Code (relating to special rule for military property), as in effect on the day before the date of the enactment of the FSC Repeal and Extraterritorial Income Exclusion Act of 2000).

In determining the FSC/ETI benefit there shall be excluded any amount attributable to a transaction with respect to which the taxpayer is the lessor unless the leased property was manufactured or produced in whole or in significant part by the taxpayer.

(6) SPECIAL RULE FOR AGRICULTURAL AND HORTICULTURAL COOPERATIVES.—Determinations under this subsection with respect to an organization described in section 943(g)(1) of such Code, as in effect on the day before the date of the enactment of this Act, shall be made at the cooperative level and the purposes of this subsection shall be carried out in a manner similar to section 199(h)(2) of such Code, as added by this Act. Such determinations shall be in accordance with such requirements and procedures as the Secretary may prescribe.

(7) CERTAIN RULES TO APPLY.—Rules similar to the rules of section 41(f) of such Code shall apply for purposes of this subsection.

(8) COORDINATION WITH BINDING CONTRACT RULE.—The deduction determined under paragraph (1) for any taxable year shall be reduced by the phaseout percentage of any FSC/ETI benefit realized for the taxable year by reason of subsection (c)(2) or section 5(c)(1)(B) of the FSC Repeal and Extraterritorial Income Exclusion Act of 2000, except that for purposes of this paragraph the phaseout percentage for 2003 shall be treated as being equal to 100 percent.

(9) SPECIAL RULE FOR TAXABLE YEAR WHICH INCLUDES DATE OF ENACTMENT.—In the case of a taxable year which includes the date of the enactment of this Act, the deduction allowed under this subsection to any current FSC/ETI beneficiary shall in no event exceed—

(A) 100 percent of such beneficiary's base period amount for calendar year 2003, reduced by

(B) the FSC/ETI benefit of such beneficiary with respect to transactions occurring during the portion of the taxable year ending on the date of the enactment of this Act.

SEC. 3. DEDUCTION RELATING TO INCOME ATTRIBUTABLE TO UNITED STATES PRODUCTION ACTIVITIES.

(a) IN GENERAL.—Part VI of subchapter B of chapter 1 (relating to itemized deductions for individuals and corporations) is amended by adding at the end the following new section:

''SEC. 199. INCOME ATTRIBUTABLE TO DOMESTIC PRODUCTION ACTIVITIES.

''(a) ALLOWANCE OF DEDUCTION.—

''(1) IN GENERAL.—There shall be allowed as a deduction an amount equal to 9 percent of the qualified production activities income of the taxpayer for the taxable year.

''(2) PHASEIN.—In the case of taxable years beginning in 2003, 2004, 2005, 2006, 2007, or 2008, paragraph (1) shall be applied by substituting for the percentage contained therein the transition percentage determined under the following table:

''Taxable years beginning in:	The transition percentage is:
2003 or 2004	1
2005	2
2006	3
2007 or 2008	6.

''(b) DEDUCTION LIMITED TO WAGES PAID.—

''(1) IN GENERAL.—The amount of the deduction allowable under subsection (a) for any taxable year shall not exceed 50 percent of the W-2 wages of the employer for the taxable year.

''(2) W-2 WAGES.—For purposes of paragraph (1), the term 'W-2 wages' means the sum of the aggregate amounts the taxpayer is required to include on statements under paragraphs (3) and (8) of section 6051(a) with respect to employment of employees of the taxpayer during the taxpayer's taxable year.

''(3) SPECIAL RULES.—

''(A) PASS-THRU ENTITIES.—In the case of an S corporation, partnership, estate or trust, or other pass-thru entity, the limitation under this subsection shall apply at the entity level.

''(B) ACQUISITIONS AND DISPOSITIONS.—The Secretary shall provide for the application of this subsection in cases where the taxpayer acquires, or disposes of, the major portion of a trade or business or the major portion of a separate unit of a trade or business during the taxable year.

''(c) QUALIFIED PRODUCTION ACTIVITIES INCOME.—For purposes of this section, the term 'qualified production activities income' means an amount equal to the portion of the modified taxable income of the taxpayer which is attributable to domestic production activities.

''(d) DETERMINATION OF INCOME ATTRIBUTABLE TO DOMESTIC PRODUCTION ACTIVITIES.—For purposes of this section—

''(1) IN GENERAL.—The portion of the modified taxable income which is attributable to domestic production activities is so much of the modified taxable income for the taxable year as does not exceed—

''(A) the taxpayer's domestic production gross receipts for such taxable year, reduced by

''(B) the sum of—

''(i) the costs of goods sold that are allocable to such receipts,

''(ii) other deductions, expenses, or losses directly allocable to such receipts, and

''(iii) a proper share of other deductions, expenses, and losses that are not directly allocable to such receipts or another class of income.

''(2) ALLOCATION METHOD.—The Secretary shall prescribe rules for the proper allocation of items of income, deduction, expense, and loss for purposes of determining income attributable to domestic production activities.

''(3) SPECIAL RULES FOR DETERMINING COSTS.—

''(A) IN GENERAL.—For purposes of determining costs under clause (i) of paragraph (1)(B), any item or service brought into the United States shall be treated as acquired by purchase, and its cost shall be treated as not less than its fair market value immediately after it entered the United States. A similar rule shall apply in determining the adjusted basis of leased or rented property where the lease or rental gives rise to domestic production gross receipts.

''(B) EXPORTS FOR FURTHER MANUFACTURE.—In the case of any property described in subparagraph (A) that had been exported by the taxpayer for further manufacture, the increase in cost or adjusted basis under subparagraph (A) shall not exceed the difference between the value of the property when exported and the value of the property when brought back into the United States after the further manufacture.

''(4) MODIFIED TAXABLE INCOME.—The term 'modified taxable income' means taxable income computed without regard to the deduction allowable under this section.

''(e) DOMESTIC PRODUCTION GROSS RECEIPTS.—For purposes of this section—

''(1) IN GENERAL.—The term 'domestic production gross receipts' means the gross receipts of the taxpayer which are derived from—

''(A) any sale, exchange, or other disposition of, or

''(B) any lease, rental, or license of,

qualifying production property which was manufactured, produced, grown, or extracted in whole or in significant part by the taxpayer within the United States.

''(2) SPECIAL RULES FOR CERTAIN PROPERTY.—In the case of any qualifying production property described in subsection (f)(1)(C)—

''(A) such property shall be treated for purposes of paragraph (1) as produced in significant part by the taxpayer within the United States if more than 50 percent of the aggregate development and production costs are incurred by the taxpayer within the United States, and

''(B) if a taxpayer acquires such property before such property begins to generate substantial gross receipts, any development or production costs incurred before the acquisition shall be treated as incurred by the taxpayer for purposes of subparagraph (A) and paragraph (1).

''(f) QUALIFYING PRODUCTION PROPERTY.—For purposes of this section—

''(1) IN GENERAL.—Except as otherwise provided in this paragraph, the term 'qualifying production property' means—

''(A) any tangible personal property,

''(B) any computer software, and

''(C) any property described in section 168(f) (3) or (4), including any underlying copyright or trademark.

''(2) EXCLUSIONS FROM QUALIFYING PRODUCTION PROPERTY.—The term 'qualifying production property' shall not include—

''(A) consumable property that is sold, leased, or licensed by the taxpayer as an integral part of the provision of services,

''(B) oil or gas,

''(C) electricity,

''(D) water supplied by pipeline to the consumer,

''(E) utility services, or

''(F) any film, tape, recording, book, magazine, newspaper, or similar property the market for which is primarily topical or otherwise essentially transitory in nature.

''(g) DEFINITIONS AND SPECIAL RULES.—

''(1) APPLICATION OF SECTION TO PASS-THRU ENTITIES.—In the case of an S corporation, partnership, estate or trust, or other pass-thru entity—

''(A) subject to the provisions of paragraph (2) and subsection (b)(3)(A), this section shall be applied at the shareholder, partner, or similar level, and

''(B) the Secretary shall prescribe rules for the application of this section, including rules relating to—

''(i) restrictions on the allocation of the deduction to taxpayers at the partner or similar level, and

''(ii) additional reporting requirements.

''(2) EXCLUSION FOR PATRONS OF AGRICULTURAL AND HORTICULTURAL COOPERATIVES.—

''(A) IN GENERAL.—If any amount described in paragraph (1) or (3) of section 1385(a)—

''(i) is received by a person from an organization to which part I of subchapter T applies which is engaged in the marketing of agricultural or horticultural products, and

''(ii) is allocable to the portion of the qualified production activities income of the organization which is deductible under subsection (a) and designated as such by the organization in a written notice mailed to its patrons during the payment period described in section 1382(d),

then such person shall be allowed an exclusion from gross income with respect to such amount. The taxable income of the organization shall not be reduced under section 1382 by the portion of any such amount with respect to which an exclusion is allowable to a person by reason of this paragraph.

''(B) SPECIAL RULES.—For purposes of applying subparagraph (A), in determining the qualified production activities income of the organization under this section—

''(i) there shall not be taken into account in computing the organization's modified taxable income any deduction allowable under subsection (b) or (c) of section 1382 (relating to patronage dividends, per-unit retain allocations, and nonpatronage distributions), and

''(ii) the organization shall be treated as having manufactured, produced, grown, or extracted in whole or significant part any qualifying production property marketed by the organization which its patrons have so manufactured, produced, grown, or extracted.

''(3) SPECIAL RULE FOR AFFILIATED GROUPS.—

''(A) IN GENERAL.—All members of an expanded affiliated group shall be treated as a single corporation for purposes of this section.

''(B) EXPANDED AFFILIATED GROUP.—The term 'expanded affiliated group' means an affiliated group as defined in section 1504(a), determined—

''(i) by substituting '50 percent' for '80 percent' each place it appears, and

''(ii) without regard to paragraphs (2) and (4) of section 1504(b).

''(4) COORDINATION WITH MINIMUM TAX.—The deduction under this section shall be allowed for purposes of the tax imposed by section 55; except that for purposes of section 55, alternative minimum taxable income shall be taken into account in determining the deduction under this section.

''(5) ORDERING RULE.—The amount of any other deduction allowable under this chapter shall be determined as if this section had not been enacted.

''(6) TRADE OR BUSINESS REQUIREMENT.—This section shall be applied by only taking into account items which are attributable to the actual conduct of a trade or business.

''(7) POSSESSIONS, ETC.—

''(A) IN GENERAL.—For purposes of subsections (d) and (e), the term 'United States' includes the Commonwealth of Puerto Rico, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and the Virgin Islands of the United States.

''(B) SPECIAL RULES FOR APPLYING WAGE LIMITATION.—For purposes of applying the limitation under subsection (b) for any taxable year—

''(i) the determination of W–2 wages of a taxpayer shall be made without regard to any exclusion under section 3401(a)(8) for remuneration paid for services performed in a jurisdiction described in subparagraph (A), and

''(ii) in determining the amount of any credit allowable under section 30A or 936 for the taxable year, there shall not be taken into account any wages which are taken into account in applying such limitation.

''(8) COORDINATION WITH TRANSITION RULES.—For purposes of this section—

''(A) domestic production gross receipts shall not include gross receipts from any transaction if the binding contract transition relief of section 2(c)(2) of the American Manufacturing Jobs Act of 2003 applies to such transaction, and

''(B) any deduction allowed under section 2(e) of such Act shall be disregarded in determining the portion of the taxable income which is attributable to domestic production gross receipts.''.

(b) MINIMUM TAX.—Section 56(g)(4)(C) (relating to disallowance of items not deductible in computing earnings and profits) is amended by adding at the end the following new clause:

''(v) DEDUCTION FOR DOMESTIC PRODUCTION.—Clause (i) shall not apply to any amount allowable as a deduction under section 199.''.

(c) CLERICAL AMENDMENT.—The table of sections for part VI of subchapter B of chapter 1 is amended by adding at the end the following new item:

''Sec. 199. Income attributable to domestic production activities.''.

(d) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by this section shall apply to taxable years ending after the date of the enactment of this Act.

(2) APPLICATION OF SECTION 15.—Section 15 of the Internal Revenue Code of 1986 shall apply to the amendments made by this section as if they were changes in a rate of tax.

By Mr. LEAHY:

S. 1923. A bill to reauthorize and amend the National Film Preservation Act of 1996; to the Committee on the Judiciary.

Mr. LEAHY. Mr. President, I call attention today to a part of American heritage that is literally disintegrating faster than can be saved. Motion pictures are an important part of our American experience and provide an extraordinary record of our history, our dreams, and our aspirations. The National Film Preservation Board and the National Film Preservation Foundation were created by Congress under the auspices of the Library of Congress, to help save America's film heritage. Today, I am introducing the ''National Film Preservation Act of 2003,'' which will reauthorize and extend the ''National Film Preservation Act of 1996.''

We first acted in 1988 in order to recognize both the educational, cultural, and historical importance of our film heritage, and its inherently fragile nature. The ''National Film Preservation Act of 2003'' will allow the Library of Congress to continue its important work in preserving America's fading treasures, as well as providing grants that will help libraries, museums, and archives preserve films, and make those works available for study and research. These continued efforts are more critical today than ever before. Fewer than 20 percent of the features of the 1920s exist in complete form and less than 10 percent of the features of the 1910s have survived into the new millennium.

The films saved by the National Film Preservation Board are precisely those types of films that would be unlikely to survive without public support. At-risk documentaries, silent-era films, avant-garde works, ethnic films, newsreels, and home movies are in many ways more illuminating on the question of who we are as a society than the Hollywood sound features kept and preserved by major studios. What is more, in many cases only one copy of these ''orphaned'' works exists. As the Librarian of Congress, Dr. James H. Billington, has noted, ''Our film heritage is America's living past.'' I encourage my colleagues to support the ''Film Preservation Act of 2003'' so that America's past can survive in order to enlighten and entertain future generations.

I ask unanimous consent that the text of this bill be printed in the RECORD.

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

S. 1923

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

TITLE I—REAUTHORIZATION OF THE NATIONAL FILM PRESERVATION BOARD

SEC. 101. SHORT TITLE.

This title may be cited as the ''National Film Preservation Act of 2003''.

SEC. 102. REAUTHORIZATION AND AMENDMENT.

(a) DUTIES OF THE LIBRARIAN OF CONGRESS.—Section 103 of the National Film Preservation Act of 1996 (2 U.S.C. 179m) is amended:

(1) in subsection (b)—

(A) by striking ''film copy'' each place that term appears and inserting ''film or other approved copy'';

(B) by striking ''film copies'' each place that term appears and inserting ''film or other approved copies''; and

(C) in the third sentence, by striking ''copyrighted'' and inserting ''copyrighted, mass distributed, broadcast, or published'' ; and

(2) by adding at the end the following:

''(c) COORDINATION OF PROGRAM WITH OTHER COLLECTION, PRESERVATION, AND ACCESSIBILITY ACTIVITIES.—In carrying out the comprehensive national film preservation program for motion pictures established under the National Film Preservation Act of 1992, the Librarian, in consultation with the Board established pursuant to section 104, shall—

''(1) carry out activities to make films included in the National Film registry more broadly accessible for research and educational purposes, and to generate public awareness and support of the Registry and the comprehensive national film preservation program;

''(2) review the comprehensive national film preservation plan, and amend it to the

extent necessary to ensure that it addresses technological advances in the preservation and storage of, and access to film collections in multiple formats; and

''(3) wherever possible, undertake expanded initiatives to ensure the preservation of the moving image heritage of the United States, including film, videotape, television, and born digital moving image formats, by supporting the work of the National Audio-Visual Conservation Center of the Library of Congress, and other appropriate nonprofit archival and preservation organizations.''.

(b) NATIONAL FILM PRESERVATION BOARD.—Section 104 of the National Film Preservation Act of 1996 (2 U.S.C. 179n) is amended—

(1) in subsection (a)(1) by striking ''20'' and inserting ''22'';

(2) in subsection (a) (2) by striking ''three'' and inserting ''5'';

(3) in subsection (d) by striking ''11'' and inserting ''12''; and

(4) by striking subsection (e) and inserting the following:

''(e) REIMBURSEMENT OF EXPENSES.—Members of the Board shall serve without pay, but may receive travel expenses, including per diem in lieu of subsistence, in accordance with sections 5702 and 5703 of title 5, United States Code.''.

(c) RESPONSIBILITIES AND POWERS OF BOARD.—Section 105(c) of the National Film Preservation Act of 1996 (2 U.S.C. 179o) is amended by adding at the end the following:

''(3) REVIEW AND APPROVAL OF SPECIAL FOUNDATION PROJECTS.—The Board shall review special projects submitted for its approval by the National Film Preservation Foundation under section 151711 of title 36, United States Code.''.

(d) NATIONAL FILM REGISTRY.—Section 106 of the National Film Preservation Act of 1996 (2 U.S.C. 179q) is amended by adding at the end the following:

''(e) NATIONAL AUDIO-VISUAL CONSERVATION CENTER.—The Librarian shall utilize the National Audio-Visual Conservation Center of the Library of Congress at Culpeper, Virginia, to ensure that preserved films included in the National Film Registry are stored in a proper manner, and disseminated to researchers, scholars, and the public as may be appropriate in accordance with—

''(1) title 17 of the United States Code; and

''(2) the terms of any agreements between the Librarian and persons who hold copyrights to such audiovisual works.''.

(e) USE OF SEAL.—Section 107 (a) of the National Film Preservation Act of 1996 (2 U.S.C. 179q) is amended—

(1) in paragraph (1), by inserting ''in any format'' after ''or any copy''; and

(2) in paragraph (2), by striking ''or film copy'' and inserting ''in any format''.

(f) EFFECTIVE DATE.—Section 113 of the National Film Preservation Act of 1996 (2 U.S.C. 179w) is amended by striking ''7'' and inserting ''17''.

TITLE II—REAUTHORIZATION OF THE NATIONAL FILM PRESERVATION FOUNDATION

SEC. 201. SHORT TITLE.

This title may be cited as the ''National Film Preservation Foundation Reauthorization Act of 2003''.

SEC. 202. REAUTHORIZATION AND AMENDMENT.

(a) BOARD OF DIRECTORS.—Section 151703 of title 36, United States Code, is amended—

(1) in subsection (b)(2)(A), by striking ''nine'' and inserting ''12''; and

(2) in subsection (b)(4), by striking the second sentence and inserting ''There shall be no limit to the number of terms to which any individual may be appointed.''.

(b) POWERS.—Section 151705 of title 36, United States Code, is amended in subsection (b) by striking ''District of Columbia'' and inserting ''the jurisdiction in which the principal office of the corporation is located''.

(c) PRINCIPAL OFFICE.—Section 151706 of title 36, United States Code, is amended by inserting '', or another place as determined by the board of directors'' after ''District of Columbia''.

(d) AUTHORIZATION OF APPROPRIATIONS.—Section 151711 of title 36, United States Code, is amended by striking subsections (a) and (b) and inserting the following:

''(a) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Library of Congress amounts necessary to carry out this chapter, not to exceed $500,000 for each of the fiscal years 2004 and 2005, and not to exceed $1,000,000 for each of the fiscal years 2006 through 2013. These amounts are to be made available to the corporation to match any private contributions (whether in currency, services, or property) made to the corporation by private persons and State and local governments.

''(b) LIMITATION RELATED TO ADMINISTRATIVE EXPENSES.—Amounts authorized under this section may not be used by the corporation for management and general or fundraising expenses as reported to the Internal Revenue Service as part of an annual information return required under the Internal Revenue Code of 1986.''.

(e) COOPERATIVE FILM PRESERVATION.—

(1) IN GENERAL.—Chapter 1517 of title 36, United States Code, is amended—

(A) by redesignating sections 151711 and 151712 as sections 151712 and 151713, respectively; and

(B) by adding at the end the following:

''§ 151711. Cooperative film preservation

''(a) COOPERATIVE FILM PRESERVATION.—

''(1) IN GENERAL.—The corporation shall design and support cooperative national film preservation and access initiatives. Such initiatives shall be approved by the corporation, the Librarian of Congress, and the National Film Preservation Board of the Library of Congress under section 105(c)(3) of the National Film Preservation Act of 1996.

''(2) SCOPE.—Cooperative initiatives authorized under paragraph (1) may include—

''(A) the repatriation and preservation of American films that may be found in archives outside of the United States;

''(B) the exhibition and dissemination via broadcast or other means of ''orphan'' films;

''(C) the production of educational materials in various formats to encourage film preservation, preservation initiatives undertaken by 3 or more archives jointly; and

''(D) other activities undertaken in light of significant unfunded film preservation and access needs.

''(b) AUTHORIZATION OF APPROPRIATIONS.—

''(1) IN GENERAL.—There are authorized to be appropriated to the Library of Congress amounts not to exceed $1,000,000 for each of the fiscal years 2006 through 2013, to carry out the purposes of this section.

''(2) MATCHING.—The amounts made available under paragraph (1) are to be made available to the corporation to match any private contributions (whether in currency, services, or property) made to the corporation by private persons and State and local governments.

''(3) LIMITATION RELATED TO ADMINISTRATIVE EXPENSES.—Amounts authorized under this section may not be used by the corporation for management and general or fundraising expenses as reported to the Internal Revenue Service as part of an annual information return required under the Internal Revenue Code of 1986.''.

(2) TECHNICAL AND CONFORMING AMENDMENT.—The table of sections for chapter 1517 of title 36, United States Code, is amended by striking the matter relating to section 151711 and 151712 and inserting the following:

''151711. Cooperative film preservation.
''151712. Authorization of appropriations.
''151713. Annual report.''.

By Mr. JEFFORDS:

S. 1924. A bill to provide for the coverage of milk production under the H–2A nonimmigrant worker program; to the Committee on the Judiciary.

Mr. JEFFORDS. Mr. President, today I rise to introduce the Dairy Farm Workers Fairness Act.

Family dairy farms are critically important to our agricultural economy and to the rural way of life in many parts of the country. These farms support the rural economy by supporting the local tax base and many local businesses. The working landscape created by our farms, especially a patchwork of small farms, is also the best antidote for the urban sprawl that is overtaking so much of the country. And, of course, the availability of fresh, locally produced milk is an amenity that we have come to take for granted. To support our rural economies, the working landscape and our local food supply systems we need to help small family dairy farms survive and thrive.

The most difficult challenge to the family dairy farm, after the volatility in milk price, is finding and hiring workers. In my home State of Vermont, dairy farms are not only an important part of our economy; they are an institution that has come to define our landscape. Vermont's beauty lies in the green fields, the red barns and the cows grazing on the hillside. When a farm family sells their land, which in many cases may have been worked by them and their ancestors for 5 or more generations, the decision is often driven by the non-stop, 7 day a week, 365 days a year work schedule. As fewer rural residents choose to work in agriculture, these farmers have been forced to take on more themselves. The whole family can end up working without vacations, sick leave or having weekends off. Although dairy farming might not seem seasonal, the burden becomes particularly heavy during the growing season when planting, haying, harvesting and storage of feed must all occur.

Dairy farmers are being forced to explore other options to find a predictable source of qualified labor. While other agricultural businesses in the country benefit from the temporary workers qualified under the H2A Work Visa Program, dairy farms do not. The job of milking cows on dairy farms has been judged under the current H2A program to not meet the definition of temporary or seasonal and is thus excluded. The largest labor need on dairy farms during the growing season, remains the need for assistance with milking. The cows must be milked two or three times a day by hired help so the farmer is able to take on the more complex and specialized work of operating large machinery to plant and harvest. While the work of milking is not seasonal or temporary, the need for additional labor to accomplish the

work is seasonal and temporary. I believe the exclusion of dairy farming under the H2A program is an unintended problem in definitions, and our legislation is designed to fix that glitch. We must do this out of fairness, so that dairy farms can benefit from the same access to labor that other farms have, and more importantly to help our farms survive.

Recently, I heard from a farmer who owns and operates, along with his wife, a small dairy farm in central Vermont. The couple is nearing retirement age and have no children of their own. They had attempted to find a farm hand that could live on the farm and help with milking and some of the heavier chores. After placing ads in the paper and working with the state of Vermont's Department of Employment and Training, it became clear that their best option was to hire a family friend who had a strong desire to learn farming. Since the young man was from Honduras they began the visa process only to have their request for certification by the U.S. Department of Labor denied because their need was considered neither temporary nor seasonal. This farm plays such an important role in their rural Vermont community that I heard from several other constituents who asked for my assistance on this family's behalf. The couple continues to work their land but in doing so they are straining their health and pushing themselves harder than they should. They continue to operate their farm because they do not want to sell it since it is land that has been farmed for generations.

The legislation I am introducing today would allow this family farm, and so many others like it, to avail themselves of a labor source that exists for virtually every other farm in this country. By creating a period based on the summer growing season, dairy farms will be able to bring on extra help during the busiest part of the year, providing much needed relief for our farm families. I urge my colleagues to join me in supporting dairy farms across the United States by cosponsoring this important 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. 1924

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 ''Dairy Farm Workers Fairness Act''.

SEC. 2. COVERAGE OF MILK PRODUCTION UNDER H–2A NONIMMIGRANT WORKER PROGRAM.

(a) IN GENERAL.—For purposes of the administration of the H–2A worker program in a year, work performed in the production of milk for commercial use not earlier than April 15 or later than October 15 of that year shall qualify as agriculture labor or services of a seasonal nature.

(b) DEFINITIONS.—In this section:

(1) H–2A NONIMMIGRANT WORKER PROGRAM.—The term ''H–2A nonimmigrant worker program'' means the program for the admission to the United States of H–2A nonimmigrant workers.

(2) H–2A NONIMMIGRANT WORKERS.—The term ''H–2A worker'' means a nonimmigrant alien described in section 101(a)(15)(H)(ii)(a) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(H)(ii)(a)).

By Ms. STABENOW (for herself, Mr. GRAHAM of Florida, Mrs. CLINTON, Mrs. MURRAY, Mr. LEAHY, Mr. DASCHLE, Mr. PRYOR, Mr. LEVIN, Mr. SCHUMER, and Ms. CANTWELL):

S. 1926. A bill to amend title XVIII of the Social Security Act to restore the medicare program and for other purposes; to the Committee on Finance.

Ms. STABENOW. Mr. President, I rise today to introduce legislation that would allow us to help our providers and patients now.

If we immediately pass this bill, we can make our providers whole and then go back to the drawing board to get a better Medicare prescription drug benefit bill.

The bill includes all of the provider givebacks in the Conference Report accompanying H.R. 1, the Medicare Prescription Drug and Modernization Act of 2003.

It includes all adjustments, word for word, for the rural provisions, physician updates, graduate medical education, GME, and home health services.

It does not add new language.

It does not include any provider cuts or premium increases in H.R.1.

Congress should pass these provisions on their own to help hospitals, physicians, and patients and not hold them hostage to a prescription drug bill that privatizes Medicare and provides a mediocre benefit to most seniors.

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. 1926

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

SECTION 1. SHORT TITLE; AMENDMENTS TO SOCIAL SECURITY ACT; REFERENCES TO BIPA AND SECRETARY; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the ''Support Our Health Care Providers Act of 2003''.

(b) AMENDMENTS TO SOCIAL SECURITY ACT.—Except as otherwise specifically provided, whenever in division A of this Act an amendment is expressed in terms of an amendment to or repeal of a section or other provision, the reference shall be considered to be made to that section or other provision of the Social Security Act.

(c) BIPA; SECRETARY.—In this Act:

(1) BIPA.—The term ''BIPA'' means the Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000, as enacted into law by section 1(a)(6) of Public Law 106–554.

(2) SECRETARY.—The term ''Secretary'' means the Secretary of Health and Human Services.

(d) TABLE OF CONTENTS.—The table of contents of this Act is as follows:

Sec. 1. Short title; table of contents.

TITLE I—RURAL PROVISIONS

Subtitle A—Provisions Relating to Part A Only

Sec. 101. Equalizing urban and rural standardized payment amounts under the medicare inpatient hospital prospective payment system.

Sec. 102. Enhanced disproportionate share hospital (DSH) treatment for rural hospitals and urban hospitals with fewer than 100 beds.

Sec. 103. Adjustment to the medicare inpatient hospital prospective payment system wage index to revise the labor-related share of such index.

Sec. 104. More frequent update in weights used in hospital market basket.

Sec. 105. Improvements to critical access hospital program.

Sec. 106. Medicare inpatient hospital payment adjustment for low-volume hospitals.

Sec. 107. Treatment of missing cost reporting periods for sole community hospitals.

Sec. 108. Recognition of attending nurse practitioners as attending physicians to serve hospice patients.

Sec. 109. Rural hospice demonstration project.

Sec. 110. Exclusion of certain rural health clinic and federally qualified health center services from the prospective payment system for skilled nursing facilities.

Sec. 110A. Rural community hospital demonstration program.

Subtitle B—Provisions Relating to Part B Only

Sec. 111. 2-year extension of hold harmless provisions for small rural hospitals and sole community hospitals under the prospective payment system for hospital outpatient department services.

Sec. 112. Establishment of floor on work geographic adjustment.

Sec. 113. Medicare incentive payment program improvements for physician scarcity.

Sec. 114. Payment for rural and urban ambulance services.

Sec. 115. Providing appropriate coverage of rural air ambulance services.

Sec. 116. Treatment of certain clinical diagnostic laboratory tests furnished to hospital outpatients in certain rural areas.

Sec. 117. Extension of telemedicine demonstration project.

Sec. 118. Report on demonstration project permitting skilled nursing facilities to be originating telehealth sites; authority to implement.

Subtitle C—Provisions Relating to Parts A and B

Sec. 121. 1-year increase for home health services furnished in a rural area.

Sec. 122. Redistribution of unused resident positions.

Subtitle D—Other Provisions

Sec. 131. Providing safe harbor for certain collaborative efforts that benefit medically underserved populations.

Sec. 132. Office of rural health policy improvements.

Sec. 133. MedPac study on rural hospital payment adjustments.
Sec. 134. Frontier extended stay clinic demonstration project.

TITLE II—PROVISIONS RELATING TO PART A

Subtitle A—Inpatient Hospital Services

Sec. 201. Revision of acute care hospital payment updates.
Sec. 202. Revision of the indirect medical education (IME) adjustment percentage.
Sec. 203. Recognition of new medical technologies under inpatient hospital prospective payment system.
Sec. 204. Increase in Federal rate for hospitals in Puerto Rico.
Sec. 205. Wage index adjustment reclassification reform.
Sec. 206. Limitation on charges for inpatient hospital contract health services provided to Indians by medicare participating hospitals.
Sec. 207. Clarifications to certain exceptions to medicare limits on physician referrals.
Sec. 208. 1-time appeals process for hospital wage index classification.

Subtitle B—Other Provisions

Sec. 211. Payment for covered skilled nursing facility services.
Sec. 212. Coverage of hospice consultation services.
Sec. 213. Study on portable diagnostic ultrasound services for beneficiaries in skilled nursing facilities.

TITLE III—PROVISIONS RELATING TO PART B

Subtitle A—Provisions Relating to Physicians' Services

Sec. 301. Revision of updates for physicians' services.
Sec. 302. Treatment of physicians' services furnished in Alaska.
Sec. 303. Inclusion of podiatrists, dentists, and optometrists under private contracting authority.
Sec. 304. GAO study on access to physicians' services.
Sec. 305. Collaborative demonstration-based review of physician practice expense geographic adjustment data.
Sec. 306. MedPac report on payment for physicians' services.

Subtitle B—Preventive Services

Sec. 311. Coverage of an initial preventive physical examination.
Sec. 312. Coverage of cardiovascular screening blood tests.
Sec. 313. Coverage of diabetes screening tests.
Sec. 314. Improved payment for certain mammography services.

Subtitle C—Other Provisions

Sec. 321. Hospital outpatient department (HOPD) payment reform.
Sec. 322. Limitation of application of functional equivalence standard.
Sec. 323. Payment for renal dialysis services.
Sec. 324. 2-year moratorium on therapy caps; provisions relating to reports.
Sec. 325. Waiver of part B late enrollment penalty for certain military retirees; special enrollment period.
Sec. 326. Payment for services furnished in ambulatory surgical centers.
Sec. 327. Payment for certain shoes and inserts under the fee schedule for orthotics and prosthetics.
Sec. 328. 5-year authorization of reimbursement for all medicare part B services furnished by certain Indian hospitals and clinics.

Subtitle D—Additional Demonstrations, Studies, and Other Provisions

Sec. 341. Demonstration project for coverage of certain prescription drugs and biologicals.
Sec. 342. Extension of coverage of intravenous immune globulin (IVIG) for the treatment of primary immune deficiency diseases in the home.
Sec. 343. MedPac study of coverage of surgical first assisting services of certified registered nurse first assistants.
Sec. 344. MedPac study of payment for cardio-thoracic surgeons.
Sec. 345. Studies relating to vision impairments.
Sec. 346. Medicare health care quality demonstration programs.
Sec. 347. MedPac study on direct access to physical therapy services.
Sec. 348. Demonstration project for consumer-directed chronic outpatient services.
Sec. 349. Medicare care management performance demonstration.
Sec. 350. GAO study and report on the propagation of concierge care.
Sec. 351. Demonstration of coverage of chiropractic services under medicare.

TITLE IV—PROVISIONS RELATING TO PARTS A AND B

Subtitle A—Home Health Services

Sec. 401. Demonstration project to clarify the definition of homebound.
Sec. 402. Demonstration project for medical adult day-care services.
Sec. 403. Temporary suspension of oasis requirement for collection of data on non-medicare and non-medicaid patients.
Sec. 404. MedPac study on medicare margins of home health agencies.
Sec. 405. Coverage of religious nonmedical health care institution services furnished in the home.

Subtitle B—Graduate Medical Education

Sec. 411. Exception to initial residency period for geriatric residency or fellowship programs.
Sec. 412. Treatment of volunteer supervision.

Subtitle C—Chronic Care Improvement

Sec. 421. Voluntary chronic care improvement under traditional fee-for-service.
Sec. 422. Medicare advantage quality improvement programs.
Sec. 423. Chronically ill medicare beneficiary research, data, demonstration strategy.

Subtitle D—Other Provisions

Sec. 431. Improvements in national and local coverage determination process to respond to changes in technology.
Sec. 432. Extension of treatment of certain physician pathology services under medicare.
Sec. 433. Payment for pancreatic islet cell investigational transplants for medicare beneficiaries in clinical trials.
Sec. 434. Restoration of medicare trust funds.
Sec. 435. Modifications to Medicare Payment Advisory Commission (MedPac).
Sec. 436. Technical amendments.

TITLE V—ADMINISTRATIVE IMPROVEMENTS, REGULATORY REDUCTION, AND CONTRACTING REFORM

Sec. 500. Administrative improvements within the Centers for Medicare & Medicaid Services (CMS).

Subtitle A—Regulatory Reform

Sec. 501. Construction; definition of supplier.
Sec. 502. Issuance of regulations.
Sec. 503. Compliance with changes in regulations and policies.
Sec. 504. Reports and studies relating to regulatory reform.

Subtitle B—Contracting Reform

Sec. 511. Increased flexibility in medicare administration.
Sec. 512. Requirements for information security for medicare administrative contractors.

Subtitle C—Education and Outreach

Sec. 521. Provider education and technical assistance.
Sec. 522. Small provider technical assistance demonstration program.
Sec. 523. Medicare beneficiary ombudsman.
Sec. 524. Beneficiary outreach demonstration program.
Sec. 525. Inclusion of additional information in notices to beneficiaries about skilled nursing facility benefits.
Sec. 526. Information on medicare-certified skilled nursing facilities in hospital discharge plans.

Subtitle D—Appeals and Recovery

Sec. 531. Transfer of responsibility for medicare appeals.
Sec. 532. Process for expedited access to review.
Sec. 533. Revisions to medicare appeals process.
Sec. 534. Prepayment review.
Sec. 535. Recovery of overpayments.
Sec. 536. Provider enrollment process; right of appeal.
Sec. 537. Process for correction of minor errors and omissions without pursuing appeals process.
Sec. 538. Prior determination process for certain items and services; advance beneficiary notices.
Sec. 539. Appeals by providers when there is no other party available.
Sec. 540. Revisions to appeals timeframes and amounts.
Sec. 540A. Mediation process for local coverage determinations.

Subtitle E—Miscellaneous Provisions

Sec. 541. Policy development regarding evaluation and management (E & M) documentation guidelines.
Sec. 542. Improvement in oversight of technology and coverage.
Sec. 543. Treatment of hospitals for certain services under medicare secondary payor (MSP) provisions.
Sec. 544. EMTALA improvements.
Sec. 545. Emergency Medical Treatment and Labor Act (EMTALA) Technical Advisory Group.
Sec. 546. Authorizing use of arrangements to provide core hospice services in certain circumstances.
Sec. 547. Application of osha bloodborne pathogens standard to certain hospitals.
Sec. 548. Bipa-related technical amendments and corrections.
Sec. 549. Conforming authority to waive a program exclusion.
Sec. 550. Treatment of certain dental claims.
Sec. 551. Furnishing hospitals with information to compute DSH formula.

Sec. 552. Revisions to reassignment provisions.
Sec. 553. Other provisions.
TITLE VI—MEDICAID AND MISCELLANEOUS PROVISIONS
Subtitle A—Medicaid Provisions
Sec. 601. Medicaid disproportionate share hospital (DSH) payments.
Sec. 602. Clarification of inclusion of inpatient drug prices charged to certain public hospitals in the best price exemptions for the medicaid drug rebate program.
Sec. 603. Extension of moratorium.
Subtitle B—Miscellaneous Provisions
Sec. 611. Federal reimbursement of emergency health services furnished to undocumented aliens.
Sec. 612. Commission on Systemic Interoperability.
Sec. 613. Research on outcomes of health care items and services.
Sec. 614. Health care that works for all Americans: Citizens Health Care Working Group.
Sec. 615. Funding start-up administrative costs for medicare reform.
Sec. 616. Health care infrastructure improvement program.

TITLE I—RURAL PROVISIONS

Subtitle A—Provisions Relating to Part A Only

SEC. 101. EQUALIZING URBAN AND RURAL STANDARDIZED PAYMENT AMOUNTS UNDER THE MEDICARE INPATIENT HOSPITAL PROSPECTIVE PAYMENT SYSTEM.

(a) IN GENERAL.—Section 1886(d)(3)(A)(iv) (42 U.S.C. 1395ww(d)(3)(A)(iv)) is amended—

(1) by striking ''(iv) For discharges'' and inserting ''(iv)(I) Subject to subclause (II), for discharges''; and

(2) by adding at the end the following new subclause:

''(II) For discharges occurring in a fiscal year (beginning with fiscal year 2004), the Secretary shall compute a standardized amount for hospitals located in any area within the United States and within each region equal to the standardized amount computed for the previous fiscal year under this subparagraph for hospitals located in a large urban area (or, beginning with fiscal year 2005, for all hospitals in the previous fiscal year) increased by the applicable percentage increase under subsection (b)(3)(B)(i) for the fiscal year involved.''.

(b) CONFORMING AMENDMENTS.—

(1) COMPUTING DRG-SPECIFIC RATES.—Section 1886(d)(3)(D) (42 U.S.C. 1395ww(d)(3)(D)) is amended—

(A) in the heading, by striking ''IN DIFFERENT AREAS'';

(B) in the matter preceding clause (i), by striking '', each of'';

(C) in clause (i)—

(i) in the matter preceding subclause (I), by inserting ''for fiscal years before fiscal year 2004,'' before ''for hospitals''; and

(ii) in subclause (II), by striking ''and'' after the semicolon at the end;

(D) in clause (ii)—

(i) in the matter preceding subclause (I), by inserting ''for fiscal years before fiscal year 2004,'' before ''for hospitals''; and

(ii) in subclause (II), by striking the period at the end and inserting ''; and''; and

(E) by adding at the end the following new clause:

''(iii) for a fiscal year beginning after fiscal year 2003, for hospitals located in all areas, to the product of—

''(I) the applicable standardized amount (computed under subparagraph (A)), reduced under subparagraph (B), and adjusted or reduced under subparagraph (C) for the fiscal year; and

''(II) the weighting factor (determined under paragraph (4)(B)) for that diagnosis-related group.''.

(2) TECHNICAL CONFORMING SUNSET.—Section 1886(d)(3) (42 U.S.C. 1395ww(d)(3)) is amended—

(A) in the matter preceding subparagraph (A), by inserting '', for fiscal years before fiscal year 1997,'' before ''a regional adjusted DRG prospective payment rate''; and

(B) in subparagraph (D), in the matter preceding clause (i), by inserting '', for fiscal years before fiscal year 1997,'' before ''a regional DRG prospective payment rate for each region,''.

(3) ADDITIONAL TECHNICAL AMENDMENT.—Section 1886(d)(3)(A)(iii) (42 U.S.C. 1395ww(d)(3)(A)(iii)) is amended by striking ''in an other urban area'' and inserting ''in an urban area''.

(c) EQUALIZING URBAN AND RURAL STANDARDIZED PAYMENT AMOUNTS UNDER THE MEDICARE INPATIENT HOSPITAL PROSPECTIVE PAYMENT SYSTEM FOR HOSPITALS IN PUERTO RICO.—

(1) IN GENERAL.—Section 1886(d)(9)(A) (42 U.S.C. 1395ww(d)(9)(A)), as amended by section 204, is amended—

(A) in clause (i), by striking ''and'' after the comma at the end; and

(B) by striking clause (ii) and inserting the following new clause:

''(ii) the applicable Federal percentage (specified in subparagraph (E)) of—

''(I) for discharges beginning in a fiscal year beginning on or after October 1, 1997, and before October 1, 2003, the discharge-weighted average of—

''(aa) the national adjusted DRG prospective payment rate (determined under paragraph (3)(D)) for hospitals located in a large urban area,

''(bb) such rate for hospitals located in other urban areas, and

''(cc) such rate for hospitals located in a rural area,

for such discharges, adjusted in the manner provided in paragraph (3)(E) for different area wage levels; and

''(II) for discharges in a fiscal year beginning on or after October 1, 2003, the national DRG prospective payment rate determined under paragraph (3)(D)(iii) for hospitals located in any area for such discharges, adjusted in the manner provided in paragraph (3)(E) for different area wage levels.

(2) APPLICATION OF PUERTO RICO STANDARDIZED AMOUNT BASED ON LARGE URBAN AREAS.—The authority of the Secretary referred to in paragraph (1) shall apply with respect to the amendments made by subsection (c) (2) of this section in the same manner as that authority applies with respect to the extension of provisions equalizing urban and rural standardized inpatient hospital payments under subsection (a) of such section 402, except that any reference in subsection (b)(2)(A) of such section 402 is deemed to be a reference to April 1, 2004.

SEC. 102 ENHANCED DISPROPORTIONATE SHARE HOSPITAL (DSH) TREATMENT FOR RURAL HOSPITALS AND URBAN HOSPITALS WITH FEWER THAN 100 BEDS.

(a) DOUBLING THE CAP.—Section 1886(d)(5)(F) (42 U.S.C. 1395ww(d)(5)(F)) is amended by adding at the end the following new clause:

''(xiv)(I) In the case of discharges occurring on or after April 1, 2004, subject to subclause (II), there shall be substituted for the disproportionate share adjustment percentage otherwise determined under clause (iv) (other than subclause (I)) or under clause (viii), (x), (xi), (xii), or (xiii), the disproportionate share adjustment percentage determined under clause (vii) (relating to large, urban hospitals).

''(II) Under subclause (I,) the disproportionate share adjustment percentage shall not exceed 12 percent for a hospital that is not classified as a rural referral center under subparagraph (C).''.

(b) CONFORMING AMENDMENTS.—Section 1886(d) (42 U.S.C. 1395ww(d)) is amended—

(1) in paragraph (5)(F)—

(A) in each of subclauses (II), (III), (IV), (V), and (VI) of clause (iv), by inserting ''subject to clause (xiv) and'' before ''for discharges occurring'';

(B) in clause (vi), by striking ''The Formula'' and inserting ''Subject to clause (xiv), the formula''; and

As used in this section, the term 'subsection (d) Puerto Rico hospital' means a hospital that is located in Puerto Rico and that would be a subsection (d) hospital (as defined in paragraph (1)(B)) if it were located in one of the 50 States.''.

(2) APPLICATION OF PUERTO RICO STANDARDIZED AMOUNT BASED ON LARGE URBAN AREAS.—Section 1886(d)(9)(C) (42 U.S.C. 1395ww(d)(9)(C)) is amended—

(A) in clause (i)—

(i) by striking ''(i) The Secretary'' and inserting ''(i)(I) For discharges in a fiscal year after fiscal year 1988 and before fiscal year 2004, the Secretary''; and

(ii) by adding at the end the following new subclause:

''(II) For discharges occurring in a fiscal year (beginning with fiscal year 2004), the Secretary shall compute an average standardized amount for hospitals located in any area of Puerto Rico that is equal to the average standardized amount computed under subclause (I) for fiscal year 2003 for hospitals in a large urban area (or, beginning with fiscal year 2005, for all hospitals in the previous fiscal year) increased by the applicable percentage increase under subsection (b)(3)(B) for the fiscal year involved.'';

(B) in clause (ii), by inserting ''(or for fiscal year 2004 and thereafter, the average standardized amount)'' after ''each of the average standardized amounts''; and

(C) in clause (iii)(I), by striking ''for hospitals located in an urban or rural area, respectively''.

(d) IMPLEMENTATION.—

(1) IN GENERAL.—The amendments made by subsections (a), (b), and (c)(1) of this section shall have no effect on the authority of the Secretary, under subsection (b)(2) of section 402 of Public Law 108–89, to delay implementation of the extension of provisions equalizing urban and rural standardized inpatient hospital payments under subsection (a) of such section 402.

(2) APPLICATION OF PUERTO RICO STANDARDIZED AMOUNT BASED ON LARGE URBAN AREAS.—The authority of the Secretary referred to in paragraph (1) shall apply with respect to the amendments made by subsection (c)(2) of this section in the same manner as that authority applies with respect to the extension of provisions equalizing urban and rural standardized inpatient hospital payments under subsection (a) of such section 402, except that any reference in subsection (b)(2)(A) of such section 402 is deemed to be a reference to April 1, 2004.

SEC. 102. ENHANCED DISPROPORTIONATE SHARE HOSPITAL (DSH) TREATMENT FOR RURAL HOSPITALS AND URBAN HOSPITALS WITH FEWER THAN 100 BEDS.

(a) DOUBLING THE CAP.—Section 1886(d)(5)(F) (42 U.S.C. 1395ww(d)(5)(F)) is amended by adding at the end the following new clause:

''(xiv)(I) In the case of discharges occurring on or after April 1, 2004, subject to subclause (II), there shall be substituted for the disproportionate share adjustment percentage otherwise determined under clause (iv) (other than subclause (I)) or under clause

(viii), (x), (xi), (xii), or (xiii), the disproportionate share adjustment percentage determined under clause (vii) (relating to large, urban hospitals).

''(II) Under subclause (I), the disproportionate share adjustment percentage shall not exceed 12 percent for a hospital that is not classified as a rural referral center under subparagraph (C).''.

(b) CONFORMING AMENDMENTS.—Section 1886(d) (42 U.S.C. 1395ww(d)) is amended—

(1) in paragraph (5)(F)—

(A) in each of subclauses (II), (III), (IV), (V), and (VI) of clause (iv), by inserting ''subject to clause (xiv) and'' before ''for discharges occurring'';

(B) in clause (viii), by striking ''The formula'' and inserting ''Subject to clause (xiv), the formula''; and

(C) in each of clauses (x), (xi), (xii), and (xiii), by striking ''For purposes'' and inserting ''Subject to clause (xiv), for purposes''; and

(2) in paragraph (2)(C)(iv)—

(A) by striking ''or'' before ''the enactment of section 303''; and

(B) by inserting before the period at the end the following: '', or the enactment of section 402(a)(1) of the Medicare Provider Restoration Act of 2003''.

SEC. 103. ADJUSTMENT TO THE MEDICARE INPATIENT HOSPITAL PROSPECTIVE PAYMENT SYSTEM WAGE INDEX TO REVISE THE LABOR-RELATED SHARE OF SUCH INDEX.

(a) ADJUSTMENT.—

(1) IN GENERAL.—Section 1886(d)(3)(E) (42 U.S.C. 1395ww(d)(3)(E)) is amended—

(A) by striking ''WAGE LEVELS.—The Secretary'' and inserting ''WAGE LEVELS.—

''(i) IN GENERAL.—Except as provided in clause (ii), the Secretary''; and

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

''(ii) ALTERNATIVE PROPORTION TO BE ADJUSTED BEGINNING IN FISCAL YEAR 2005.—For discharges occurring on or after October 1, 2004, the Secretary shall substitute '62 percent' for the proportion described in the first sentence of clause (i), unless the application of this clause would result in lower payments to a hospital than would otherwise be made.''.

(2) WAIVING BUDGET NEUTRALITY.—Section 1886(d)(3)(E) (42 U.S.C. 1395ww(d)(3)(E)), as amended by subsection (a), is amended by adding at the end of clause (i) the following new sentence: ''The Secretary shall apply the previous sentence for any period as if the amendments made by section 103(a)(1) of the Medicare Provider Restoration Act of 2003 had not been enacted.''.

(b) APPLICATION TO PUERTO RICO HOSPITALS.—Section 1886(d)(9)(C)(iv) (42 U.S.C. 1395ww(d)(9)(C)(iv)) is amended—

(1) by inserting ''(I)'' after ''(iv)'';

(2) by striking ''paragraph (3)(E)'' and inserting ''paragraph (3)(E)(i)''; and

(3) by adding at the end the following new subclause:

''(II) For discharges occurring on or after October 1, 2004, the Secretary shall substitute '62 percent' for the proportion described in the first sentence of clause (i), unless the application of this subclause would result in lower payments to a hospital than would otherwise be made.''.

SEC. 104. MORE FREQUENT UPDATE IN WEIGHTS USED IN HOSPITAL MARKET BASKET.

(a) MORE FREQUENT UPDATES IN WEIGHTS.—After revising the weights used in the hospital market basket under section 1886(b)(3)(B)(iii) of the Social Security Act (42 U.S.C. 1395ww(b)(3)(B)(iii)) to reflect the most current data available, the Secretary shall establish a frequency for revising such weights, including the labor share, in such market basket to reflect the most current data available more frequently than once every 5 years.

(b) INCORPORATION OF EXPLANATION IN RULEMAKING.—The Secretary shall include in the publication of the final rule for payment for inpatient hospital services under section 1886(d) of the Social Security Act (42 U.S.C. 1395ww(d)) for fiscal year 2006, an explanation of the reasons for, and options considered, in determining frequency established under subsection (a).

SEC. 105. IMPROVEMENTS TO CRITICAL ACCESS HOSPITAL PROGRAM.

(a) INCREASE IN PAYMENT AMOUNTS.—

(1) IN GENERAL.—Sections 1814(l), 1834(g)(1), and 1883(a)(3) (42 U.S.C. 1395f(l), 1395m(g)(1), and 1395tt(a)(3)) are each amended by inserting ''equal to 101 percent of'' before ''the reasonable costs''.

(2) EFFECTIVE DATE.—The amendments made by paragraph (1) shall apply to payments for services furnished during cost reporting periods beginning on or after January 1, 2004.

(b) COVERAGE OF COSTS FOR CERTAIN EMERGENCY ROOM ON-CALL PROVIDERS.—

(1) IN GENERAL.—Section 1834(g)(5) (42 U.S.C. 1395m(g)(5)) is amended—

(A) in the heading—

(i) by inserting ''CERTAIN'' before ''EMERGENCY''; and

(ii) by striking ''PHYSICIANS'' and inserting ''PROVIDERS'';

(B) by striking ''emergency room physicians who are on-call (as defined by the Secretary)'' and inserting ''physicians, physician assistants, nurse practitioners, and clinical nurse specialists who are on-call (as defined by the Secretary) to provide emergency services''; and

(C) by striking ''physicians' services'' and inserting ''services covered under this title''.

(2) EFFECTIVE DATE.—The amendments made by paragraph (1) shall apply with respect to costs incurred for services furnished on or after January 1, 2005.

(c) AUTHORIZATION OF PERIODIC INTERIM PAYMENT (PIP).—

(1) IN GENERAL.—Section 1815(e)(2) (42 U.S.C. 1395g(e)(2)) is amended—

(A) in the matter before subparagraph (A), by inserting '', in the cases described in subparagraphs (A) through (D)'' after ''1986'';

(B) by striking ''and'' at the end of subparagraph (C);

(C) by adding ''and'' at the end of subparagraph (D); and

(D) by inserting after subparagraph (D) the following new subparagraph:

''(E) inpatient critical access hospital services;''.

(2) DEVELOPMENT OF ALTERNATIVE TIMING METHODS OF PERIODIC INTERIM PAYMENTS.—With respect to periodic interim payments to critical access hospitals for inpatient critical access hospital services under section 1815(e)(2)(E) of the Social Security Act, as added by paragraph (1), the Secretary shall develop alternative methods for the timing of such payments.

(3) AUTHORIZATION OF PIP.—The amendments made by paragraph (1) shall apply to payments made on or after July 1, 2004.

(d) CONDITION FOR APPLICATION OF SPECIAL PROFESSIONAL SERVICE PAYMENT ADJUSTMENT.—

(1) IN GENERAL.—Section 1834(g)(2) (42 U.S.C. 1395m(g)(2)) is amended by adding after and below subparagraph (B) the following:

''The Secretary may not require, as a condition for applying subparagraph (B) with respect to a critical access hospital, that each physician or other practitioner providing professional services in the hospital must assign billing rights with respect to such services, except that such subparagraph shall not apply to those physicians and practitioners who have not assigned such billing rights.''.

(2) EFFECTIVE DATE.—

(A) IN GENERAL.—Except as provided in subparagraph (B), the amendment made by paragraph (1) shall apply to cost reporting periods beginning on or after July 1, 2004.

(B) RULE OF APPLICATION.—In the case of a critical access hospital that made an election under section 1834(g)(2) of the Social Security Act (42 U.S.C. 1395m(g)(2)) before November 1, 2003, the amendment made by paragraph (1) shall apply to cost reporting periods beginning on or after July 1, 2001.

(e) REVISION OF BED LIMITATION FOR HOSPITALS.—

(1) IN GENERAL.—Section 1820(c)(2)(B)(iii) (42 U.S.C. 1395i–4(c)(2)(B)(iii)) is amended by striking ''15 (or, in the case of a facility under an agreement described in subsection (f), 25)'' and inserting ''25''.

(2) CONFORMING AMENDMENT.—Section 1820(f) (42 U.S.C. 1395i–4(f)) is amended by striking ''and the number of beds used at any time for acute care inpatient services does not exceed 15 beds''.

(3) EFFECTIVE DATE.—The amendments made by this subsection shall apply to designations made before, on, or after January 1, 2004, but any election made pursuant to regulations promulgated to carry out such amendments shall only apply prospectively.

(f) PROVISIONS RELATING TO FLEX GRANTS.—

(1) ADDITIONAL 4-YEAR PERIOD OF FUNDING.—Section 1820(j) (42 U.S.C. 1395i–4(j)) is amended by inserting before the period at the end the following: '', and for making grants to all States under paragraphs (1) and (2) of subsection (g), $35,000,000 in each of fiscal years 2005 through 2008''.

(2) ADDITIONAL REQUIREMENTS AND ADMINISTRATION.—Section 1820(g) (42 U.S.C. 1395i–4(g)) is amended by adding at the end the following new paragraphs:

''(4) ADDITIONAL REQUIREMENTS WITH RESPECT TO FLEX GRANTS.—With respect to grants awarded under paragraph (1) or (2) from funds appropriated for fiscal year 2005 and subsequent fiscal years—

''(A) CONSULTATION WITH THE STATE HOSPITAL ASSOCIATION AND RURAL HOSPITALS ON THE MOST APPROPRIATE WAYS TO USE GRANTS.—A State shall consult with the hospital association of such State and rural hospitals located in such State on the most appropriate ways to use the funds under such grant.

''(B) LIMITATION ON USE OF GRANT FUNDS FOR ADMINISTRATIVE EXPENSES.—A State may not expend more than the lesser of—

''(i) 15 percent of the amount of the grant for administrative expenses; or

''(ii) the State's federally negotiated indirect rate for administering the grant.

''(5) USE OF FUNDS FOR FEDERAL ADMINISTRATIVE EXPENSES.—Of the total amount appropriated for grants under paragraphs (1) and (2) for a fiscal year (beginning with fiscal year 2005), up to 5 percent of such amount shall be available to the Health Resources and Services Administration for purposes of administering such grants.''.

(g) AUTHORITY TO ESTABLISH PSYCHIATRIC AND REHABILITATION DISTINCT PART UNITS.—

(1) IN GENERAL.—Section 1820(c)(2) (42 U.S.C. 1395i–4(c)(2)) is amended by adding at the end the following:

''(E) AUTHORITY TO ESTABLISH PSYCHIATRIC AND REHABILITATION DISTINCT PART UNITS.—

''(i) IN GENERAL.—Subject to the succeeding provisions of this subparagraph, a critical access hospital may establish—

''(I) a psychiatric unit of the hospital that is a distinct part of the hospital; and

''(II) a rehabilitation unit of the hospital that is a distinct part of the hospital,

if the distinct part meets the requirements (including conditions of participation) that would otherwise apply to the distinct part if the distinct part were established by a subsection (d) hospital in accordance with the matter following clause (v) of section 1886(d)(1)(B), including any regulations adopted by the Secretary under such section.

''(ii) LIMITATION ON NUMBER OF BEDS.—The total number of beds that may be established under clause (i) for a distinct part unit may not exceed 10.

''(iii) EXCLUSION OF BEDS FROM BED COUNT.—In determining the number of beds of a critical access hospital for purposes of applying the bed limitations referred to in subparagraph (B)(iii) and subsection (f), the Secretary shall not take into account any bed established under clause (i).

''(iv) EFFECT OF FAILURE TO MEET REQUIREMENTS.—If a psychiatric or rehabilitation unit established under clause (i) does not meet the requirements described in such clause with respect to a cost reporting period, no payment may be made under this title to the hospital for services furnished in such unit during such period. Payment to the hospital for services furnished in the unit may resume only after the hospital has demonstrated to the Secretary that the unit meets such requirements.''.

(2) PAYMENT ON A PROSPECTIVE PAYMENT BASIS.—Section 1814(l) (42 U.S.C. 1395f(l)) is amended—

(A) by striking ''(l) The amount'' and inserting ''(l)(1) Except as provided in paragraph (2), the amount''; and

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

''(2) In the case of a distinct part psychiatric or rehabilitation unit of a critical access hospital described in section 1820(c)(2)(E), the amount of payment for inpatient critical access hospital services of such unit shall be equal to the amount of the payment that would otherwise be made if such services were inpatient hospital services of a distinct part psychiatric or rehabilitation unit, respectively, described in the matter following clause (v) of section 1886(d)(1)(B).''.

(3) EFFECTIVE DATE.—The amendments made by this subsection shall apply to cost reporting periods beginning on or after October 1, 2004.

(h) WAIVER AUTHORITY.—

(1) IN GENERAL.—Section 1820(c)(2)(B)(i)(II) (42 U.S.C. 1395i–4(c)(2)(B)(i)(II)) is amended by inserting ''before January 1, 2006,'' after ''is certified''.

(2) GRANDFATHERING WAIVER AUTHORITY FOR CERTAIN FACILITIES.—Section 1820(h) (42 U.S.C. 1395i–4(h)) is amended—

(A) in the heading preceding paragraph (1), by striking ''OF CERTAIN FACILITIES'' and inserting ''PROVISIONS''; and

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

''(3) STATE AUTHORITY TO WAIVE 35-MILE RULE.—In the case of a facility that was designated as a critical access hospital before January 1, 2006, and was certified by the State as being a necessary provider of health care services to residents in the area under subsection (c)(2)(B)(i)(II), as in effect before such date, the authority under such subsection with respect to any redesignation of such facility shall continue to apply notwithstanding the amendment made by section 105(h)(1) of the Medicare Provider Restoration Act of 2003.''.

SEC. 106. MEDICARE INPATIENT HOSPITAL PAYMENT ADJUSTMENT FOR LOW-VOLUME HOSPITALS.

(a) IN GENERAL.—Section 1886(d) (42 U.S.C. 1395ww(d)) is amended by adding at the end the following new paragraph:

''(12) PAYMENT ADJUSTMENT FOR LOW-VOLUME HOSPITALS.—

''(A) IN GENERAL.—In addition to any payments calculated under this section for a subsection (d) hospital, for discharges occurring during a fiscal year (beginning with fiscal year 2005), the Secretary shall provide for an additional payment amount to each low-volume hospital (as defined in subparagraph (C)(i)) for discharges occurring during that fiscal year that is equal to the applicable percentage increase (determined under subparagraph (B) for the hospital involved) in the amount paid to such hospital under this section for such discharges (determined without regard to this paragraph).

''(B) APPLICABLE PERCENTAGE INCREASE.—The Secretary shall determine an applicable percentage increase for purposes of subparagraph (A) as follows:

''(i) The Secretary shall determine the empirical relationship for subsection (d) hospitals between the standardized cost-per-case for such hospitals and the total number of discharges of such hospitals and the amount of the additional incremental costs (if any) that are associated with such number of discharges.

''(ii) The applicable percentage increase shall be determined based upon such relationship in a manner that reflects, based upon the number of such discharges for a subsection (d) hospital, such additional incremental costs.

''(iii) In no case shall the applicable percentage increase exceed 25 percent.

''(C) DEFINITIONS.—

''(i) LOW-VOLUME HOSPITAL.—For purposes of this paragraph, the term 'low-volume hospital' means, for a fiscal year, a subsection (d) hospital (as defined in paragraph (1)(B)) that the Secretary determines is located more than 25 road miles from another subsection (d) hospital and has less than 800 discharges during the fiscal year.

''(ii) DISCHARGE.—For purposes of subparagraph (B) and clause (i), the term 'discharge' means an inpatient acute care discharge of an individual regardless of whether the individual is entitled to benefits under part A.''.

(b) JUDICIAL REVIEW.—Section 1886(d)(7)(A) (42 U.S.C. 1395ww(d)(7)(A)) is amended by inserting after ''to subsection (e)(1)'' the following: ''or the determination of the applicable percentage increase under paragraph (12)(A)(ii)''.

SEC. 107. TREATMENT OF MISSING COST REPORTING PERIODS FOR SOLE COMMUNITY HOSPITALS.

(a) IN GENERAL.—Section 1886(b)(3)(I) (42 U.S.C. 1395ww(b)(3)(I)) is amended by adding at the end the following new clause:

''(iii) In no case shall a hospital be denied treatment as a sole community hospital or payment (on the basis of a target rate as such as a hospital) because data are unavailable for any cost reporting period due to changes in ownership, changes in fiscal intermediaries, or other extraordinary circumstances, so long as data for at least one applicable base cost reporting period is available.''.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to cost reporting periods beginning on or after January 1, 2004.

SEC. 108. RECOGNITION OF ATTENDING NURSE PRACTITIONERS AS ATTENDING PHYSICIANS TO SERVE HOSPICE PATIENTS.

(a) IN GENERAL.—Section 1861(dd)(3)(B) (42 U.S.C. 1395x(dd)(3)(B)) is amended by inserting ''or nurse practitioner (as defined in subsection (aa)(5))'' after ''the physician (as defined in subsection (r)(1))''.

(b) CLARIFICATION OF HOSPICE ROLE OF NURSE PRACTITIONERS.—Section 1814(a)(7)(A)(i)(I) (42 U.S.C. 1395f(a)(7)(A) (i)(I)) is amended by inserting ''(which for purposes of this subparagraph does not include a nurse practitioner)'' after ''attending physician (as defined in section 1861(dd)(3)(B))''.

SEC. 109. RURAL HOSPICE DEMONSTRATION PROJECT.

(a) IN GENERAL.—The Secretary shall conduct a demonstration project for the delivery of hospice care to medicare beneficiaries in rural areas. Under the project medicare beneficiaries who are unable to receive hospice care in the facility for lack of an appropriate caregiver are provided such care in a facility of 20 or fewer beds which offers, within its walls, the full range of services provided by hospice programs under section 1861(dd) of the Social Security Act (42 U.S.C. 1395x(dd)).

(b) SCOPE OF PROJECT.—The Secretary shall conduct the project under this section with respect to no more than 3 hospice programs over a period of not longer than 5 years each.

(c) COMPLIANCE WITH CONDITIONS.—Under the demonstration project—

(1) the hospice program shall comply with otherwise applicable requirements, except that it shall not be required to offer services outside of the home or to meet the requirements of section 1861(dd)(2)(A)(iii) of the Social Security Act; and

(2) payments for hospice care shall be made at the rates otherwise applicable to such care under title XVIII of such Act.

The Secretary may require the program to comply with such additional quality assurance standards for its provision of services in its facility as the Secretary deems appropriate.

(d) REPORT.—Upon completion of the project, the Secretary shall submit a report to Congress on the project and shall include in the report recommendations regarding extension of such project to hospice programs serving rural areas.

SEC. 110. EXCLUSION OF CERTAIN RURAL HEALTH CLINIC AND FEDERALLY QUALIFIED HEALTH CENTER SERVICES FROM THE PROSPECTIVE PAYMENT SYSTEM FOR SKILLED NURSING FACILITIES.

(a) IN GENERAL.—Section 1888(e)(2)(A) (42 U.S.C. 1395yy(e)(2)(A)) is amended—

(1) in clause (i)(II), by striking ''clauses (ii) and (iii)'' and inserting ''clauses (ii), (iii), and (iv)''; and

(2) by adding at the end the following new clause:

''(iv) EXCLUSION OF CERTAIN RURAL HEALTH CLINIC AND FEDERALLY QUALIFIED HEALTH CENTER SERVICES.—Services described in this clause are—

''(I) rural health clinic services (as defined in paragraph (1) of section 1861(aa)); and

''(II) Federally qualified health center services (as defined in paragraph (3) of such section);

that would be described in clause (ii) if such services were furnished by an individual not affiliated with a rural health clinic or a Federally qualified health center.''.

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall apply to services furnished on or after January 1, 2005.

SEC. 110A. RURAL COMMUNITY HOSPITAL DEMONSTRATION PROGRAM.

(a) ESTABLISHMENT OF RURAL COMMUNITY HOSPITAL (RCH) DEMONSTRATION PROGRAM.—

(1) IN GENERAL.—The Secretary shall establish a demonstration program to test the feasibility and advisability of the establishment of rural community hospitals (as defined in subsection (f)(1)) to furnish covered inpatient hospital services (as defined in subsection (f)(2)) to medicare beneficiaries.

(2) DEMONSTRATION AREAS.—The program shall be conducted in rural areas selected by

the Secretary in States with low population densities, as determined by the Secretary.

(3) APPLICATION.—Each rural community hospital that is located in a demonstration area selected under paragraph (2) that desires to participate in the demonstration program under this section shall submit an application to the Secretary at such time, in such manner, and containing such information as the Secretary may require.

(4) SELECTION OF HOSPITALS.—The Secretary shall select from among rural community hospitals submitting applications under paragraph (3) not more than 15 of such hospitals to participate in the demonstration program under this section.

(5) DURATION.—The Secretary shall conduct the demonstration program under this section for a 5-year period.

(6) IMPLEMENTATION.—The Secretary shall implement the demonstration program not later than January 1, 2005, but may not implement the program before October 1, 2004.

(b) PAYMENT.—

(1) IN GENERAL.—The amount of payment under the demonstration program for covered inpatient hospital services furnished in a rural community hospital, other than such services furnished in a psychiatric or rehabilitation unit of the hospital which is a distinct part, is—

(A) for discharges occurring in the first cost reporting period beginning on or after the implementation of the demonstration program, the reasonable costs of providing such services; and

(B) for discharges occurring in a subsequent cost reporting period under the demonstration program, the lesser of—

(i) the reasonable costs of providing such services in the cost reporting period involved; or

(ii) the target amount (as defined in paragraph (2), applicable to the cost reporting period involved.

(2) TARGET AMOUNT.—For purposes of paragraph (1)(B)(ii), the term ''target amount'' means, with respect to a rural community hospital for a particular 12-month cost reporting period—

(A) in the case of the second such reporting period for which this subsection is in effect, the reasonable costs of providing such covered inpatient hospital services as determined under paragraph (1)(A), and

(B) in the case of a later reporting period, the target amount for the preceding 12-month cost reporting period,

increased by the applicable percentage increase (under clause (i) of section 1886(b)(3)(B) of the Social Security Act (42 U.S.C. 1395ww(b)(3)(B))) in the market basket percentage increase (as defined in clause (iii) of such section) for that particular cost reporting period.

(c) FUNDING.—

(1) IN GENERAL.—The Secretary shall provide for the transfer from the Federal Hospital Insurance Trust Fund under section 1817 of the Social Security Act (42 U.S.C. 1395i) of such funds as are necessary for the costs of carrying out the demonstration program under this section.

(2) BUDGET NEUTRALITY.—In conducting the demonstration program under this section, the Secretary shall ensure that the aggregate payments made by the Secretary do not exceed the amount which the Secretary would have paid if the demonstration program under this section was not implemented.

(d) WAIVER AUTHORITY.—The Secretary may waive such requirements of title XVIII of the Social Security Act (42 U.S.C. 1395 et seq.) as may be necessary for the purpose of carrying out the demonstration program under this section.

(e) REPORT.—Not later than 6 months after the completion of the demonstration program under this section, the Secretary shall submit to Congress a report on such program, together with recommendations for such legislation and administrative action as the Secretary determines to be appropriate.

(f) DEFINITIONS.—In this section:

(1) RURAL COMMUNITY HOSPITAL DEFINED.—

(A) IN GENERAL.—The term ''rural community hospital'' means a hospital (as defined in section 1861(e) of the Social Security Act (42 U.S.C. 1395x(e))) that—

(i) is located in a rural area (as defined in section 1886(d)(2)(D) of such Act (42 U.S.C. 1395ww(d)(2)(D))) or treated as being so located pursuant to section 1886(d)(8)(E) of such Act (42 U.S.C. 1395ww(d)(8)(E));

(ii) subject to paragraph (2), has fewer than 51 acute care inpatient beds, as reported in its most recent cost report;

(iii) makes available 24-hour emergency care services; and

(iv) is not eligible for designation, or has not been designated, as a critical access hospital under section 1820.

(B) TREATMENT OF PSYCHIATRIC AND REHABILITATION UNITS.—For purposes of paragraph (1)(B), beds in a psychiatric or rehabilitation unit of the hospital which is a distinct part of the hospital shall not be counted.

(2) COVERED INPATIENT HOSPITAL SERVICES.—The term ''covered inpatient hospital services'' means inpatient hospital services, and includes extended care services furnished under an agreement under section 1883 of the Social Security Act (42 U.S.C. 1395tt).

Subtitle B—Provisions Relating to Part B Only

SEC. 111. 2-YEAR EXTENSION OF HOLD HARMLESS PROVISIONS FOR SMALL RURAL HOSPITALS AND SOLE COMMUNITY HOSPITALS UNDER THE PROSPECTIVE PAYMENT SYSTEM FOR HOSPITAL OUTPATIENT DEPARTMENT SERVICES.

(a) HOLD HARMLESS PROVISIONS.—

(1) IN GENERAL.—Section 1833(t)(7)(D)(i) (42 U.S.C. 1395l(t)(7)(D)(i)) is amended—

(A) in the heading, by striking ''SMALL'' and inserting ''CERTAIN'';

(B) by inserting ''or a sole community hospital (as defined in section 1886(d)(5)(D)(iii)) located in a rural area'' after ''100 beds''; and

(C) by striking ''2004'' and inserting ''2006''.

(2) EFFECTIVE DATE.—The amendment made by paragraph (1)(B) shall apply with respect to cost reporting periods beginning on and after January 1, 2004.

(b) STUDY; AUTHORIZATION OF ADJUSTMENT.—Section 1833(t) (42 U.S.C. 1395l(t)) is amended—

(1) by redesignating paragraph (13) as paragraph (16); and

(2) by inserting after paragraph (12) the following new paragraph:

''(13) AUTHORIZATION OF ADJUSTMENT FOR RURAL HOSPITALS.—

''(A) STUDY.—The Secretary shall conduct a study to determine if, under the system under this subsection, costs incurred by hospitals located in rural areas by ambulatory payment classification groups (APCs) exceed those costs incurred by hospitals located in urban areas.

''(B) AUTHORIZATION OF ADJUSTMENT.—Insofar as the Secretary determines under subparagraph (A) that costs incurred by hospitals located in rural areas exceed those costs incurred by hospitals located in urban areas, the Secretary shall provide for an appropriate adjustment under paragraph (2)(E) to reflect those higher costs by January 1, 2006.''.

SEC. 112. ESTABLISHMENT OF FLOOR ON WORK GEOGRAPHIC ADJUSTMENT.

Section 1848(e)(1) (42 U.S.C. 1395w–4(e)(1)) is amended—

(1) in subparagraph (A), by striking ''subparagraphs (B) and (C)'' and inserting ''subparagraphs (B), (C), and (E)''; and

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

''(E) FLOOR AT 1.0 ON WORK GEOGRAPHIC INDEX.—After calculating the work geographic index in subparagraph (A)(iii), for purposes of payment for services furnished on or after January 1, 2004, and before January 1, 2007, the Secretary shall increase the work geographic index to 1.00 for any locality for which such work geographic index is less than 1.00.''.

SEC. 113. MEDICARE INCENTIVE PAYMENT PROGRAM IMPROVEMENTS FOR PHYSICIAN SCARCITY.

(a) ADDITIONAL INCENTIVE PAYMENT FOR CERTAIN PHYSICIAN SCARCITY AREAS.—Section 1833 (42 U.S.C. 1395l) is amended by adding at the end the following new subsection:

''(u) INCENTIVE PAYMENTS FOR PHYSICIAN SCARCITY AREAS.—

''(1) IN GENERAL.—In the case of physicians' services furnished on or after January 1, 2005, and before January 1, 2008—

''(A) by a primary care physician in a primary care scarcity county (identified under paragraph (4)); or

''(B) by a physician who is not a primary care physician in a specialist care scarcity county (as so identified),

in addition to the amount of payment that would otherwise be made for such services under this part, there also shall be paid an amount equal to 5 percent of the payment amount for the service under this part.

''(2) DETERMINATION OF RATIOS OF PHYSICIANS TO MEDICARE BENEFICIARIES IN AREA.—Based upon available data, the Secretary shall establish for each county or equivalent area in the United States, the following:

''(A) NUMBER OF PHYSICIANS PRACTICING IN THE AREA.—The number of physicians who furnish physicians' services in the active practice of medicine or osteopathy in that county or area, other than physicians whose practice is exclusively for the Federal Government, physicians who are retired, or physicians who only provide administrative services. Of such number, the number of such physicians who are—

''(i) primary care physicians; or

''(ii) physicians who are not primary care physicians.

''(B) NUMBER OF MEDICARE BENEFICIARIES RESIDING IN THE AREA.—The number of individuals who are residing in the county and are entitled to benefits under part A or enrolled under this part, or both (in this subsection referred to as 'individuals').

''(C) DETERMINATION OF RATIOS.—

''(i) PRIMARY CARE RATIO.—The ratio (in this paragraph referred to as the 'primary care ratio') of the number of primary care physicians (determined under subparagraph (A)(i)), to the number of individuals determined under subparagraph (B).

''(ii) SPECIALIST CARE RATIO.—The ratio (in this paragraph referred to as the 'specialist care ratio') of the number of other physicians (determined under subparagraph (A)(ii)), to the number of individuals determined under subparagraph (B).

''(3) RANKING OF COUNTIES.—The Secretary shall rank each such county or area based separately on its primary care ratio and its specialist care ratio.

''(4) IDENTIFICATION OF COUNTIES.—

''(A) IN GENERAL.—The Secretary shall identify—

''(i) those counties and areas (in this paragraph referred to as 'primary care scarcity counties') with the lowest primary care ratios that represent, if each such county or area were weighted by the number of individuals determined under paragraph (2)(B), an

aggregate total of 20 percent of the total of the individuals determined under such paragraph; and

''(ii) those counties and areas (in this subsection referred to as 'specialist care scarcity counties') with the lowest specialist care ratios that represent, if each such county or area were weighted by the number of individuals determined under paragraph (2)(B), an aggregate total of 20 percent of the total of the individuals determined under such paragraph.

''(B) PERIODIC REVISIONS.—The Secretary shall periodically revise the counties or areas identified in subparagraph (A) (but not less often than once every three years) unless the Secretary determines that there is no new data available on the number of physicians practicing in the county or area or the number of individuals residing in the county or area, as identified in paragraph (2).

''(C) IDENTIFICATION OF COUNTIES WHERE SERVICE IS FURNISHED.—For purposes of paying the additional amount specified in paragraph (1), if the Secretary uses the 5-digit postal ZIP Code where the service is furnished, the dominant county of the postal ZIP Code (as determined by the United States Postal Service, or otherwise) shall be used to determine whether the postal ZIP Code is in a scarcity county identified in subparagraph (A) or revised in subparagraph (B).

''(D) JUDICIAL REVIEW.—There shall be no administrative or judicial review under section 1869, 1878, or otherwise, respecting—

''(i) the identification of a county or area;

''(ii) the assignment of a specialty of any physician under this paragraph;

''(iii) the assignment of a physician to a county under paragraph (2); or

''(iv) the assignment of a postal ZIP Code to a county or other area under this subsection.

''(5) RURAL CENSUS TRACTS.—To the extent feasible, the Secretary shall treat a rural census tract of a metropolitan statistical area (as determined under the most recent modification of the Goldsmith Modification, originally published in the Federal Register on February 27, 1992 (57 Fed. Reg. 6725)), as an equivalent area for purposes of qualifying as a primary care scarcity county or specialist care scarcity county under this subsection.

''(6) PHYSICIAN DEFINED.—For purposes of this paragraph, the term 'physician' means a physician described in section 1861(r)(1) and the term 'primary care physician' means a physician who is identified in the available data as a general practitioner, family practice practitioner, general internist, or obstetrician or gynecologist.

''(7) PUBLICATION OF LIST OF COUNTIES; POSTING ON WEBSITE.—With respect to a year for which a county or area is identified or revised under paragraph (4), the Secretary shall identify such counties or areas as part of the proposed and final rule to implement the physician fee schedule under section 1848 for the applicable year. The Secretary shall post the list of counties identified or revised under paragraph (4) on the Internet website of the Centers for Medicare & Medicaid Services.''.

(b) IMPROVEMENT TO MEDICARE INCENTIVE PAYMENT PROGRAM.—

(1) IN GENERAL.—Section 1833(m) (42 U.S.C. 1395l(m)) is amended—

(A) by inserting ''(1)'' after ''(m)'';

(B) in paragraph (1), as designated by subparagraph (A)—

(i) by inserting ''in a year'' after ''In the case of physicians' services furnished''; and

(ii) by inserting ''as identified by the Secretary prior to the beginning of such year'' after ''as a health professional shortage area''; and

(C) by adding at the end the following new paragraphs:

''(2) For each health professional shortage area identified in paragraph (1) that consists of an entire county, the Secretary shall provide for the additional payment under paragraph (1) without any requirement on the physician to identify the health professional shortage area involved. The Secretary may implement the previous sentence using the method specified in subsection (u)(4)(C).

''(3) The Secretary shall post on the Internet website of the Centers for Medicare & Medicaid Services a list of the health professional shortage areas identified in paragraph (1) that consist of a partial county to facilitate the additional payment under paragraph (1) in such areas.

''(4) There shall be no administrative or judicial review under section 1869, section 1878, or otherwise, respecting—

''(A) the identification of a county or area;

''(B) the assignment of a specialty of any physician under this paragraph;

''(C) the assignment of a physician to a county under this subsection; or

''(D) the assignment of a postal zip code to a county or other area under this subsection.''.

(2) EFFECTIVE DATE.—The amendments made by paragraph (1) shall apply to physicians' services furnished on or after January 1, 2005.

(c) GAO STUDY OF GEOGRAPHIC DIFFERENCES IN PAYMENTS FOR PHYSICIANS' SERVICES.—

(1) STUDY.—The Comptroller General of the United States shall conduct a study of differences in payment amounts under the physician fee schedule under section 1848 of the Social Security Act (42 U.S.C. 1395w–4) for physicians' services in different geographic areas. Such study shall include—

(A) an assessment of the validity of the geographic adjustment factors used for each component of the fee schedule;

(B) an evaluation of the measures used for such adjustment, including the frequency of revisions;

(C) an evaluation of the methods used to determine professional liability insurance costs used in computing the malpractice component, including a review of increases in professional liability insurance premiums and variation in such increases by State and physician specialty and methods used to update the geographic cost of practice index and relative weights for the malpractice component; and

(D) an evaluation of the effect of the adjustment to the physician work geographic index under section 1848(e)(1)(E) of the Social Security Act, as added by section 112, on physician location and retention in areas affected by such adjustment, taking into account—

(i) differences in recruitment costs and retention rates for physicians, including specialists, between large urban areas and other areas; and

(ii) the mobility of physicians, including specialists, over the last decade.

(2) REPORT.—Not later than 1 year after the date of the enactment of this Act, the Comptroller General shall submit to Congress a report on the study conducted under paragraph (1). The report shall include recommendations regarding the use of more current data in computing geographic cost of practice indices as well as the use of data directly representative of physicians' costs (rather than proxy measures of such costs).

SEC. 114. PAYMENT FOR RURAL AND URBAN AMBULANCE SERVICES.

(a) PHASE-IN PROVIDING FLOOR USING BLEND OF FEE SCHEDULE AND REGIONAL FEE SCHEDULES.—Section 1834(l) (42 U.S.C. 1395m(l)) is amended—

(1) in paragraph (2)(E), by inserting ''consistent with paragraph (11)'' after ''in an efficient and fair manner''; and

(2) by redesignating paragraph (8), as added by section 221(a) of BIPA (114 Stat. 2763A–486), as paragraph (9); and

(3) by adding at the end the following new paragraph:

''(10) PHASE-IN PROVIDING FLOOR USING BLEND OF FEE SCHEDULE AND REGIONAL FEE SCHEDULES.—In carrying out the phase-in under paragraph (2)(E) for each level of ground service furnished in a year, the portion of the payment amount that is based on the fee schedule shall be the greater of the amount determined under such fee schedule (without regard to this paragraph) or the following blended rate of the fee schedule under paragraph (1) and of a regional fee schedule for the region involved:

''(A) For 2004 (for services furnished on or after July 1, 2004), the blended rate shall be based 20 percent on the fee schedule under paragraph (1) and 80 percent on the regional fee schedule.

''(B) For 2005, the blended rate shall be based 40 percent on the fee schedule under paragraph (1) and 60 percent on the regional fee schedule.

''(C) For 2006, the blended rate shall be based 60 percent on the fee schedule under paragraph (1) and 40 percent on the regional fee schedule.

''(D) For 2007, 2008, and 2009, the blended rate shall be based 80 percent on the fee schedule under paragraph (1) and 20 percent on the regional fee schedule.

''(E) For 2010 and each succeeding year, the blended rate shall be based 100 percent on the fee schedule under paragraph (1).

For purposes of this paragraph, the Secretary shall establish a regional fee schedule for each of the nine census divisions (referred to in section 1886(d)(2)) using the methodology (used in establishing the fee schedule under paragraph (1)) to calculate a regional conversion factor and a regional mileage payment rate and using the same payment adjustments and the same relative value units as used in the fee schedule under such paragraph.''.

(b) ADJUSTMENT IN PAYMENT FOR CERTAIN LONG TRIPS.—Section 1834(l), as amended by subsection (a), is amended by adding at the end the following new paragraph:

''(11) ADJUSTMENT IN PAYMENT FOR CERTAIN LONG TRIPS.—In the case of ground ambulance services furnished on or after July 1, 2004, and before January 1, 2009, regardless of where the transportation originates, the fee schedule established under this subsection shall provide that, with respect to the payment rate for mileage for a trip above 50 miles the per mile rate otherwise established shall be increased by ¼ of the payment per mile otherwise applicable to miles in excess of 50 miles in such trip.''.

(c) IMPROVEMENT IN PAYMENTS TO RETAIN EMERGENCY CAPACITY FOR AMBULANCE SERVICES IN RURAL AREAS.—

(1) IN GENERAL.—Section 1834(l) (42 U.S.C. 1395m(l)), as amended by subsections (a) and (b), is amended by adding at the end the following new paragraph:

''(12) ASSISTANCE FOR RURAL PROVIDERS FURNISHING SERVICES IN LOW POPULATION DENSITY AREAS.—

''(A) IN GENERAL.—In the case of ground ambulance services furnished on or after July 1, 2004, and before January 1, 2010, for which the transportation originates in a qualified rural area (identified under subparagraph (B)(iii)), the Secretary shall provide for a percent increase in the base rate of the fee schedule for a trip established under this subsection. In establishing such percent increase, the Secretary shall estimate the

average cost per trip for such services (not taking into account mileage) in the lowest quartile as compared to the average cost per trip for such services (not taking into account mileage) in the highest quartile of all rural county populations.

''(B) IDENTIFICATION OF QUALIFIED RURAL AREAS.—

''(i) DETERMINATION OF POPULATION DENSITY IN AREA.—Based upon data from the United States decennial census for the year 2000, the Secretary shall determine, for each rural area, the population density for that area.

''(ii) RANKING OF AREAS.—The Secretary shall rank each such area based on such population density.

''(iii) IDENTIFICATION OF QUALIFIED RURAL AREAS.—The Secretary shall identify those areas (in subparagraph (A) referred to as 'qualified rural areas') with the lowest population densities that represent, if each such area were weighted by the population of such area (as used in computing such population densities), an aggregate total of 25 percent of the total of the population of all such areas.

''(iv) RURAL AREA.—For purposes of this paragraph, the term 'rural area' has the meaning given such term in section 1886(d)(2)(D). If feasible, the Secretary shall treat a rural census tract of a metropolitan statistical area (as determined under the most recent modification of the Goldsmith Modification, originally published in the Federal Register on February 27, 1992 (57 Fed. Reg. 6725) as a rural area for purposes of this paragraph.

''(v) JUDICIAL REVIEW.—There shall be no administrative or judicial review under section 1869, 1878, or otherwise, respecting the identification of an area under this subparagraph.''.

(2) USE OF DATA.—In order to promptly implement section 1834(l)(12) of the Social Security Act, as added by paragraph (1), the Secretary may use data furnished by the Comptroller General of the United States.

(d) TEMPORARY INCREASE FOR GROUND AMBULANCE SERVICES.—Section 1834(l) (42 U.S.C. 1395m(l)), as amended by subsections (a), (b), and (c), is amended by adding at the end the following new paragraph:

''(13) TEMPORARY INCREASE FOR GROUND AMBULANCE SERVICES.—

''(A) IN GENERAL.—After computing the rates with respect to ground ambulance services under the other applicable provisions of this subsection, in the case of such services furnished on or after July 1, 2004, and before January 1, 2007, for which the transportation originates in—

''(i) a rural area described in paragraph (9) or in a rural census tract described in such paragraph, the fee schedule established under this section shall provide that the rate for the service otherwise established, after the application of any increase under paragraphs (11) and (12), shall be increased by 2 percent; and

''(ii) an area not described in clause (i), the fee schedule established under this subsection shall provide that the rate for the service otherwise established, after the application of any increase under paragraph (11), shall be increased by 1 percent.

''(B) APPLICATION OF INCREASED PAYMENTS AFTER 2006.—The increased payments under subparagraph (A) shall not be taken into account in calculating payments for services furnished after the period specified in such subparagraph.''.

(e) IMPLEMENTATION.—The Secretary may implement the amendments made by this section, and revise the conversion factor applicable under section 1834(l) of the Social Security Act (42 U.S.C. 1395m(l)) for purposes of implementing such amendments, on an interim final basis, or by program instruction.

(f) GAO REPORT ON COSTS AND ACCESS.—Not later than December 31, 2005, the Comptroller General of the United States shall submit to Congress an initial report on how costs differ among the types of ambulance providers and on access, supply, and quality of ambulance services in those regions and States that have a reduction in payment under the medicare ambulance fee schedule (under section 1834(l) of the Social Security Act, as amended by this Act). Not later than December 31, 2007, the Comptroller General shall submit to Congress a final report on such access and supply.

(g) TECHNICAL AMENDMENTS.—(1) Section 221(c) of BIPA (114 Stat. 2763A–487) is amended by striking ''subsection (b)(2)'' and inserting ''subsection (b)(3)''.

(2) Section 1861(v)(1) (42 U.S.C. 1395x(v)(1)) is amended by moving subparagraph (U) 4 ems to the left.

SEC. 115. PROVIDING APPROPRIATE COVERAGE OF RURAL AIR AMBULANCE SERVICES.

(a) COVERAGE.—Section 1834(l) (42 U.S.C. 1395m(l)), as amended by subsections (a), (b), (c), and (d) of section 114, is amended by adding at the end the following new paragraph:

''(14) PROVIDING APPROPRIATE COVERAGE OF RURAL AIR AMBULANCE SERVICES.—

''(A) IN GENERAL.—The regulations described in section 1861(s)(7) shall provide, to the extent that any ambulance services (whether ground or air) may be covered under such section, that a rural air ambulance service (as defined in subparagraph (C)) is reimbursed under this subsection at the air ambulance rate if the air ambulance service—

''(i) is reasonable and necessary based on the health condition of the individual being transported at or immediately prior to the time of the transport; and

''(ii) complies with equipment and crew requirements established by the Secretary.

''(B) SATISFACTION OF REQUIREMENT OF MEDICALLY NECESSARY.—The requirement of subparagraph (A)(i) is deemed to be met for a rural air ambulance service if—

''(i) subject to subparagraph (D), such service is requested by a physician or other qualified medical personnel (as specified by the Secretary) who reasonably determines or certifies that the individual's condition is such that the time needed to transport the individual by land or the instability of transportation by land poses a threat to the individual's survival or seriously endangers the individual's health; or

''(ii) such service is furnished pursuant to a protocol that is established by a State or regional emergency medical service (EMS) agency and recognized or approved by the Secretary under which the use of an air ambulance is recommended, if such agency does not have an ownership interest in the entity furnishing such service.

''(C) RURAL AIR AMBULANCE SERVICE DEFINED.—For purposes of this paragraph, the term 'rural air ambulance service' means fixed wing and rotary wing air ambulance service in which the point of pick up of the individual occurs in a rural area (as defined in section 1886(d)(2)(D)) or in a rural census tract of a metropolitan statistical area (as determined under the most recent modification of the Goldsmith Modification, originally published in the Federal Register on February 27, 1992 (57 Fed. Reg. 6725)).

''(D) LIMITATION.—

''(i) IN GENERAL.—Subparagraph (B)(i) shall not apply if there is a financial or employment relationship between the person requesting the rural air ambulance service and the entity furnishing the ambulance service, or an entity under common ownership with the entity furnishing the air ambulance service, or a financial relationship between an immediate family member of such requester and such an entity.

''(ii) EXCEPTION.—Where a hospital and the entity furnishing rural air ambulance services are under common ownership, clause (i) shall not apply to remuneration (through employment or other relationship) by the hospital of the requester or immediate family member if the remuneration is for provider-based physician services furnished in a hospital (as described in section 1887) which are reimbursed under part A and the amount of the remuneration is unrelated directly or indirectly to the provision of rural air ambulance services.''.

(b) CONFORMING AMENDMENT.—Section 1861(s)(7) (42 U.S.C. 1395x(s)(7)) is amended by inserting '', subject to section 1834(l)(14),'' after ''but''.

(c) EFFECTIVE DATE.—The amendments made by this subsection shall apply to services furnished on or after January 1, 2005.

SEC. 116. TREATMENT OF CERTAIN CLINICAL DIAGNOSTIC LABORATORY TESTS FURNISHED TO HOSPITAL OUTPATIENTS IN CERTAIN RURAL AREAS.

(a) IN GENERAL.—Notwithstanding subsections (a), (b), and (h) of section 1833 of the Social Security Act (42 U.S.C. 1395l) and section 1834(d)(1) of such Act (42 U.S.C. 1395m(d)(1)), in the case of a clinical diagnostic laboratory test covered under part B of title XVIII of such Act that is furnished during a cost reporting period described in subsection (b) by a hospital with fewer than 50 beds that is located in a qualified rural area (identified under paragraph (12)(B)(iii) of section 1834(l) of the Social Security Act (42 U.S.C. 1395m(l)), as added by section 114(c)) as part of outpatient services of the hospital, the amount of payment for such test shall be 100 percent of the reasonable costs of the hospital in furnishing such test.

(b) APPLICATION.—A cost reporting period described in this subsection is a cost reporting period beginning during the 2-year period beginning on July 1, 2004.

(c) PROVISION AS PART OF OUTPATIENT HOSPITAL SERVICES.—For purposes of subsection (a), in determining whether clinical diagnostic laboratory services are furnished as part of outpatient services of a hospital, the Secretary shall apply the same rules that are used to determine whether clinical diagnostic laboratory services are furnished as an outpatient critical access hospital service under section 1834(g)(4) of the Social Security Act (42 U.S.C. 1395m(g)(4)).

SEC. 117. EXTENSION OF TELEMEDICINE DEMONSTRATION PROJECT.

Section 4207 of the Balanced Budget Act of 1997 (Public Law 105–33) is amended—

(1) in subsection (a)(4), by striking ''4-year'' and inserting ''8-year''; and

(2) in subsection (d)(3), by striking ''$30,000,000'' and inserting ''$60,000,000''.

SEC. 118. REPORT ON DEMONSTRATION PROJECT PERMITTING SKILLED NURSING FACILITIES TO BE ORIGINATING TELEHEALTH SITES; AUTHORITY TO IMPLEMENT.

(a) EVALUATION.—The Secretary, acting through the Administrator of the Health Resources and Services Administration in consultation with the Administrator of the Centers for Medicare & Medicaid Services, shall evaluate demonstration projects conducted by the Secretary under which skilled nursing facilities (as defined in section 1819(a) of the Social Security Act (42 U.S.C. 1395i–3(a)) are treated as originating sites for telehealth services.

(b) REPORT.—Not later than January 1, 2005, the Secretary shall submit to Congress a report on the evaluation conducted under subsection (a). Such report shall include recommendations on mechanisms to ensure that permitting a skilled nursing facility to

serve as an originating site for the use of telehealth services or any other service delivered via a telecommunications system does not serve as a substitute for in-person visits furnished by a physician, or for in-person visits furnished by a physician assistant, nurse practitioner or clinical nurse specialist, as is otherwise required by the Secretary.

(c) AUTHORITY TO EXPAND ORIGINATING TELEHEALTH SITES TO INCLUDE SKILLED NURSING FACILITIES.—Insofar as the Secretary concludes in the report required under subsection (b) that is advisable to permit a skilled nursing facility to be an originating site for telehealth services under section 1834(m) of the Social Security Act (42 U.S.C. 1395m(m)), and that the Secretary can establish the mechanisms to ensure such permission does not serve as a substitute for in-person visits furnished by a physician, or for in-person visits furnished by a physician assistant, nurse practitioner or clinical nurse specialist, the Secretary may deem a skilled nursing facility to be an originating site under paragraph (4)(C)(ii) of such section beginning on January 1, 2006.

Subtitle C—Provisions Relating to Parts A and B

SEC. 121. 1-YEAR INCREASE FOR HOME HEALTH SERVICES FURNISHED IN A RURAL AREA.

(a) IN GENERAL.—With respect to episodes and visits ending on or after April 1, 2004, and before April 1, 2005, in the case of home health services furnished in a rural area (as defined in section 1886(d)(2)(D) of the Social Security Act (42 U.S.C. 1395ww(d)(2)(D))), the Secretary shall increase the payment amount otherwise made under section 1895 of such Act (42 U.S.C. 1395fff) for such services by 5 percent.

(b) WAIVING BUDGET NEUTRALITY.—The Secretary shall not reduce the standard prospective payment amount (or amounts) under section 1895 of the Social Security Act (42 U.S.C. 1395fff) applicable to home health services furnished during a period to offset the increase in payments resulting from the application of subsection (a).

(c) NO EFFECT ON SUBSEQUENT PERIODS.—The payment increase provided under subsection (a) for a period under such subsection—

(1) shall not apply to episodes and visits ending after such period; and

(2) shall not be taken into account in calculating the payment amounts applicable for episodes and visits occurring after such period.

SEC. 122. REDISTRIBUTION OF UNUSED RESIDENT POSITIONS.

(a) IN GENERAL.—Section 1886(h) (42 U.S.C. 1395ww(h)(4)) is amended—

(1) in paragraph (4)(F)(i), by inserting ''subject to paragraph (7),'' after ''October 1, 1997,'';

(2) in paragraph (4)(H)(i), by inserting ''and subject to paragraph (7),'' after ''subparagraphs (F) and (G)''; and

(3) by adding at the end the following new paragraph:

''(7) REDISTRIBUTION OF UNUSED RESIDENT POSITIONS.—

''(A) REDUCTION IN LIMIT BASED ON UNUSED POSITIONS.—

''(i) PROGRAMS SUBJECT TO REDUCTION.—

''(I) IN GENERAL.—Except as provided in subclause (II), if a hospital's reference resident level (specified in clause (ii)) is less than the otherwise applicable resident limit (as defined in subparagraph (C)(ii)), effective for portions of cost reporting periods occurring on or after July 1, 2005, the otherwise applicable resident limit shall be reduced by 75 percent of the difference between such otherwise applicable resident limit and such reference resident level.

''(II) EXCEPTION FOR SMALL RURAL HOSPITALS.—This subparagraph shall not apply to a hospital located in a rural area (as defined in subsection (d)(2)(D)(ii)) with fewer than 250 acute care inpatient beds.

''(ii) REFERENCE RESIDENT LEVEL.—

''(I) IN GENERAL.—Except as otherwise provided in subclauses (II) and (III), the reference resident level specified in this clause for a hospital is the resident level for the most recent cost reporting period of the hospital ending on or before September 30, 2002, for which a cost report has been settled (or, if not, submitted (subject to audit)), as determined by the Secretary.

''(II) USE OF MOST RECENT ACCOUNTING PERIOD TO RECOGNIZE EXPANSION OF EXISTING PROGRAMS.—If a hospital submits a timely request to increase its resident level due to an expansion of an existing residency training program that is not reflected on the most recent settled cost report, after audit and subject to the discretion of the Secretary, the reference resident level for such hospital is the resident level for the cost reporting period that includes July 1, 2003, as determined by the Secretary.

''(III) EXPANSIONS UNDER NEWLY APPROVED PROGRAMS.—Upon the timely request of a hospital, the Secretary shall adjust the reference resident level specified under subclause (I) or (II) to include the number of medical residents that were approved in an application for a medical residency training program that was approved by an appropriate accrediting organization (as determined by the Secretary) before January 1, 2002, but which was not in operation during the cost reporting period used under subclause (I) or (II), as the case may be, as determined by the Secretary.

''(iii) AFFILIATION.—The provisions of clause (i) shall be applied to hospitals which are members of the same affiliated group (as defined by the Secretary under paragraph (4)(H)(ii)) as of July 1, 2003.

''(B) REDISTRIBUTION.—

''(i) IN GENERAL.—The Secretary is authorized to increase the otherwise applicable resident limit for each qualifying hospital that submits a timely application under this subparagraph by such number as the Secretary may approve for portions of cost reporting periods occurring on or after July 1, 2005. The aggregate number of increases in the otherwise applicable resident limits under this subparagraph may not exceed the Secretary's estimate of the aggregate reduction in such limits attributable to subparagraph (A).

''(ii) CONSIDERATIONS IN REDISTRIBUTION.—In determining for which hospitals the increase in the otherwise applicable resident limit is provided under clause (i), the Secretary shall take into account the demonstrated likelihood of the hospital filling the positions within the first 3 cost reporting periods beginning on or after July 1, 2005, made available under this subparagraph, as determined by the Secretary.

''(iii) PRIORITY FOR RURAL AND SMALL URBAN AREAS.—In determining for which hospitals and residency training programs an increase in the otherwise applicable resident limit is provided under clause (i), the Secretary shall distribute the increase to programs of hospitals located in the following priority order:

''(I) First, to hospitals located in rural areas (as defined in subsection (d)(2)(D)(ii)).

''(II) Second, to hospitals located in urban areas that are not large urban areas (as defined for purposes of subsection (d)).

''(III) Third, to other hospitals in a State if the residency training program involved is in a specialty for which there are not other residency training programs in the State.

Increases of residency limits within the same priority category under this clause shall be determined by the Secretary.

''(iv) LIMITATION.—In no case shall more than 25 full-time equivalent additional residency positions be made available under this subparagraph with respect to any hospital.

''(v) APPLICATION OF LOCALITY ADJUSTED NATIONAL AVERAGE PER RESIDENT AMOUNT.—With respect to additional residency positions in a hospital attributable to the increase provided under this subparagraph, notwithstanding any other provision of this subsection, the approved FTE resident amount is deemed to be equal to the locality adjusted national average per resident amount computed under paragraph (4)(E) for that hospital.

''(vi) CONSTRUCTION.—Nothing in this subparagraph shall be construed as permitting the redistribution of reductions in residency positions attributable to voluntary reduction programs under paragraph (6), under a demonstration project approved as of October 31, 2003, under the authority of section 402 of Public Law 90–248, or as affecting the ability of a hospital to establish new medical residency training programs under paragraph (4)(H).

''(C) RESIDENT LEVEL AND LIMIT DEFINED.—In this paragraph:

''(i) RESIDENT LEVEL.—The term 'resident level' means, with respect to a hospital, the total number of full-time equivalent residents, before the application of weighting factors (as determined under paragraph (4)), in the fields of allopathic and osteopathic medicine for the hospital.

''(ii) OTHERWISE APPLICABLE RESIDENT LIMIT.—The term 'otherwise applicable resident limit' means, with respect to a hospital, the limit otherwise applicable under subparagraphs (F)(i) and (H) of paragraph (4) on the resident level for the hospital determined without regard to this paragraph.

''(D) JUDICIAL REVIEW.—There shall be no administrative or judicial review under section 1869, 1878, or otherwise, with respect to determinations made under this paragraph.''.

(b) CONFORMING PROVISIONS.—(1) Section 1886(d)(5)(B) (42 U.S.C. 1395ww(d)(5)(B)) is amended—

(A) in the second sentence of clause (ii), by striking ''For discharges'' and inserting ''Subject to clause (ix), for discharges''; and

(B) in clause (v), by adding at the end the following: ''The provisions of subsection (h)(7) shall apply with respect to the first sentence of this clause in the same manner as it applies with respect to subsection (h)(4)(F)(i).''; and

(C) by adding at the end the following new clause:

''(ix) For discharges occurring on or after July 1, 2005, insofar as an additional payment amount under this subparagraph is attributable to resident positions redistributed to a hospital under subsection (h)(7)(B), in computing the indirect teaching adjustment factor under clause (ii) the adjustment shall be computed in a manner as if 'c' were equal to 0.66 with respect to such resident positions.''.

(2) Chapter 35 of title 44, United States Code, shall not apply with respect to applications under section 1886(h)(7) of the Social Security Act, as added by subsection (a)(3).

(c) REPORT ON EXTENSION OF APPLICATIONS UNDER REDISTRIBUTION PROGRAM.—Not later than July 1, 2005, the Secretary shall submit to Congress a report containing recommendations regarding whether to extend the deadline for applications for an increase in resident limits under section 1886(h)(4)(I)(ii)(II) of the Social Security Act (as added by subsection (a)).

Subtitle D—Other Provisions

SEC. 131. PROVIDING SAFE HARBOR FOR CERTAIN COLLABORATIVE EFFORTS THAT BENEFIT MEDICALLY UNDERSERVED POPULATIONS.

(a) IN GENERAL.—Section 1128B(b)(3) (42 U.S.C. 1320a–7(b)(3)), as amended by section 101(e)(2), is amended—

(1) in subparagraph (F), by striking ''and'' after the semicolon at the end;

(2) in subparagraph (G), by striking the period at the end and inserting ''; and''; and

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

''(H) any remuneration between a health center entity described under clause (i) or (ii) of section 1905(l)(2)(B) and any individual or entity providing goods, items, services, donations, loans, or a combination thereof, to such health center entity pursuant to a contract, lease, grant, loan, or other agreement, if such agreement contributes to the ability of the health center entity to maintain or increase the availability, or enhance the quality, of services provided to a medically underserved population served by the health center entity.''.

(b) RULEMAKING FOR EXCEPTION FOR HEALTH CENTER ENTITY ARRANGEMENTS.—

(1) ESTABLISHMENT.—

(A) IN GENERAL.—The Secretary shall establish, on an expedited basis, standards relating to the exception described in section 1128B(b)(3)(H) of the Social Security Act, as added by subsection (a), for health center entity arrangements to the antikickback penalties.

(B) FACTORS TO CONSIDER.—The Secretary shall consider the following factors, among others, in establishing standards relating to the exception for health center entity arrangements under subparagraph (A):

(i) Whether the arrangement between the health center entity and the other party results in savings of Federal grant funds or increased revenues to the health center entity.

(ii) Whether the arrangement between the health center entity and the other party restricts or limits an individual's freedom of choice.

(iii) Whether the arrangement between the health center entity and the other party protects a health care professional's independent medical judgment regarding medically appropriate treatment.

The Secretary may also include other standards and criteria that are consistent with the intent of Congress in enacting the exception established under this section.

(2) DEADLINE.—Not later than 1 year after the date of the enactment of this Act the Secretary shall publish final regulations establishing the standards described in paragraph (1).

SEC. 132. OFFICE OF RURAL HEALTH POLICY IMPROVEMENTS.

Section 711(b) (42 U.S.C. 912(b)) is amended—

(1) in paragraph (3), by striking ''and'' after the comma at the end;

(2) in paragraph (4), by striking the period at the end and inserting '', and''; and

(3) by inserting after paragraph (4) the following new paragraph:

''(5) administer grants, cooperative agreements, and contracts to provide technical assistance and other activities as necessary to support activities related to improving health care in rural areas.''.

SEC. 133. MEDPAC STUDY ON RURAL HOSPITAL PAYMENT ADJUSTMENTS.

(a) IN GENERAL.—The Medicare Payment Advisory Commission shall conduct a study of the impact of sections 401 through 406, 411, 416, and 505. The Commission shall analyze the effect on total payments, growth in costs, capital spending, and such other payment effects under those sections.

(b) REPORTS.—

(1) INTERIM REPORT.—Not later than 18 months after the date of the enactment of this Act, the Commission shall submit to Congress an interim report on the matters studied under subsection (a) with respect only to changes to the critical access hospital provisions under section 105.

(2) FINAL REPORT.—Not later than 3 years after the date of the enactment of this Act, the Commission shall submit to Congress a final report on all matters studied under subsection (a).

SEC. 134. FRONTIER EXTENDED STAY CLINIC DEMONSTRATION PROJECT.

(a) AUTHORITY TO CONDUCT DEMONSTRATION PROJECT.—The Secretary shall waive such provisions of the medicare program established under title XVIII of the Social Security Act (42 U.S.C. 1395 et seq.) as are necessary to conduct a demonstration project under which frontier extended stay clinics described in subsection (b) in isolated rural areas are treated as providers of items and services under the medicare program.

(b) CLINICS DESCRIBED.—A frontier extended stay clinic is described in this subsection if the clinic—

(1) is located in a community where the closest short-term acute care hospital or critical access hospital is at least 75 miles away from the community or is inaccessible by public road; and

(2) is designed to address the needs of—

(A) seriously or critically ill or injured patients who, due to adverse weather conditions or other reasons, cannot be transferred quickly to acute care referral centers; or

(B) patients who need monitoring and observation for a limited period of time.

(c) SPECIFICATION OF CODES.—The Secretary shall determine the appropriate life-safety codes for such clinics that treat patients for needs referred to in subsection (b)(2).

(d) FUNDING.—

(1) IN GENERAL.—Subject to paragraph (2), there are authorized to be appropriated, in appropriate part from the Federal Hospital Insurance Trust Fund and the Federal Supplementary Medical Insurance Trust Fund, such sums as are necessary to conduct the demonstration project under this section.

(2) BUDGET NEUTRAL IMPLEMENTATION.—In conducting the demonstration project under this section, the Secretary shall ensure that the aggregate payments made by the Secretary under the medicare program do not exceed the amount which the Secretary would have paid under the medicare program if the demonstration project under this section was not implemented.

(e) 3-YEAR PERIOD.—The Secretary shall conduct the demonstration under this section for a 3-year period.

(f) REPORT.—Not later than the date that is 1 year after the date on which the demonstration project concludes, the Secretary shall submit to Congress a report on the demonstration project, together with such recommendations for legislation or administrative action as the Secretary determines appropriate.

(g) DEFINITIONS.—In this section, the terms ''hospital'' and ''critical access hospital'' have the meanings given such terms in subsections (e) and (mm), respectively, of section 1861 of the Social Security Act (42 U.S.C. 1395x).

TITLE II—PROVISIONS RELATING TO PART A

Subtitle A—Inpatient Hospital Services

SEC. 201. REVISION OF ACUTE CARE HOSPITAL PAYMENT UPDATES.

(a) IN GENERAL.—Section 1886(b)(3)(B)(i) (42 U.S.C. 1395ww(b)(3)(B)(i)) is amended—

(1) by striking ''and'' at the end of subclause (XVIII);

(2) by striking subclause (XIX); and

(3) by inserting after subclause (XVIII) the following new subclauses:

''(XIX) for each of fiscal years 2004 through 2007, subject to clause (vii), the market basket percentage increase for hospitals in all areas; and

''(XX) for fiscal year 2008 and each subsequent fiscal year, the market basket percentage increase for hospitals in all areas.''.

(b) SUBMISSION OF HOSPITAL QUALITY DATA.—Section 1886(b)(3)(B) (42 U.S.C. 1395ww(b)(3)(B)) is amended by adding at the end the following new clause:

''(vii)(I) For purposes of clause (i)(XIX) for each of fiscal years 2005 through 2007, in a case of a subsection (d) hospital that does not submit data to the Secretary in accordance with subclause (II) with respect to such a fiscal year, the applicable percentage increase under such clause for such fiscal year shall be reduced by 0.4 percentage points. Such reduction shall apply only with respect to the fiscal year involved, and the Secretary shall not take into account such reduction in computing the applicable percentage increase under clause (i)(XIX) for a subsequent fiscal year.

''(II) Each subsection (d) hospital shall submit to the Secretary quality data (for a set of 10 indicators established by the Secretary as of November 1, 2003) that relate to the quality of care furnished by the hospital in inpatient settings in a form and manner, and at a time, specified by the Secretary for purposes of this clause, but with respect to fiscal year 2005, the Secretary shall provide for a 30-day grace period for the submission of data by a hospital.''.

(c) GAO STUDY AND REPORT ON APPROPRIATENESS OF PAYMENTS UNDER THE PROSPECTIVE PAYMENT SYSTEM FOR INPATIENT HOSPITAL SERVICES.—

(1) STUDY.—The Comptroller General of the United States, using the most current data available, shall conduct a study to determine—

(A) the appropriate level and distribution of payments in relation to costs under the prospective payment system under section 1886 of the Social Security Act (42 U.S.C. 1395ww) for inpatient hospital services furnished by subsection (d) hospitals (as defined in subsection (d)(1)(B) of such section); and

(B) whether there is a need to adjust such payments under such system to reflect legitimate differences in costs across different geographic areas, kinds of hospitals, and types of cases.

(2) REPORT.—Not later than 24 months after the date of the enactment of this Act, the Comptroller General of the United States shall submit to Congress a report on the study conducted under paragraph (1) together with such recommendations for legislative and administrative action as the Comptroller General determines appropriate.

SEC. 202. REVISION OF THE INDIRECT MEDICAL EDUCATION (IME) ADJUSTMENT PERCENTAGE.

(a) IN GENERAL.—Section 1886(d)(5)(B)(ii) (42 U.S.C. 1395ww(d)(5)(B)(ii)) is amended—

(1) in subclause (VI), by striking ''and'' after the semicolon at the end;

(2) in subclause (VII)—

(A) by inserting ''and before April 1, 2004,'' after ''on or after October 1, 2002,''; and

(B) by striking the period at the end and inserting a semicolon; and

(3) by adding at the end the following new subclauses:

''(VIII) on or after April 1, 2004, and before October 1, 2004, 'c' is equal to 1.47;

''(IX) during fiscal year 2005, 'c' is equal to 1.42;

''(X) during fiscal year 2006, 'c' is equal to 1.37;

''(XI) during fiscal year 2007, 'c' is equal to 1.32; and

''(XII) on or after October 1, 2007, 'c' is equal to 1.35.''.

(b) CONFORMING AMENDMENT RELATING TO DETERMINATION OF STANDARDIZED AMOUNT.—Section 1886(d)(2)(C)(i) (42 U.S.C. 1395ww(d)(2)(C)(i)) is amended—

(1) by striking ''1999 or'' and inserting ''1999,''; and

(2) by inserting '', or the Medicare Provider Restoration Act of 2003'' after ''2000''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to discharges occurring on or after April 1, 2004.

SEC. 203. RECOGNITION OF NEW MEDICAL TECHNOLOGIES UNDER INPATIENT HOSPITAL PROSPECTIVE PAYMENT SYSTEM.

(a) IMPROVING TIMELINESS OF DATA COLLECTION.—Section 1886(d)(5)(K) (42 U.S.C. 1395ww(d)(5)(K)) is amended by adding at the end the following new clause:

''(vii) Under the mechanism under this subparagraph, the Secretary shall provide for the addition of new diagnosis and procedure codes in April 1 of each year, but the addition of such codes shall not require the Secretary to adjust the payment (or diagnosis-related group classification) under this subsection until the fiscal year that begins after such date.''.

(b) ELIGIBILITY STANDARD FOR TECHNOLOGY OUTLIERS.—

(1) ADJUSTMENT OF THRESHOLD.—Section 1886(d)(5)(K)(ii)(I) (42 U.S.C. 1395ww(d)(5)(K)(ii)(I)) is amended by inserting ''(applying a threshold specified by the Secretary that is the lesser of 75 percent of the standardized amount (increased to reflect the difference between cost and charges) or 75 percent of one standard deviation for the diagnosis-related group involved)'' after ''is inadequate''.

(2) PROCESS FOR PUBLIC INPUT.—Section 1886(d)(5)(K) (42 U.S.C. 1395ww(d)(5)(K)), as amended by subsection (a), is amended—

(A) in clause (i), by adding at the end the following: ''Such mechanism shall be modified to meet the requirements of clause (viii).''; and

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

''(viii) The mechanism established pursuant to clause (i) shall be adjusted to provide, before publication of a proposed rule, for public input regarding whether a new service or technology represents an advance in medical technology that substantially improves the diagnosis or treatment of individuals entitled to benefits under part A as follows:

''(I) The Secretary shall make public and periodically update a list of all the services and technologies for which an application for additional payment under this subparagraph is pending.

''(II) The Secretary shall accept comments, recommendations, and data from the public regarding whether the service or technology represents a substantial improvement.

''(III) The Secretary shall provide for a meeting at which organizations representing hospitals, physicians, such individuals, manufacturers, and any other interested party may present comments, recommendations, and data to the clinical staff of the Centers for Medicare & Medicaid Services before publication of a notice of proposed rulemaking regarding whether service or technology represents a substantial improvement.''.

(c) PREFERENCE FOR USE OF DRG ADJUSTMENT.—Section 1886(d)(5)(K) (42 U.S.C. 1395ww(d)(5)(K)), as amended by subsections (a) and (b), is amended by adding at the end the following new clause:

''(ix) Before establishing any add-on payment under this subparagraph with respect to a new technology, the Secretary shall seek to identify one or more diagnosis-related groups associated with such technology, based on similar clinical or anatomical characteristics and the cost of the technology. Within such groups the Secretary shall assign an eligible new technology into a diagnosis-related group where the average costs of care most closely approximate the costs of care of using the new technology. No add-on payment under this subparagraph shall be made with respect to such new technology and this clause shall not affect the application of paragraph (4)(C)(iii).''.

(d) ESTABLISHMENT OF NEW FUNDING FOR HOSPITAL INPATIENT TECHNOLOGY.—

(1) IN GENERAL.—Section 1886(d)(5)(K)(ii)(III) (42 U.S.C. 1395ww(d)(5)(K)(ii)(III)) is amended by striking ''subject to paragraph (4)(C)(iii),''.

(2) NOT BUDGET NEUTRAL.—There shall be no reduction or other adjustment in payments under section 1886 of the Social Security Act because an additional payment is provided under subsection (d)(5)(K)(ii)(III) of such section.

(e) EFFECTIVE DATE.—

(1) IN GENERAL.—The Secretary shall implement the amendments made by this section so that they apply to classification for fiscal years beginning with fiscal year 2005.

(2) RECONSIDERATIONS OF APPLICATIONS FOR FISCAL YEAR 2004 THAT ARE DENIED.—In the case of an application for a classification of a medical service or technology as a new medical service or technology under section 1886(d)(5)(K) of the Social Security Act (42 U.S.C. 1395ww(d)(5)(K)) that was filed for fiscal year 2004 and that is denied—

(A) the Secretary shall automatically reconsider the application as an application for fiscal year 2005 under the amendments made by this section; and

(B) the maximum time period otherwise permitted for such classification of the service or technology shall be extended by 12 months.

SEC. 204. INCREASE IN FEDERAL RATE FOR HOSPITALS IN PUERTO RICO.

Section 1886(d)(9) (42 U.S.C. 1395ww(d)(9)) is amended—

(1) in subparagraph (A)—

(A) in clause (i), by striking ''for discharges beginning on or after October 1, 1997, 50 percent (and for discharges between October 1, 1987, and September 30, 1997, 75 percent)'' and inserting ''the applicable Puerto Rico percentage (specified in subparagraph (E))''; and

(B) in clause (ii), by striking ''for discharges beginning in a fiscal year beginning on or after October 1, 1997, 50 percent (and for discharges between October 1, 1987, and September 30, 1997, 25 percent)'' and inserting ''the applicable Federal percentage (specified in subparagraph (E))''; and

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

''(E) For purposes of subparagraph (A), for discharges occurring—

''(i) on or after October 1, 1987, and before October 1, 1997, the applicable Puerto Rico percentage is 75 percent and the applicable Federal percentage is 25 percent;

''(ii) on or after October 1, 1997, and before April 1, 2004, the applicable Puerto Rico percentage is 50 percent and the applicable Federal percentage is 50 percent;

''(iii) on or after April 1, 2004, and before October 1, 2004, the applicable Puerto Rico percentage is 37.5 percent and the applicable Federal percentage is 62.5 percent; and

''(iv) on or after October 1, 2004, the applicable Puerto Rico percentage is 25 percent and the applicable Federal percentage is 75 percent.''.

SEC. 205. WAGE INDEX ADJUSTMENT RECLASSIFICATION REFORM.

(a) IN GENERAL.—Section 1886(d) (42 U.S.C. 1395ww(d)), as amended by section 106, is amended by adding at the end the following new paragraph:

''(13)(A) In order to recognize commuting patterns among geographic areas, the Secretary shall establish a process through application or otherwise for an increase of the wage index applied under paragraph (3)(E) for subsection (d) hospitals located in a qualifying county described in subparagraph (B) in the amount computed under subparagraph (D) based on out-migration of hospital employees who reside in that county to any higher wage index area.

''(B) The Secretary shall establish criteria for a qualifying county under this subparagraph based on the out-migration referred to in subparagraph (A) and differences in the area wage indices. Under such criteria the Secretary shall, utilizing such data as the Secretary determines to be appropriate, establish—

''(i) a threshold percentage, established by the Secretary, of the weighted average of the area wage index or indices for the higher wage index areas involved;

''(ii) a threshold (of not less than 10 percent) for minimum out-migration to a higher wage index area or areas; and

''(iii) a requirement that the average hourly wage of the hospitals in the qualifying county equals or exceeds the average hourly wage of all the hospitals in the area in which the qualifying county is located.

''(C) For purposes of this paragraph, the term 'higher wage index area' means, with respect to a county, an area with a wage index that exceeds that of the county.

''(D) The increase in the wage index under subparagraph (A) for a qualifying county shall be equal to the percentage of the hospital employees residing in the qualifying county who are employed in any higher wage index area multiplied by the sum of the products, for each higher wage index area of—

''(i) the difference between—

''(I) the wage index for such higher wage index area, and

''(II) the wage index of the qualifying county; and

''(ii) the number of hospital employees residing in the qualifying county who are employed in such higher wage index area divided by the total number of hospital employees residing in the qualifying county who are employed in any higher wage index area.

''(E) The process under this paragraph may be based upon the process used by the Medicare Geographic Classification Review Board under paragraph (10). As the Secretary determines to be appropriate to carry out such process, the Secretary may require hospitals (including subsection (d) hospitals and other hospitals) and critical access hospitals, as required under section 1866(a)(1)(T), to submit data regarding the location of residence, or the Secretary may use data from other sources.

''(F) A wage index increase under this paragraph shall be effective for a period of 3 fiscal years, except that the Secretary shall establish procedures under which a subsection (d) hospital may elect to waive the application of such wage index increase.

''(G) A hospital in a county that has a wage index increase under this paragraph for a period and that has not waived the application of such an increase under subparagraph (F) is not eligible for reclassification under paragraph (8) or (10) during that period.

''(H) Any increase in a wage index under this paragraph for a county shall not be taken into account for purposes of—

''(i) computing the wage index for portions of the wage index area (not including the county) in which the county is located; or

''(ii) applying any budget neutrality adjustment with respect to such index under paragraph (8)(D).

''(I) The thresholds described in subparagraph (B), data on hospital employees used under this paragraph, and any determination of the Secretary under the process described in subparagraph (E) shall be final and shall not be subject to judicial review.''.

(b) CONFORMING AMENDMENTS.—Section 1866(a)(1) (42 U.S.C. 1395cc(a)(1)) is amended—

(1) in subparagraph (R), by striking ''and'' at the end;

(2) in subparagraph (S), by striking the period at the end and inserting '', and''; and

(3) by inserting after subparagraph (S) the following new subparagraph:

''(T) in the case of hospitals and critical access hospitals, to furnish to the Secretary such data as the Secretary determines appropriate pursuant to subparagraph (E) of section 1886(d)(12) to carry out such section.''.

(c) EFFECTIVE DATE.—The amendments made by this section shall first apply to the wage index for discharges occurring on or after October 1, 2004. In initially implementing such amendments, the Secretary may modify the deadlines otherwise applicable under clauses (ii) and (iii)(I) of section 1886(d)(10)(C) of the Social Security Act (42 U.S.C. 1395ww(d)(10)(C)), for submission of, and actions on, applications relating to changes in hospital geographic reclassification.

SEC. 206. LIMITATION ON CHARGES FOR INPATIENT HOSPITAL CONTRACT HEALTH SERVICES PROVIDED TO INDIANS BY MEDICARE PARTICIPATING HOSPITALS.

(a) IN GENERAL.—Section 1866(a)(1) (42 U.S.C. 1395cc(a)(1)), as amended by section 205(b), is amended—

(1) in subparagraph (S), by striking ''and'' at the end;

(2) in subparagraph (T), by striking the period and inserting '', and''; and

(3) by inserting after subparagraph (T) the following new subparagraph:

''(U) in the case of hospitals which furnish inpatient hospital services for which payment may be made under this title, to be a participating provider of medical care both—

''(i) under the contract health services program funded by the Indian Health Service and operated by the Indian Health Service, an Indian tribe, or tribal organization (as those terms are defined in section 4 of the Indian Health Care Improvement Act), with respect to items and services that are covered under such program and furnished to an individual eligible for such items and services under such program; and

''(ii) under any program funded by the Indian Health Service and operated by an urban Indian organization with respect to the purchase of items and services for an eligible urban Indian (as those terms are defined in such section 4),

in accordance with regulations promulgated by the Secretary regarding admission practices, payment methodology, and rates of payment (including the acceptance of no more than such payment rate as payment in full for such items and services.''.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply as of a date specified by the Secretary of Health and Human Services (but in no case later than 1 year after the date of enactment of this Act) to medicare participation agreements in effect (or entered into) on or after such date.

(c) PROMULGATION OF REGULATIONS.—The Secretary shall promulgate regulations to carry out the amendments made by subsection (a).

SEC. 207. CLARIFICATIONS TO CERTAIN EXCEPTIONS TO MEDICARE LIMITS ON PHYSICIAN REFERRALS.

(a) LIMITS ON PHYSICIAN REFERRALS.—

(1) OWNERSHIP AND INVESTMENT INTERESTS IN WHOLE HOSPITALS.—

(A) IN GENERAL.—Section 1877(d)(3) (42 U.S.C. 1395nn(d)(3)) is amended—

(i) by striking '', and'' at the end of subparagraph (A) and inserting a semicolon; and

(ii) by redesignating subparagraph (B) as subparagraph (C) and inserting after subparagraph (A) the following new subparagraph:

''(B) effective for the 18-month period beginning on the date of the enactment of the Medicare Provider Restoration Act of 2003, the hospital is not a specialty hospital (as defined in subsection (h)(7)); and''.

(B) DEFINITION.—Section 1877(h) (42 U.S.C. 1395nn(h)) is amended by adding at the end the following:

''(7) SPECIALTY HOSPITAL.—

''(A) IN GENERAL.—For purposes of this section, except as provided in subparagraph (B), the term 'specialty hospital' means a subsection (d) hospital (as defined in section 1886(d)(1)(B)) that is primarily or exclusively engaged in the care and treatment of one of the following categories:

''(i) Patients with a cardiac condition.

''(ii) Patients with an orthopedic condition.

''(iii) Patients receiving a surgical procedure.

''(iv) Any other specialized category of services that the Secretary designates as inconsistent with the purpose of permitting physician ownership and investment interests in a hospital under this section.

''(B) EXCEPTION.—For purposes of this section, the term 'specialty hospital' does not include any hospital—

''(i) determined by the Secretary—

''(I) to be in operation before November 18, 2003; or

''(II) under development as of such date;

''(ii) for which the number of physician investors at any time on or after such date is no greater than the number of such investors as of such date;

''(iii) for which the type of categories described in subparagraph (A) at any time on or after such date is no different than the type of such categories as of such date;

''(iv) for which any increase in the number of beds occurs only in the facilities on the main campus of the hospital and does not exceed 50 percent of the number of beds in the hospital as of November 18, 2003, or 5 beds, whichever is greater; and

''(v) that meets such other requirements as the Secretary may specify.''.

(2) OWNERSHIP AND INVESTMENT INTERESTS IN A RURAL PROVIDER.—Section 1877(d)(2) (42 U.S.C. 1395nn(d)(2)) is amended to read as follows:

''(2) RURAL PROVIDERS.—In the case of designated health services furnished in a rural area (as defined in section 1886(d)(2)(D)) by an entity, if—

''(A) substantially all of the designated health services furnished by the entity are furnished to individuals residing in such a rural area; and

''(B) effective for the 18-month period beginning on the date of the enactment of the Medicare Provider Restoration Act of 2003, the entity is not a specialty hospital (as defined in subsection (h)(7)).''.

(b) APPLICATION OF EXCEPTION FOR HOSPITALS UNDER DEVELOPMENT.—For purposes of section 1877(h)(7)(B)(i)(II) of the Social Security Act, as added by subsection (a)(1)(B), in determining whether a hospital is under development as of November 18, 2003, the Secretary shall consider—

(1) whether architectural plans have been completed, funding has been received, zoning requirements have been met, and necessary approvals from appropriate State agencies have been received; and

(2) any other evidence the Secretary determines would indicate whether a hospital is under development as of such date.

(c) STUDIES.—

(1) MEDPAC STUDY.—The Medicare Payment Advisory Commission, in consultation with the Comptroller General of the United States, shall conduct a study to determine—

(A) any differences in the costs of health care services furnished to patients by physician-owned specialty hospitals and the costs of such services furnished by local full-service community hospitals within specific diagnosis-related groups;

(B) the extent to which specialty hospitals, relative to local full-service community hospitals, treat patients in certain diagnosis-related groups within a category, such as cardiology, and an analysis of the selection;

(C) the financial impact of physician-owned specialty hospitals on local full-service community hospitals;

(D) how the current diagnosis-related group system should be updated to better reflect the cost of delivering care in a hospital setting; and

(E) the proportions of payments received, by type of payer, between the specialty hospitals and local full-service community hospitals.

(2) HHS STUDY.—The Secretary shall conduct a study of a representative sample of specialty hospitals—

(A) to determine the percentage of patients admitted to physician-owned specialty hospitals who are referred by physicians with an ownership interest;

(B) to determine the referral patterns of physician owners, including the percentage of patients they referred to physician-owned specialty hospitals and the percentage of patients they referred to local full-service community hospitals for the same condition;

(C) to compare the quality of care furnished in physician-owned specialty hospitals and in local full-service community hospitals for similar conditions and patient satisfaction with such care; and

(D) to assess the differences in uncompensated care, as defined by the Secretary, between the specialty hospital and local full-service community hospitals, and the relative value of any tax exemption available to such hospitals.

(3) REPORTS.—Not later than 15 months after the date of the enactment of this Act, the Commission and the Secretary, respectively, shall each submit to Congress a report on the studies conducted under paragraphs (1) and (2), respectively, and shall include any recommendations for legislation or administrative changes.

SEC. 208. 1-TIME APPEALS PROCESS FOR HOSPITAL WAGE INDEX CLASSIFICATION.

(a) ESTABLISHMENT OF PROCESS.—

(1) IN GENERAL.—The Secretary shall establish not later than January 1, 2004, by instruction or otherwise a process under which a hospital may appeal the wage index classification otherwise applicable to the hospital and select another area within the State (or, at the discretion of the Secretary, within a contiguous State) to which to be reclassified.

(2) PROCESS REQUIREMENTS.—The process established under paragraph (1) shall be consistent with the following:

(A) Such an appeal may be filed as soon as possible after the date of the enactment of this Act but shall be filed by not later than February 15, 2004.

(B) Such an appeal shall be heard by the Medicare Geographic Reclassification Review Board.

(C) There shall be no further administrative or judicial review of a decision of such Board.

(3) RECLASSIFICATION UPON SUCCESSFUL APPEAL.—If the Medicare Geographic Reclassification Review Board determines that the hospital is a qualifying hospital (as defined in subsection (c)), the hospital shall be reclassified to the area selected under paragraph (1). Such reclassification shall apply with respect to discharges occurring during the 3-year period beginning with April 1, 2004.

(4) INAPPLICABILITY OF CERTAIN PROVISIONS.—Except as the Secretary may provide, the provisions of paragraphs (8) and (10) of section 1886(d) of the Social Security Act (42 U.S.C. 1395ww(d)) shall not apply to an appeal under this section.

(b) APPLICATION OF RECLASSIFICATION.—In the case of an appeal decided in favor of a qualifying hospital under subsection (a), the wage index reclassification shall not affect the wage index computation for any area or for any other hospital and shall not be effected in a budget neutral manner. The provisions of this section shall not affect payment for discharges occurring after the end of the 3-year-period referred to in subsection (a).

(c) QUALIFYING HOSPITAL DEFINED.—For purposes of this section, the term ''qualifying hospital'' means a subsection (d) hospital (as defined in section 1886(d)(1)(B) of the Social Security Act, 42 U.S.C. 1395ww(d)(1)(B)) that—

(1) does not qualify for a change in wage index classification under paragraph (8) or (10) of section 1886(d) of the Social Security Act (42 U.S.C. 1395ww(d)) on the basis of requirements relating to distance or commuting; and

(2) meets such other criteria, such as quality, as the Secretary may specify by instruction or otherwise.

The Secretary may modify the wage comparison guidelines promulgated under section 1886(d)(10)(D) of such Act (42 U.S.C. 1395ww(d)(10)(D)) in carrying out this section.

(d) WAGE INDEX CLASSIFICATION.—For purposes of this section, the term ''wage index classification'' means the geographic area in which it is classified for purposes of determining for a fiscal year the factor used to adjust the DRG prospective payment rate under section 1886(d) of the Social Security Act (42 U.S.C. 1395ww(d)) for area differences in hospital wage levels that applies to such hospital under paragraph (3)(E) of such section.

(e) LIMITATION ON EXPENDITURES.—The aggregate amount of additional expenditures resulting from the application of this section shall not exceed $900,000,000.

(f) TRANSITIONAL EXTENSION.—Any reclassification of a county or other area made by Act of Congress for purposes of making payments under section 1886(d) of the Social Security Act (42 U.S.C. 1395ww(d)) that expired on September 30, 2003, shall be deemed to be in effect during the period beginning on January 1, 2004, and ending on September 30, 2004.

Subtitle B—Other Provisions

SEC. 211. PAYMENT FOR COVERED SKILLED NURSING FACILITY SERVICES.

(a) ADJUSTMENT TO RUGS FOR AIDS RESIDENTS.—Paragraph (12) of section 1888(e) (42 U.S.C. 1395yy(e)) is amended to read as follows:

''(12) ADJUSTMENT FOR RESIDENTS WITH AIDS.—

''(A) IN GENERAL.—Subject to subparagraph (B), in the case of a resident of a skilled nursing facility who is afflicted with acquired immune deficiency syndrome (AIDS), the per diem amount of payment otherwise applicable (determined without regard to any increase under section 101 of the Medicare, Medicaid, and SCHIP Balanced Budget Refinement Act of 1999, or under section 314(a) of Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000), shall be increased by 128 percent to reflect increased costs associated with such residents.

''(B) SUNSET.—Subparagraph (A) shall not apply on and after such date as the Secretary certifies that there is an appropriate adjustment in the case mix under paragraph (4)(G)(i) to compensate for the increased costs associated with residents described in such subparagraph.''.

(b) EFFECTIVE DATE.—The amendment made by paragraph (1) shall apply to services furnished on or after October 1, 2004.

SEC. 212. COVERAGE OF HOSPICE CONSULTATION SERVICES.

(a) COVERAGE OF HOSPICE CONSULTATION SERVICES.—Section 1812(a) (42 U.S.C. 1395d(a)) is amended—

(1) by striking ''and'' at the end of paragraph (3);

(2) by striking the period at the end of paragraph (4) and inserting ''; and''; and

(3) by inserting after paragraph (4) the following new paragraph:

''(5) for individuals who are terminally ill, have not made an election under subsection (d)(1), and have not previously received services under this paragraph, services that are furnished by a physician (as defined in section 1861(r)(1)) who is either the medical director or an employee of a hospice program and that—

''(A) consist of—

''(i) an evaluation of the individual's need for pain and symptom management, including the individual's need for hospice care; and

''(ii) counseling the individual with respect to hospice care and other care options; and

''(B) may include advising the individual regarding advanced care planning.''.

(b) PAYMENT.—Section 1814(i) (42 U.S.C. 1395f(i)) is amended by adding at the end the following new paragraph:

''(4) The amount paid to a hospice program with respect to the services under section 1812(a)(5) for which payment may be made under this part shall be equal to an amount established for an office or other outpatient visit for evaluation and management associated with presenting problems of moderate severity and requiring medical decision-making of low complexity under the fee schedule established under section 1848(b), other than the portion of such amount attributable to the practice expense component.''.

(c) CONFORMING AMENDMENT.—Section 1861(dd)(2)(A)(i) (42 U.S.C. 1395x(dd)(2)(A)(i)) is amended by inserting before the comma at the end the following: ''and services described in section 1812(a)(5)''.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to services provided by a hospice program on or after January 1, 2005.

SEC. 213. STUDY ON PORTABLE DIAGNOSTIC ULTRASOUND SERVICES FOR BENEFICIARIES IN SKILLED NURSING FACILITIES.

(a) STUDY.—The Comptroller General of the United States shall conduct a study of portable diagnostic ultrasound services furnished to medicare beneficiaries in skilled nursing facilities. Such study shall consider the following:

(1) TYPES OF EQUIPMENT; TRAINING.—The types of portable diagnostic ultrasound services furnished to such beneficiaries, the types of portable ultrasound equipment used to furnish such services, and the technical skills, or training, or both, required for technicians to furnish such services.

(2) CLINICAL APPROPRIATENESS.—The clinical appropriateness of transporting portable diagnostic ultrasound diagnostic and technicians to patients in skilled nursing facilities as opposed to transporting such patients to a hospital or other facility that furnishes diagnostic ultrasound services.

(3) FINANCIAL IMPACT.—The financial impact if Medicare were make a separate payment for portable ultrasound diagnostic services, including the impact of separate payments—

(A) for transportation and technician services for residents during a resident in a part A stay, that would otherwise be paid for under the prospective payment system for covered skilled nursing facility services (under section 1888(e) of the Social Security Act (42 U.S.C. 1395yy(e)); and

(B) for such services for residents in a skilled nursing facility after a part A stay.

(4) CREDENTIALING REQUIREMENTS.—Whether the Secretary should establish credentialing or other requirements for technicians that furnish diagnostic ultrasound services to medicare beneficiaries.

(b) REPORT.—Not later than 2 years after the date of the enactment of this Act, the Comptroller General shall submit to Congress a report on the study conducted under subsection (a), and shall include any recommendations for legislation or administrative change as the Comptroller General determines appropriate.

TITLE III—PROVISIONS RELATING TO PART B

Subtitle A—Provisions Relating to Physicians' Services

SEC. 301. REVISION OF UPDATES FOR PHYSICIANS' SERVICES.

(a) UPDATE FOR 2004 AND 2005.—

(1) IN GENERAL.—Section 1848(d) (42 U.S.C. 1395w–4(d)) is amended by adding at the end the following new paragraph:

''(5) UPDATE FOR 2004 AND 2005.—The update to the single conversion factor established in paragraph (1)(C) for each of 2004 and 2005 shall be not less than 1.5 percent.''.

(2) CONFORMING AMENDMENT.—Paragraph (4)(B) of such section is amended, in the matter before clause (i), by inserting ''and paragraph (5)'' after ''subparagraph (D)''.

(3) NOT TREATED AS CHANGE IN LAW AND REGULATION IN SUSTAINABLE GROWTH RATE DETERMINATION.—The amendments made by this subsection shall not be treated as a change in law for purposes of applying section 1848(f)(2)(D) of the Social Security Act (42 U.S.C. 1395w–4(f)(2)(D)).

(b) USE OF 10-YEAR ROLLING AVERAGE IN COMPUTING GROSS DOMESTIC PRODUCT.—

(1) IN GENERAL.—Section 1848(f)(2)(C) (42 U.S.C. 1395w–4(f)(2)(C)) is amended—

(A) by striking ''projected'' and inserting ''annual average''; and

(B) by striking ''from the previous applicable period to the applicable period involved'' and inserting ''during the 10-year period ending with the applicable period involved''.

(2) EFFECTIVE DATE.—The amendments made by paragraph (1) shall apply to computations of the sustainable growth rate for years beginning with 2003.

SEC. 302. TREATMENT OF PHYSICIANS' SERVICES FURNISHED IN ALASKA.

Section 1848(e)(1) (42 U.S.C. 1395w–4(e)(1)), as amended by section 121, is amended—

(1) in subparagraph (A), by striking ''subparagraphs (B), (C), (E), and (F)'' and inserting ''subparagraphs (B), (C), (E), (F) and (G)''; and

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

''(G) FLOOR FOR PRACTICE EXPENSE, MALPRACTICE, AND WORK GEOGRAPHIC INDICES FOR SERVICES FURNISHED IN ALASKA.—For purposes of payment for services furnished in Alaska on or after January 1, 2004, and before

January 1, 2006, after calculating the practice expense, malpractice, and work geographic indices in clauses (i), (ii), and (iii) of subparagraph (A) and in subparagraph (B), the Secretary shall increase any such index to 1.67 if such index would otherwise be less than 1.67.''.

SEC. 303. INCLUSION OF PODIATRISTS, DENTISTS, AND OPTOMETRISTS UNDER PRIVATE CONTRACTING AUTHORITY.

Section 1802(b)(5)(B) (42 U.S.C. 1395a(b)(5)(B)) is amended by striking ''section 1861(r)(1)'' and inserting ''paragraphs (1), (2), (3), and (4) of section 1861(r)''.

SEC. 304. GAO STUDY ON ACCESS TO PHYSICIANS' SERVICES.

(a) STUDY.—The Comptroller General of the United States shall conduct a study on access of medicare beneficiaries to physicians' services under the medicare program. The study shall include—

(1) an assessment of the use by beneficiaries of such services through an analysis of claims submitted by physicians for such services under part B of the medicare program;

(2) an examination of changes in the use by beneficiaries of physicians' services over time; and

(3) an examination of the extent to which physicians are not accepting new medicare beneficiaries as patients.

(b) REPORT.—Not later than 18 months after the date of the enactment of this Act, the Comptroller General shall submit to Congress a report on the study conducted under subsection (a). The report shall include a determination whether—

(1) data from claims submitted by physicians under part B of the medicare program indicate potential access problems for medicare beneficiaries in certain geographic areas; and

(2) access by medicare beneficiaries to physicians' services may have improved, remained constant, or deteriorated over time.

SEC. 305. COLLABORATIVE DEMONSTRATION-BASED REVIEW OF PHYSICIAN PRACTICE EXPENSE GEOGRAPHIC ADJUSTMENT DATA.

(a) IN GENERAL.—Not later than January 1, 2005, the Secretary shall, in collaboration with State and other appropriate organizations representing physicians, and other appropriate persons, review and consider alternative data sources than those currently used in establishing the geographic index for the practice expense component under the medicare physician fee schedule under section 1848(e)(1)(A)(i) of the Social Security Act (42 U.S.C. 1395w–4(e)(1)(A)(i)).

(b) SITES.—The Secretary shall select two physician payment localities in which to carry out subsection (a). One locality shall include rural areas and at least one locality shall be a statewide locality that includes both urban and rural areas.

(c) REPORT AND RECOMMENDATIONS.—

(1) REPORT.—Not later than January 1, 2006, the Secretary shall submit to Congress a report on the review and consideration conducted under subsection (a). Such report shall include information on the alternative developed data sources considered by the Secretary under subsection (a), including the accuracy and validity of the data as measures of the elements of the geographic index for practice expenses under the medicare physician fee schedule as well as the feasibility of using such alternative data nationwide in lieu of current proxy data used in such index, and the estimated impacts of using such alternative data.

(2) RECOMMENDATIONS.—The report submitted under paragraph (1) shall contain recommendations on which data sources reviewed and considered under subsection (a) are appropriate for use in calculating the geographic index for practice expenses under the medicare physician fee schedule.

SEC. 306. MEDPAC REPORT ON PAYMENT FOR PHYSICIANS' SERVICES.

(a) PRACTICE EXPENSE COMPONENT.—Not later than 1 year after the date of the enactment of this Act, the Medicare Payment Advisory Commission shall submit to Congress a report on the effect of refinements to the practice expense component of payments for physicians' services, after the transition to a full resource-based payment system in 2002, under section 1848 of the Social Security Act (42 U.S.C. 1395w–4). Such report shall examine the following matters by physician specialty:

(1) The effect of such refinements on payment for physicians' services.

(2) The interaction of the practice expense component with other components of and adjustments to payment for physicians' services under such section.

(3) The appropriateness of the amount of compensation by reason of such refinements.

(4) The effect of such refinements on access to care by medicare beneficiaries to physicians' services.

(5) The effect of such refinements on physician participation under the medicare program.

(b) VOLUME OF PHYSICIANS' SERVICES.—Not later than 1 year after the date of the enactment of this Act, the Medicare Payment Advisory Commission shall submit to Congress a report on the extent to which increases in the volume of physicians' services under part B of the medicare program are a result of care that improves the health and well-being of medicare beneficiaries. The study shall include the following:

(1) An analysis of recent and historic growth in the components that the Secretary includes under the sustainable growth rate (under section 1848(f) of the Social Security Act (42 U.S.C. 1395w–4(f))).

(2) An examination of the relative growth of volume in physicians' services between medicare beneficiaries and other populations.

(3) An analysis of the degree to which new technology, including coverage determinations of the Centers for Medicare & Medicaid Services, has affected the volume of physicians' services.

(4) An examination of the impact on volume of demographic changes.

(5) An examination of shifts in the site of service or services that influence the number and intensity of services furnished in physicians' offices and the extent to which changes in reimbursement rates to other providers have effected these changes.

(6) An evaluation of the extent to which the Centers for Medicare & Medicaid Services takes into account the impact of law and regulations on the sustainable growth rate.

Subtitle B—Preventive Services

SEC. 311. COVERAGE OF AN INITIAL PREVENTIVE PHYSICAL EXAMINATION.

(a) COVERAGE.—Section 1861(s)(2) (42 U.S.C. 1395x(s)(2)) is amended—

(1) in subparagraph (U), by striking ''and'' at the end;

(2) in subparagraph (V)(iii), by inserting ''and'' at the end; and

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

''(W) an initial preventive physical examination (as defined in subsection (ww));''.

(b) SERVICES DESCRIBED.—Section 1861 (42 U.S.C. 1395x) is amended by adding at the end the following new subsection:

''Initial Preventive Physical Examination

''(ww)(1) The term 'initial preventive physical examination' means physicians' services consisting of a physical examination (including measurement of height, weight, and blood pressure, and an electrocardiogram) with the goal of health promotion and disease detection and includes education, counseling, and referral with respect to screening and other preventive services described in paragraph (2), but does not include clinical laboratory tests.

''(2) The screening and other preventive services described in this paragraph include the following:

''(A) Pneumococcal, influenza, and hepatitis B vaccine and administration under subsection (s)(10).

''(B) Screening mammography as defined in subsection (jj).

''(C) Screening pap smear and screening pelvic exam as defined in subsection (nn).

''(D) Prostate cancer screening tests as defined in subsection (oo).

''(E) Colorectal cancer screening tests as defined in subsection (pp).

''(F) Diabetes outpatient self-management training services as defined in subsection (qq)(1).

''(G) Bone mass measurement as defined in subsection (rr).

''(H) Screening for glaucoma as defined in subsection (uu).

''(I) Medical nutrition therapy services as defined in subsection (vv).

''(J) Cardiovascular screening blood tests as defined in subsection (xx)(1).

''(K) Diabetes screening tests as defined in subsection (yy).''.

(c) PAYMENT AS PHYSICIANS' SERVICES.—Section 1848(j)(3) (42 U.S.C. 1395w–4(j)(3)) is amended by inserting ''(2)(W),'' after ''(2)(S),''.

(d) OTHER CONFORMING AMENDMENTS.—(1) Section 1862(a) (42 U.S.C. 1395y(a)), as amended by section 303(i)(3)(B), is amended—

(A) in paragraph (1)—

(i) by striking ''and'' at the end of subparagraph (I);

(ii) by striking the semicolon at the end of subparagraph (J) and inserting '', and''; and

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

''(K) in the case of an initial preventive physical examination, which is performed not later than 6 months after the date the individual's first coverage period begins under part B;''; a

(B) in paragraph (7), by striking ''or (H)'' and inserting ''(H), or (K)''.

(2) Clauses (i) and (ii) of section 1861(s)(2)(K) (42 U.S.C. 1395x(s)(2)(K)) are each amended by inserting ''and services described in subsection (ww)(1)'' after ''services which would be physicians' services''.

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to services furnished on or after January 1, 2005, but only for individuals whose coverage period under part B begins on or after such date.

SEC. 312. COVERAGE OF CARDIOVASCULAR SCREENING BLOOD TESTS.

(a) COVERAGE.—Section 1861(s)(2) (42 U.S.C. 1395x(s)(2)), as amended by section 311(a), is amended—

(1) in subparagraph (V)(iii), by striking ''and'' at the end;

(2) in subparagraph (W), by inserting ''and'' at the end; and

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

''(X) cardiovascular screening blood tests (as defined in subsection (xx)(1));''.

(b) SERVICES DESCRIBED.—Section 1861 (42 U.S.C. 1395x) is amended by adding at the end the following new subsection:

''Cardiovascular Screening Blood Test

''(xx)(1) The term 'cardiovascular screening blood test' means a blood test for the early detection of cardiovascular disease (or abnormalities associated with an elevated

risk of cardiovascular disease) that tests for the following:

''(A) Cholesterol levels and other lipid or triglyceride levels.

''(B) Such other indications associated with the presence of, or an elevated risk for, cardiovascular disease as the Secretary may approve for all individuals (or for some individuals determined by the Secretary to be at risk for cardiovascular disease), including indications measured by noninvasive testing.

The Secretary may not approve an indication under subparagraph (B) for any individual unless a blood test for such is recommended by the United States Preventive Services Task Force.

''(2) The Secretary shall establish standards, in consultation with appropriate organizations, regarding the frequency for each type of cardiovascular screening blood tests, except that such frequency may not be more often than once every 2 years.''.

(c) FREQUENCY.—Section 1862(a)(1) (42 U.S.C. 1395y(a)(1)), as amended by section 311(d), is amended—

(1) by striking ''and'' at the end of subparagraph (K);

(2) by striking the semicolon at the end of subparagraph (L) and inserting '', and''; and

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

''(M) in the case of cardiovascular screening blood tests (as defined in section 1861(xx)(1)), which are performed more frequently than is covered under section 1861(xx)(2);''.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to tests furnished on or after January 1, 2005.

SEC. 313. COVERAGE OF DIABETES SCREENING TESTS.

(a) COVERAGE.—Section 1861(s)(2) (42 U.S.C. 1395x(s)(2)), as amended by section 312(a), is amended—

(1) in subparagraph (W), by striking ''and'' at the end;

(2) in subparagraph (X), by adding ''and'' at the end; and

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

''(Y) diabetes screening tests (as defined in subsection (yy));''.

(b) SERVICES DESCRIBED.—Section 1861 (42 U.S.C. 1395x), as amended by section 312(b), is amended by adding at the end the following new subsection:

''Diabetes Screening Tests

''(yy)(1) The term 'diabetes screening tests' means testing furnished to an individual at risk for diabetes (as defined in paragraph (2)) for the purpose of early detection of diabetes, including—

''(A) a fasting plasma glucose test; and

''(B) such other tests, and modifications to tests, as the Secretary determines appropriate, in consultation with appropriate organizations.

''(2) For purposes of paragraph (1), the term 'individual at risk for diabetes' means an individual who has any of the following risk factors for diabetes:

''(A) Hypertension.

''(B) Dyslipidemia.

''(C) Obesity, defined as a body mass index greater than or equal to 30 kg/m^2.

''(D) Previous identification of an elevated impaired fasting glucose.

''(E) Previous identification of impaired glucose tolerance.

''(F) A risk factor consisting of at least 2 of the following characteristics:

''(i) Overweight, defined as a body mass index greater than 25, but less than 30, kg/m^2.

''(ii) A family history of diabetes.

''(iii) A history of gestational diabetes mellitus or delivery of a baby weighing greater than 9 pounds.

''(iv) 65 years of age or older.

''(3) The Secretary shall establish standards, in consultation with appropriate organizations, regarding the frequency of diabetes screening tests, except that such frequency may not be more often than twice within the 12-month period following the date of the most recent diabetes screening test of that individual.''.

(c) FREQUENCY.—Section 1862(a)(1) (42 U.S.C. 1395y(a)(1)), as amended by section 312(c), is amended—

(1) by striking ''and'' at the end of subparagraph (L);

(2) by striking the semicolon at the end of subparagraph (M) and inserting '', and''; and

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

''(N) in the case of a diabetes screening test (as defined in section 1861(yy)(1)), which is performed more frequently than is covered under section 1861(yy)(3);''.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to tests furnished on or after January 1, 2005.

SEC. 314. IMPROVED PAYMENT FOR CERTAIN MAMMOGRAPHY SERVICES.

(a) EXCLUSION FROM OPD FEE SCHEDULE.—Section 1833(t)(1)(B)(iv) (42 U.S.C. 1395l(t)(1)(B)(iv)) is amended by inserting before the period at the end the following: ''and does not include screening mammography (as defined in section 1861(jj)) and diagnostic mammography''.

(b) CONFORMING AMENDMENT.—Section 1833(a)(2)(E)(i) (42 U.S.C. 1395l(a)(2)(E)(i)) is amended by inserting ''and, for services furnished on or after January 1, 2005, diagnostic mammography'' after ''screening mammography''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply—

(1) in the case of screening mammography, to services furnished on or after the date of the enactment of this Act; and

(2) in the case of diagnostic mammography, to services furnished on or after January 1, 2005.

Subtitle C—Other Provisions

SEC. 321. HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT REFORM.

(a) PAYMENT FOR DRUGS.—

(1) SPECIAL RULES FOR CERTAIN DRUGS AND BIOLOGICALS.—Section 1833(t) (42 U.S.C. 1395l(t)), as amended by section 111(b), is amended by inserting after paragraph (13) the following new paragraphs:

''(14) DRUG APC PAYMENT RATES.—

''(A) IN GENERAL.—The amount of payment under this subsection for a specified covered outpatient drug (defined in subparagraph (B)) that is furnished as part of a covered OPD service (or group of services)—

''(i) in 2004, in the case of—

''(I) a sole source drug shall in no case be less than 88 percent, or exceed 95 percent, of the reference average wholesale price for the drug;

''(II) an innovator multiple source drug shall in no case exceed 68 percent of the reference average wholesale price for the drug; or

''(III) a noninnovator multiple source drug shall in no case exceed 46 percent of the reference average wholesale price for the drug;

''(ii) in 2005, in the case of—

''(I) a sole source drug shall in no case be less than 83 percent, or exceed 95 percent, of the reference average wholesale price for the drug;

''(II) an innovator multiple source drug shall in no case exceed 68 percent of the reference average wholesale price for the drug; or

''(III) a noninnovator multiple source drug shall in no case exceed 46 percent of the reference average wholesale price for the drug; or

''(iii) in a subsequent year, shall be equal, subject to subparagraph (E)—

''(I) to the average acquisition cost for the drug for that year (which, at the option of the Secretary, may vary by hospital group (as defined by the Secretary based on volume of covered OPD services or other relevant characteristics)), as determined by the Secretary taking into account the hospital acquisition cost survey data under subparagraph (D); or

''(II) if hospital acquisition cost data are not available, the average price for the drug in the year established under section 1842(o), section 1847A, or section 1847B, as the case may be, as calculated and adjusted by the Secretary as necessary for purposes of this paragraph.

''(B) SPECIFIED COVERED OUTPATIENT DRUG DEFINED.—

''(i) IN GENERAL.—In this paragraph, the term 'specified covered outpatient drug' means, subject to clause (ii), a covered outpatient drug (as defined in section 1927(k)(2)) for which a separate ambulatory payment classification group (APC) has been established and that is—

''(I) a radiopharmaceutical; or

''(II) a drug or biological for which payment was made under paragraph (6) (relating to pass-through payments) on or before December 31, 2002.

''(ii) EXCEPTION.—Such term does not include—

''(I) a drug or biological for which payment is first made on or after January 1, 2003, under paragraph (6);

''(II) a drug or biological for which a temporary HCPCS code has not been assigned; or

''(III) during 2004 and 2005, an orphan drug (as designated by the Secretary).

''(C) PAYMENT FOR DESIGNATED ORPHAN DRUGS DURING 2004 AND 2005.—The amount of payment under this subsection for an orphan drug designated by the Secretary under subparagraph (B)(ii)(III) that is furnished as part of a covered OPD service (or group of services) during 2004 and 2005 shall equal such amount as the Secretary may specify.

''(D) ACQUISITION COST SURVEY FOR HOSPITAL OUTPATIENT DRUGS.—

''(i) ANNUAL GAO SURVEYS IN 2004 AND 2005.—

''(I) IN GENERAL.—The Comptroller General of the United States shall conduct a survey in each of 2004 and 2005 to determine the hospital acquisition cost for each specified covered outpatient drug. Not later than April 1, 2005, the Comptroller General shall furnish data from such surveys to the Secretary for use in setting the payment rates under subparagraph (A) for 2006.

''(II) RECOMMENDATIONS.—Upon the completion of such surveys, the Comptroller General shall recommend to the Secretary the frequency and methodology of subsequent surveys to be conducted by the Secretary under clause (ii).

''(ii) SUBSEQUENT SECRETARIAL SURVEYS.—The Secretary, taking into account such recommendations, shall conduct periodic subsequent surveys to determine the hospital acquisition cost for each specified covered outpatient drug for use in setting the payment rates under subparagraph (A).

''(iii) SURVEY REQUIREMENTS.—The surveys conducted under clauses (i) and (ii) shall have a large sample of hospitals that is sufficient to generate a statistically significant estimate of the average hospital acquisition cost for each specified covered outpatient drug. With respect to the surveys conducted under clause (i), the Comptroller General shall report to Congress on the justification for the size of the sample used in order to assure the validity of such estimates.

''(iv) DIFFERENTIATION IN COST.—In conducting surveys under clause (i), the Comptroller General shall determine and report to

Congress if there is (and the extent of any) variation in hospital acquisition costs for drugs among hospitals based on the volume of covered OPD services performed by such hospitals or other relevant characteristics of such hospitals (as defined by the Comptroller General).

''(v) COMMENT ON PROPOSED RATES.—Not later than 30 days after the date the Secretary promulgated proposed rules setting forth the payment rates under subparagraph (A) for 2006, the Comptroller General shall evaluate such proposed rates and submit to Congress a report regarding the appropriateness of such rates based on the surveys the Comptroller General has conducted under clause (i).

''(E) ADJUSTMENT IN PAYMENT RATES FOR OVERHEAD COSTS.—

''(i) MEDPAC REPORT ON DRUG APC DESIGN.—The Medicare Payment Advisory Commission shall submit to the Secretary, not later than July 1, 2005, a report on adjustment of payment for ambulatory payment classifications for specified covered outpatient drugs to take into account overhead and related expenses, such as pharmacy services and handling costs. Such report shall include—

''(I) a description and analysis of the data available with regard to such expenses;

''(II) a recommendation as to whether such a payment adjustment should be made; and

''(III) if such adjustment should be made, a recommendation regarding the methodology for making such an adjustment.

''(ii) ADJUSTMENT AUTHORIZED.—The Secretary may adjust the weights for ambulatory payment classifications for specified covered outpatient drugs to take into account the recommendations contained in the report submitted under clause (i).

''(F) CLASSES OF DRUGS.—For purposes of this paragraph:

''(i) SOLE SOURCE DRUGS.—The term 'sole source drug' means—

''(I) a biological product (as defined under section 1861(t)(1)); or

''(II) a single source drug (as defined in section 1927(k)(7)(A)(iv)).

''(ii) INNOVATOR MULTIPLE SOURCE DRUGS.—The term 'innovator multiple source drug' has the meaning given such term in section 1927(k)(7)(A)(ii).

''(iii) NONINNOVATOR MULTIPLE SOURCE DRUGS.—The term 'noninnovator multiple source drug' has the meaning given such term in section 1927(k)(7)(A)(iii).

''(G) REFERENCE AVERAGE WHOLESALE PRICE.—The term 'reference average wholesale price' means, with respect to a specified covered outpatient drug, the average wholesale price for the drug as determined under section 1842(o) as of May 1, 2003.

''(H) INAPPLICABILITY OF EXPENDITURES IN DETERMINING CONVERSION, WEIGHTING, AND OTHER ADJUSTMENT FACTORS.—Additional expenditures resulting from this paragraph shall not be taken into account in establishing the conversion, weighting, and other adjustment factors for 2004 and 2005 under paragraph (9), but shall be taken into account for subsequent years.

''(15) PAYMENT FOR NEW DRUGS AND BIOLOGICALS UNTIL HCPCS CODE ASSIGNED.—With respect to payment under this part for an outpatient drug or biological that is covered under this part and is furnished as part of covered OPD services for which a HCPCS code has not been assigned, the amount provided for payment for such drug or biological under this part shall be equal to 95 percent of the average wholesale price for the drug or biological.''.

(2) REDUCTION IN THRESHOLD FOR SEPARATE APCS FOR DRUGS.—Section 1833(t)(16), as redesignated section 111(b), is amended by adding at the end the following new subparagraph:

''(B) THRESHOLD FOR ESTABLISHMENT OF SEPARATE APCS FOR DRUGS.—The Secretary shall reduce the threshold for the establishment of separate ambulatory payment classification groups (APCs) with respect to drugs or biologicals to $50 per administration for drugs and biologicals furnished in 2005 and 2006.''.

(3) EXCLUSION OF SEPARATE DRUG APCS FROM OUTLIER PAYMENTS.—Section 1833(t)(5) is amended by adding at the end the following new subparagraph:

''(E) EXCLUSION OF SEPARATE DRUG AND BIOLOGICAL APCS FROM OUTLIER PAYMENTS.—No additional payment shall be made under subparagraph (A) in the case of ambulatory payment classification groups established separately for drugs or biologicals.''.

(4) PAYMENT FOR PASS THROUGH DRUGS.—Section 1833(t)(6)(D)(i) (42 U.S.C. 1395l(t)(6)(D)(i)) is amended by inserting after ''under section 1842(o)'' the following: ''(or if the drug or biological is covered under a competitive acquisition contract under section 1847B, an amount determined by the Secretary equal to the average price for the drug or biological for all competitive acquisition areas and year established under such section as calculated and adjusted by the Secretary for purposes of this paragraph)''.

(5) CONFORMING AMENDMENT TO BUDGET NEUTRALITY REQUIREMENT.—Section 1833(t)(9)(B) (42 U.S.C. 1395l(t)(9)(B)) is amended by adding at the end the following: ''In determining adjustments under the preceding sentence for 2004 and 2005, the Secretary shall not take into account under this subparagraph or paragraph (2)(E) any expenditures that would not have been made but for the application of paragraph (14).''.

(6) EFFECTIVE DATE.—The amendments made by this subsection shall apply to items and services furnished on or after January 1, 2004.

(b) SPECIAL PAYMENT FOR BRACHYTHERAPY.—

(1) IN GENERAL.—Section 1833(t)(16), as redesignated by section 111(b) and as amended by subsection (a)(2), is amended by adding at the end the following new subparagraph:

''(C) PAYMENT FOR DEVICES OF BRACHYTHERAPY AT CHARGES ADJUSTED TO COST.—Notwithstanding the preceding provisions of this subsection, for a device of brachytherapy consisting of a seed or seeds (or radioactive source) furnished on or after January 1, 2004, and before January 1, 2007, the payment basis for the device under this subsection shall be equal to the hospital's charges for each device furnished, adjusted to cost. Charges for such devices shall not be included in determining any outlier payment under this subsection.''.

(2) SPECIFICATION OF GROUPS FOR BRACHYTHERAPY DEVICES.—Section 1833(t)(2) (42 U.S.C. 1395l(t)(2)) is amended—

(A) in subparagraph (F), by striking ''and'' at the end;

(B) in subparagraph (G), by striking the period at the end and inserting ''; and''; and

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

''(H) with respect to devices of brachytherapy consisting of a seed or seeds (or radioactive source), the Secretary shall create additional groups of covered OPD services that classify such devices separately from the other services (or group of services) paid for under this subsection in a manner reflecting the number, isotope, and radioactive intensity of such devices furnished, including separate groups for palladium-103 and iodine-125 devices.''.

(3) GAO REPORT.—The Comptroller General of the United States shall conduct a study to determine appropriate payment amounts under section 1833(t)(16)(C) of the Social Security Act, as added by paragraph (1), for devices of brachytherapy. Not later than January 1, 2005, the Comptroller General shall submit to Congress and the Secretary a report on the study conducted under this paragraph, and shall include specific recommendations for appropriate payments for such devices.

SEC. 322. LIMITATION OF APPLICATION OF FUNCTIONAL EQUIVALENCE STANDARD.

Section 1833(t)(6) (42 U.S.C. 1395l(t)(6)) is amended by adding at the end the following new subparagraph:

''(F) LIMITATION OF APPLICATION OF FUNCTIONAL EQUIVALENCE STANDARD.—

''(i) IN GENERAL.—The Secretary may not publish regulations that apply a functional equivalence standard to a drug or biological under this paragraph.

''(ii) APPLICATION.—Clause (i) shall apply to the application of a functional equivalence standard to a drug or biological on or after the date of enactment of the Medicare Provider Restoration Act of 2003 unless—

''(I) such application was being made to such drug or biological prior to such date of enactment; and

''(II) the Secretary applies such standard to such drug or biological only for the purpose of determining eligibility of such drug or biological for additional payments under this paragraph and not for the purpose of any other payments under this title.

''(iii) RULE OF CONSTRUCTION.—Nothing in this subparagraph shall be construed to effect the Secretary's authority to deem a particular drug to be identical to another drug if the 2 products are pharmaceutically equivalent and bioequivalent, as determined by the Commissioner of Food and Drugs.''.

SEC. 323. PAYMENT FOR RENAL DIALYSIS SERVICES.

(a) INCREASE IN RENAL DIALYSIS COMPOSITE RATE FOR SERVICES FURNISHED.—The last sentence of section 1881(b)(7) (42 U.S.C. 1395rr(b)(7)) is amended—

(1) by striking ''and'' before ''for such services'' the second place it appears;

(2) by inserting ''and before January 1, 2005,'' after ''January 1, 2001,''; and

(3) by inserting before the period at the end the following: '', and for such services furnished on or after January 1, 2005, by 1.6 percent above such composite rate payment amounts for such services furnished on December 31, 2004''.

(b) RESTORING COMPOSITE RATE EXCEPTIONS FOR PEDIATRIC FACILITIES.—

(1) IN GENERAL.—Section 422(a)(2) of BIPA is amended—

(A) in subparagraph (A), by striking ''and (C)'' and inserting '', (C), and (D)'';

(B) in subparagraph (B), by striking ''In the case'' and inserting ''Subject to subparagraph (D), in the case''; and

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

''(D) INAPPLICABILITY TO PEDIATRIC FACILITIES.—Subparagraphs (A) and (B) shall not apply, as of October 1, 2002, to pediatric facilities that do not have an exception rate described in subparagraph (C) in effect on such date. For purposes of this subparagraph, the term 'pediatric facility' means a renal facility at least 50 percent of whose patients are individuals under 18 years of age.''.

(2) CONFORMING AMENDMENT.—The fourth sentence of section 1881(b)(7) (42 U.S.C. 1395rr(b)(7)) is amended by striking ''The Secretary'' and inserting ''Subject to section 422(a)(2) of the Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000, the Secretary''.

(c) INSPECTOR GENERAL STUDIES ON ESRD DRUGS.—

(1) IN GENERAL.—The Inspector General of the Department of Health and Human Services shall conduct two studies with respect

to drugs and biologicals (including erythropoietin) furnished to end-stage renal disease patients under the medicare program which are separately billed by end stage renal disease facilities.

(2) STUDIES ON ESRD DRUGS.—

(A) EXISTING DRUGS.—The first study under paragraph (1) shall be conducted with respect to such drugs and biologicals for which a billing code exists prior to January 1, 2004.

(B) NEW DRUGS.—The second study under paragraph (1) shall be conducted with respect to such drugs and biologicals for which a billing code does not exist prior to January 1, 2004.

(3) MATTERS STUDIED.—Under each study conducted under paragraph (1), the Inspector General shall—

(A) determine the difference between the amount of payment made to end stage renal disease facilities under title XVIII of the Social Security Act for such drugs and biologicals and the acquisition costs of such facilities for such drugs and biologicals and which are separately billed by end stage renal disease facilities, and

(B) estimate the rates of growth of expenditures for such drugs and biologicals billed by such facilities.

(4) REPORTS.—

(A) EXISTING ESRD DRUGS.—Not later than April 1, 2004, the Inspector General shall report to the Secretary on the study described in paragraph (2)(A).

(B) NEW ESRD DRUGS.—Not later than April 1, 2006, the Inspector General shall report to the Secretary on the study described in paragraph (2)(B).

(d) BASIC CASE-MIX ADJUSTED COMPOSITE RATE FOR RENAL DIALYSIS FACILITY SERVICES.—(1) Section 1881(b) (42 U.S.C. 1395rr(b)) is amended by adding at the end the following new paragraphs:

''(12)(A) In lieu of payment under paragraph (7) beginning with services furnished on January 1, 2005, the Secretary shall establish a basic case-mix adjusted prospective payment system for dialysis services furnished by providers of services and renal dialysis facilities in a year to individuals in a facility and to such individuals at home. The case-mix under such system shall be for a limited number of patient characteristics.

''(B) The system described in subparagraph (A) shall include—

''(i) the services comprising the composite rate established under paragraph (7); and

''(ii) the difference between payment amounts under this title for separately billed drugs and biologicals (including erythropoietin) and acquisition costs of such drugs and biologicals, as determined by the Inspector General reports to the Secretary as required by section 323(c) of the Medicare Provider Restoration Act of 2003—

''(I) beginning with 2005, for such drugs and biologicals for which a billing code exists prior to January 1, 2004; and

''(II) beginning with 2007, for such drugs and biologicals for which a billing code does not exist prior to January 1, 2004,

adjusted to 2005, or 2007, respectively, as determined to be appropriate by the Secretary.

''(C)(i) In applying subparagraph (B)(ii) for 2005, such payment amounts under this title shall be determined using the methodology specified in paragraph (13)(A)(i).

''(ii) For 2006, the Secretary shall provide for an adjustment to the payments under clause (i) to reflect the difference between the payment amounts using the methodology under paragraph (13)(A)(i) and the payment amount determined using the methodology applied by the Secretary under paragraph (13)(A)(iii) of such paragraph, as estimated by the Secretary.

''(D) The Secretary shall adjust the payment rates under such system by a geographic index as the Secretary determines to be appropriate. If the Secretary applies a geographic index under this paragraph that differs from the index applied under paragraph (7) the Secretary shall phase-in the application of the index under this paragraph over a multiyear period.

''(E)(i) Such system shall be designed to result in the same aggregate amount of expenditures for such services, as estimated by the Secretary, as would have been made for 2005 if this paragraph did not apply.

''(ii) The adjustment made under subparagraph (B)(ii)(II) shall be done in a manner to result in the same aggregate amount of expenditures after such adjustment as would otherwise have been made for such services for 2006 or 2007, respectively, as estimated by the Secretary, if this paragraph did not apply.

''(F) Beginning with 2006, the Secretary shall annually increase the basic case-mix adjusted payment amounts established under this paragraph, by an amount determined by—

''(i) applying the estimated growth in expenditures for drugs and biologicals (including erythropoietin) that are separately billable to the component of the basic case-mix adjusted system described in subparagraph (B)(ii); and

''(ii) converting the amount determined in clause (i) to an increase applicable to the basic case-mix adjusted payment amounts established under subparagraph (B).

Nothing in this paragraph shall be construed as providing for an update to the composite rate component of the basic case-mix adjusted system under subparagraph (B).

''(G) There shall be no administrative or judicial review under section 1869, section 1878, or otherwise, of the case-mix system, relative weights, payment amounts, the geographic adjustment factor, or the update for the system established under this paragraph, or the determination of the difference between medicare payment amounts and acquisition costs for separately billed drugs and biologicals (including erythropoietin) under this paragraph and paragraph (13).

''(13)(A) The payment amounts under this title for separately billed drugs and biologicals furnished in a year, beginning with 2004, are as follows:

''(i) For such drugs and biologicals (other than erythropoietin) furnished in 2004, the amount determined under section 1842(o)(1)(A)(v) for the drug or biological.

''(ii) For such drugs and biologicals (including erythropoietin) furnished in 2005, the acquisition cost of the drug or biological, as determined by the Inspector General reports to the Secretary as required by section 323(c) of the Medicare Provider Restoration Act of 2003. Insofar as the Inspector General has not determined the acquisition cost with respect to a drug or biological, the Secretary shall determine the payment amount for such drug or biological.

''(iii) For such drugs and biologicals (including erythropoietin) furnished in 2006 and subsequent years, such acquisition cost or the amount determined under section 1847A for the drug or biological, as the Secretary may specify.

''(B)(i) Drugs and biologicals (including erythropoietin) which were separately billed under this subsection on the day before the date of the enactment of the Medicare Provider Restoration Act of 2003 shall continue to be separately billed on and after such date.

''(ii) Nothing in this paragraph, section 1842(o), section 1847A, or section 1847B shall be construed as requiring or authorizing the bundling of payment for drugs and biologicals into the basic case-mix adjusted payment system under this paragraph.''.

(2) Paragraph (7) of such section is amended in the first sentence by striking ''The Secretary'' and inserting ''Subject to paragraph (12), the Secretary''.

(3) Paragraph (11)(B) of such section is amended by inserting ''subject to paragraphs (12) and (13)'' before ''payment for such item''.

(e) DEMONSTRATION OF BUNDLED CASE-MIX ADJUSTED PAYMENT SYSTEM FOR ESRD SERVICES.—

(1) IN GENERAL.—The Secretary shall establish a demonstration project of the use of a fully case-mix adjusted payment system for end stage renal disease services under section 1881 of the Social Security Act (42 U.S.C. 1395rr) for patient characteristics identified in the report under subsection (f) that bundles into such payment rates amounts for—

(A) drugs and biologicals (including erythropoietin) furnished to end-stage renal disease patients under the medicare program which are separately billed by end stage renal disease facilities (as of the date of the enactment of this Act); and

(B) clinical laboratory tests related to such drugs and biologicals.

(2) FACILITIES INCLUDED IN THE DEMONSTRATION.—In conducting the demonstration under this subsection, the Secretary shall ensure the participation of a sufficient number of providers of dialysis services and renal dialysis facilities, but in no case to exceed 500. In selecting such providers and facilities, the Secretary shall ensure that the following types of providers are included in the demonstration:

(A) Urban providers and facilities.

(B) Rural providers and facilities.

(C) Not-for-profit providers and facilities.

(D) For-profit providers and facilities.

(E) Independent providers and facilities.

(F) Specialty providers and facilities, including pediatric providers and facilities and small providers and facilities.

(3) TEMPORARY ADD-ON PAYMENT FOR DIALYSIS SERVICES FURNISHED UNDER THE DEMONSTRATION.—

(A) IN GENERAL.—During the period of the demonstration project, the Secretary shall increase payment rates that would otherwise apply under section 1881(b) of such Act (42 U.S.C. 1395rr(b)) by 1.6 percent for dialysis services furnished in facilities in the demonstration site.

(B) RULES OF CONSTRUCTION.—Nothing in this subsection shall be construed as—

(i) as an annual update under section 1881(b) of the Social Security Act (42 U.S.C. 1395rr(b));

(ii) as increasing the baseline for payments under such section; or

(iii) requiring the budget neutral implementation of the demonstration project under this subsection.

(4) 3-YEAR PERIOD.—The Secretary shall conduct the demonstration under this subsection for the 3-year period beginning on January 1, 2006.

(5) USE OF ADVISORY BOARD.—

(A) IN GENERAL.—In carrying out the demonstration under this subsection, the Secretary shall establish an advisory board comprised of representatives described in subparagraph (B) to provide advice and recommendations with respect to the establishment and operation of such demonstration.

(B) REPRESENTATIVES.—Representatives referred to in subparagraph (A) include representatives of the following:

(i) Patient organizations.

(ii) Individuals with expertise in end-stage renal dialysis services, such as clinicians, economists, and researchers.

(iii) The Medicare Payment Advisory Commission, established under section 1805 of the Social Security Act (42 U.S.C. 1395b–6).

(iv) The National Institutes of Health.

(v) Network organizations under section 1881(c) of the Social Security Act (42 U.S.C. 1395rr(c)).

(vi) Medicare contractors to monitor quality of care.

(vii) Providers of services and renal dialysis facilities furnishing end-stage renal disease services.

(C) TERMINATION OF ADVISORY PANEL.—The advisory panel shall terminate on December 31, 2008.

(6) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated, in appropriate part from the Federal Hospital Insurance Trust Fund and the Federal Supplementary Medical Insurance Trust Fund, $5,000,000 in fiscal year 2006 to conduct the demonstration under this subsection.

(f) REPORT ON A BUNDLED PROSPECTIVE PAYMENT SYSTEM FOR END STAGE RENAL DISEASE SERVICES.—

(1) REPORT.—

(A) IN GENERAL.—Not later than October 1, 2005, the Secretary shall submit to Congress a report detailing the elements and features for the design and implementation of a bundled prospective payment system for services furnished by end stage renal disease facilities including, to the maximum extent feasible, bundling of drugs, clinical laboratory tests, and other items that are separately billed by such facilities. The report shall include a description of the methodology to be used for the establishment of payment rates, including components of the new system described in paragraph (2).

(B) RECOMMENDATIONS.—The Secretary shall include in such report recommendations on elements, features, and methodology for a bundled prospective payment system or other issues related to such system as the Secretary determines to be appropriate.

(2) ELEMENTS AND FEATURES OF A BUNDLED PROSPECTIVE PAYMENT SYSTEM.—The report required under paragraph (1) shall include the following elements and features of a bundled prospective payment system:

(A) BUNDLE OF ITEMS AND SERVICES.—A description of the bundle of items and services to be included under the prospective payment system.

(B) CASE MIX.—A description of the case-mix adjustment to account for the relative resource use of different types of patients.

(C) WAGE INDEX.—A description of an adjustment to account for geographic differences in wages.

(D) RURAL AREAS.—The appropriateness of establishing a specific payment adjustment to account for additional costs incurred by rural facilities.

(E) OTHER ADJUSTMENTS.—Such other adjustments as may be necessary to reflect the variation in costs incurred by facilities in caring for patients with end stage renal disease.

(F) UPDATE FRAMEWORK.—A methodology for appropriate updates under the prospective payment system.

(G) ADDITIONAL RECOMMENDATIONS.—Such other matters as the Secretary determines to be appropriate.

SEC. 324. 2-YEAR MORATORIUM ON THERAPY CAPS; PROVISIONS RELATING TO REPORTS.

(a) ADDITIONAL MORATORIUM ON THERAPY CAPS.—

(1) 2004 AND 2005.—Section 1833(g)(4) (42 U.S.C. 1395l(g)(4)) is amended by striking ''and 2002'' and inserting ''2002, 2004, and 2005''.

(2) REMAINDER OF 2003.—For the period beginning on the date of the enactment of this Act and ending of December 31, 2003, the Secretary shall not apply the provisions of paragraphs (1), (2), and (3) of section 1833(g) to expenses incurred with respect to services described in such paragraphs during such period. Nothing in the preceding sentence shall be construed as affecting the application of such paragraphs by the Secretary before the date of the enactment of this Act.

(b) PROMPT SUBMISSION OF OVERDUE REPORTS ON PAYMENT AND UTILIZATION OF OUTPATIENT THERAPY SERVICES.—Not later than March 31, 2004, the Secretary shall submit to Congress the reports required under section 4541(d)(2) of the Balanced Budget Act of 1997 (Public Law 105–33; 111 Stat. 457) (relating to alternatives to a single annual dollar cap on outpatient therapy) and under section 221(d) of the Medicare, Medicaid, and SCHIP Balanced Budget Refinement Act of 1999 (Appendix F, 113 Stat. 1501A–352), as enacted into law by section 1000(a)(6) of Public Law 106–113 (relating to utilization patterns for outpatient therapy).

(c) GAO REPORT IDENTIFYING CONDITIONS AND DISEASES JUSTIFYING WAIVER OF THERAPY CAP.—

(1) STUDY.—The Comptroller General of the United States shall identify conditions or diseases that may justify waiving the application of the therapy caps under section 1833(g) of the Social Security Act (42 U.S.C. 1395l(g)) with respect to such conditions or diseases.

(2) REPORT TO CONGRESS.—Not later than October 1, 2004, the Comptroller General shall submit to Congress a report on the conditions and diseases identified under paragraph (1), and shall include a recommendation of criteria, with respect to such conditions and disease, under which a waiver of the therapy caps would apply.

SEC. 325. WAIVER OF PART B LATE ENROLLMENT PENALTY FOR CERTAIN MILITARY RETIREES; SPECIAL ENROLLMENT PERIOD.

(a) WAIVER OF PENALTY.—

(1) IN GENERAL.—Section 1839(b) (42 U.S.C. 1395r(b)) is amended by adding at the end the following new sentence: ''No increase in the premium shall be effected for a month in the case of an individual who enrolls under this part during 2001, 2002, 2003, or 2004 and who demonstrates to the Secretary before December 31, 2004, that the individual is a covered beneficiary (as defined in section 1072(5) of title 10, United States Code). The Secretary of Health and Human Services shall consult with the Secretary of Defense in identifying individuals described in the previous sentence.''.

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall apply to premiums for months beginning with January 2004. The Secretary shall establish a method for providing rebates of premium penalties paid for months on or after January 2004 for which a penalty does not apply under such amendment but for which a penalty was previously collected.

(b) MEDICARE PART B SPECIAL ENROLLMENT PERIOD.—

(1) IN GENERAL.—In the case of any individual who, as of the date of the enactment of this Act, is eligible to enroll but is not enrolled under part B of title XVIII of the Social Security Act and is a covered beneficiary (as defined in section 1072(5) of title 10, United States Code), the Secretary of Health and Human Services shall provide for a special enrollment period during which the individual may enroll under such part. Such period shall begin as soon as possible after the date of the enactment of this Act and shall end on December 31, 2004.

(2) COVERAGE PERIOD.—In the case of an individual who enrolls during the special enrollment period provided under paragraph (1), the coverage period under part B of title XVIII of the Social Security Act shall begin on the first day of the month following the month in which the individual enrolls.

SEC. 326. PAYMENT FOR SERVICES FURNISHED IN AMBULATORY SURGICAL CENTERS.

(a) REDUCTIONS IN PAYMENT UPDATES.—Section 1833(i)(2)(C) (42 U.S.C. 1395l(i)(2)(C)) is amended to read as follows:

''(C)(i) Notwithstanding the second sentence of each of subparagraphs (A) and (B), except as otherwise specified in clauses (ii), (iii), and (iv), if the Secretary has not updated amounts established under such subparagraphs or under subparagraph (D), with respect to facility services furnished during a fiscal year (beginning with fiscal year 1986 or a calendar year (beginning with 2006)), such amounts shall be increased by the percentage increase in the Consumer Price Index for all urban consumers (U.S. city average) as estimated by the Secretary for the 12-month period ending with the midpoint of the year involved.

''(ii) In each of the fiscal years 1998 through 2002, the increase under this subparagraph shall be reduced (but not below zero) by 2.0 percentage points.

''(iii) In fiscal year 2004, beginning with April 1, 2004, the increase under this subparagraph shall be the Consumer Price Index for all urban consumers (U.S. city average) as estimated by the Secretary for the 12-month period ending with March 31, 2003, minus 3.0 percentage points.

''(iv) In fiscal year 2005, the last quarter of calendar year 2005, and each of calendar years 2006 through 2009, the increase under this subparagraph shall be 0 percent.''.

(b) REPEAL OF SURVEY REQUIREMENT AND IMPLEMENTATION OF NEW SYSTEM.—Section 1833(i)(2) (42 U.S.C. 1395l(i)(2)) is amended—

(1) in subparagraph (A)—

(A) in the matter preceding clause (i), by striking ''The'' and inserting ''For services furnished prior to the implementation of the system described in subparagraph (D), the''; and

(B) in clause (i), by striking ''taken not later than January 1, 1995, and every 5 years thereafter,''; and

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

''(D)(i) Taking into account the recommendations in the report under section 326(d) of Medicare Provider Restoration Act of 2003, the Secretary shall implement a revised payment system for payment of surgical services furnished in ambulatory surgical centers.

''(ii) In the year the system described in clause (i) is implemented, such system shall be designed to result in the same aggregate amount of expenditures for such services as would be made if this subparagraph did not apply, as estimated by the Secretary.

''(iii) The Secretary shall implement the system described in clause (i) for periods in a manner so that it is first effective beginning on or after January 1, 2006, and not later than January 1, 2008.

''(iv) There shall be no administrative or judicial review under section 1869, 1878, or otherwise, of the classification system, the relative weights, payment amounts, and the geographic adjustment factor, if any, under this subparagraph.''.

(c) CONFORMING AMENDMENT.—Section 1833(a)(1) (42 U.S.C. 1395l(a)(1)) is amended by adding the following new subparagraph:

''(G) with respect to facility services furnished in connection with a surgical procedure specified pursuant to subsection (i)(1)(A) and furnished to an individual in an ambulatory surgical center described in such subsection, for services furnished beginning with the implementation date of a revised payment system for such services in such facilities specified in subsection (i)(2)(D), the amounts paid shall be 80 percent of the lesser of the actual charge for the services or the

amount determined by the Secretary under such revised payment system,''.

(d) GAO STUDY OF AMBULATORY SURGICAL CENTER PAYMENTS.—

(1) STUDY.—

(A) IN GENERAL.—The Comptroller General of the United States shall conduct a study that compares the relative costs of procedures furnished in ambulatory surgical centers to the relative costs of procedures furnished in hospital outpatient departments under section 1833(t) of the Social Security Act (42 U.S.C. 1395l(t)). The study shall also examine how accurately ambulatory payment categories reflect procedures furnished in ambulatory surgical centers.

(B) CONSIDERATION OF ASC DATA.—In conducting the study under paragraph (1), the Comptroller General shall consider data submitted by ambulatory surgical centers regarding the matters described in clauses (i) through (iii) of paragraph (2)(B).

(2) REPORT AND RECOMMENDATIONS.—

(A) REPORT.—Not later than January 1, 2005, the Comptroller General shall submit to Congress a report on the study conducted under paragraph (1).

(B) RECOMMENDATIONS.—The report submitted under subparagraph (A) shall include recommendations on the following matters:

(i) The appropriateness of using the groups of covered services and relative weights established under the outpatient prospective payment system as the basis of payment for ambulatory surgical centers.

(ii) If the relative weights under such hospital outpatient prospective payment system are appropriate for such purpose—

(I) whether the payment rates for ambulatory surgical centers should be based on a uniform percentage of the payment rates or weights under such outpatient system; or

(II) whether the payment rates for ambulatory surgical centers should vary, or the weights should be revised, based on specific procedures or types of services (such as ophthalmology and pain management services).

(iii) Whether a geographic adjustment should be used for payment of services furnished in ambulatory surgical centers, and if so, the labor and nonlabor shares of such payment.

SEC. 327. PAYMENT FOR CERTAIN SHOES AND INSERTS UNDER THE FEE SCHEDULE FOR ORTHOTICS AND PROSTHETICS.

(a) IN GENERAL.—Section 1833(o) (42 U.S.C. 1395l(o)) is amended—

(1) in paragraph (1)(B), by striking ''no more than the limits established under paragraph (2)'' and inserting ''no more than the amount of payment applicable under paragraph (2)''; and

(2) in paragraph (2), to read as follows:

''(2)(A) Except as provided by the Secretary under subparagraphs (B) and (C), the amount of payment under this paragraph for custom molded shoes, extra-depth shoes, and inserts shall be the amount determined for such items by the Secretary under section 1834(h).

''(B) The Secretary may establish payment amounts for shoes and inserts that are lower than the amount established under section 1834(h) if the Secretary finds that shoes and inserts of an appropriate quality are readily available at or below the amount established under such section.

''(C) In accordance with procedures established by the Secretary, an individual entitled to benefits with respect to shoes described in section 1861(s)(12) may substitute modification of such shoes instead of obtaining one (or more, as specified by the Secretary) pair of inserts (other than the original pair of inserts with respect to such shoes). In such case, the Secretary shall substitute, for the payment amount established under section 1834(h), a payment amount that the Secretary estimates will assure that there is no net increase in expenditures under this subsection as a result of this subparagraph.''.

(b) CONFORMING AMENDMENTS.—(1) Section 1834(h)(4)(C) (42 U.S.C. 1395m(h)(4)(C)) is amended by inserting ''(and includes shoes described in section 1861(s)(12))'' after ''in section 1861(s)(9)''.

(2) Section 1842(s)(2) (42 U.S.C. 1395u(s)(2)) is amended by striking subparagraph (C).

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to items furnished on or after January 1, 2005.

SEC. 329. 5-YEAR AUTHORIZATION OF REIMBURSEMENT FOR ALL MEDICARE PART B SERVICES FURNISHED BY CERTAIN INDIAN HOSPITALS AND CLINICS.

Section 1880(e)(1)(A) (42 U.S.C. 1395qq(e)(1)(A)) is amended by inserting ''(and for items and services furnished during the 5-year period beginning on January 1, 2005, all items and services for which payment may be made under part B)'' after ''for services described in paragraph (2)''.

Subtitle D—Additional Demonstrations, Studies, and Other Provisions

SEC. 341. DEMONSTRATION PROJECT FOR COVERAGE OF CERTAIN PRESCRIPTION DRUGS AND BIOLOGICALS.

(a) DEMONSTRATION PROJECT.—The Secretary shall conduct a demonstration project under part B of title XVIII of the Social Security Act under which payment is made for drugs or biologicals that are prescribed as replacements for drugs and biologicals described in section 1861(s)(2)(A) or 1861(s)(2)(Q) of such Act (42 U.S.C. 1395x(s)(2)(A), 1395x(s)(2)(Q)), or both, for which payment is made under such part. Such project shall provide for cost-sharing applicable with respect to such drugs or biologicals.

(b) DEMONSTRATION PROJECT SITES.—The project established under this section shall be conducted in sites selected by the Secretary.

(c) DURATION.—The Secretary shall conduct the demonstration project for the 2-year period beginning on the date that is 90 days after the date of the enactment of this Act, but in no case may the project extend beyond December 31, 2005.

(d) LIMITATION.—Under the demonstration project over the duration of the project, the Secretary may not provide—

(1) coverage for more than 50,000 patients; and

(2) more than $500,000,000 in funding.

(e) REPORT.—Not later than July 1, 2006, the Secretary shall submit to Congress a report on the project. The report shall include an evaluation of patient access to care and patient outcomes under the project, as well as an analysis of the cost effectiveness of the project, including an evaluation of the costs savings (if any) to the medicare program attributable to reduced physicians' services and hospital outpatient departments services for administration of the biological.

SEC. 342. EXTENSION OF COVERAGE OF INTRAVENOUS IMMUNE GLOBULIN (IVIG) FOR THE TREATMENT OF PRIMARY IMMUNE DEFICIENCY DISEASES IN THE HOME.

(a) IN GENERAL.—Section 1861 (42 U.S.C. 1395x), as amended by sections 611(a) and 612(a) is amended—

(1) in subsection (s)(2)—

(A) by striking ''and'' at the end of subparagraph (X);

(B) by adding ''and'' at the end of subparagraph (Y); and

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

''(Z) intravenous immune globulin for the treatment of primary immune deficiency diseases in the home (as defined in subsection (zz));''; and

(2) by adding at the end the following new subsection:

''Intravenous Immune Globulin

''(zz) The term 'intravenous immune globulin' means an approved pooled plasma derivative for the treatment in the patient's home of a patient with a diagnosed primary immune deficiency disease, but not including items or services related to the administration of the derivative, if a physician determines administration of the derivative in the patient's home is medically appropriate.''.

(b) PAYMENT AS A DRUG OR BIOLOGICAL.—Section 1833(a)(1)(S) (42 U.S.C. 1395l(a)(1)(S)) is amended by inserting ''(including intravenous immune globulin (as defined in section 1861(zz)))'' after ''with respect to drugs and biologicals''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to items furnished administered on or after January 1, 2004.

SEC. 343. MEDPAC STUDY OF COVERAGE OF SURGICAL FIRST ASSISTING SERVICES OF CERTIFIED REGISTERED NURSE FIRST ASSISTANTS.

(a) STUDY.—The Medicare Payment Advisory Commission (in this section referred to as the ''Commission'') shall conduct a study on the feasibility and advisability of providing for payment under part B of title XVIII of the Social Security Act for surgical first assisting services furnished by a certified registered nurse first assistant to medicare beneficiaries.

(b) REPORT.—Not later than January 1, 2005, the Commission shall submit to Congress a report on the study conducted under subsection (a) together with recommendations for such legislation or administrative action as the Commission determines to be appropriate.

(c) DEFINITIONS.—In this section:

(1) SURGICAL FIRST ASSISTING SERVICES.—The term ''surgical first assisting services'' means services consisting of first assisting a physician with surgery and related preoperative, intraoperative, and postoperative care (as determined by the Secretary) furnished by a certified registered nurse first assistant (as defined in paragraph (2)) which the certified registered nurse first assistant is legally authorized to perform by the State in which the services are performed.

(2) CERTIFIED REGISTERED NURSE FIRST ASSISTANT.—The term ''certified registered nurse first assistant'' means an individual who—

(A) is a registered nurse and is licensed to practice nursing in the State in which the surgical first assisting services are performed;

(B) has completed a minimum of 2,000 hours of first assisting a physician with surgery and related preoperative, intraoperative, and postoperative care; and

(C) is certified as a registered nurse first assistant by an organization recognized by the Secretary.

SEC. 344. MEDPAC STUDY OF PAYMENT FOR CARDIO-THORACIC SURGEONS.

(a) STUDY.—The Medicare Payment Advisory Commission (in this section referred to as the ''Commission'') shall conduct a study on the practice expense relative values established by the Secretary of Health and Human Services under the medicare physician fee schedule under section 1848 of the Social Security Act (42 U.S.C. 1395w–4) for physicians in the specialties of thoracic and cardiac surgery to determine whether such values adequately take into account the attendant costs that such physicians incur in providing clinical staff for patient care in hospitals.

(b) REPORT.—Not later than January 1, 2005, the Commission shall submit to Congress a report on the study conducted under

subsection (a) together with recommendations for such legislation or administrative action as the Commission determines to be appropriate.

SEC. 345. STUDIES RELATING TO VISION IMPAIRMENTS.

(a) COVERAGE OF OUTPATIENT VISION SERVICES FURNISHED BY VISION REHABILITATION PROFESSIONALS UNDER PART B.—

(1) STUDY.—The Secretary shall conduct a study to determine the feasibility and advisability of providing for payment for vision rehabilitation services furnished by vision rehabilitation professionals.

(2) REPORT.—Not later than January 1, 2005, the Secretary shall submit to Congress a report on the study conducted under paragraph (1) together with recommendations for such legislation or administrative action as the Secretary determines to be appropriate.

(3) VISION REHABILITATION PROFESSIONAL DEFINED.—In this subsection, the term ''vision rehabilitation professional'' means an orientation and mobility specialist, a rehabilitation teacher, or a low vision therapist.

(b) REPORT ON APPROPRIATENESS OF A DEMONSTRATION PROJECT TO TEST FEASIBILITY OF USING PPO NETWORKS TO REDUCE COSTS OF ACQUIRING EYEGLASSES FOR MEDICARE BENEFICIARIES AFTER CATARACT SURGERY.—Not later than 1 year after the date of the enactment of this Act, the Secretary shall submit to Congress a report on the feasibility of establishing a two-year demonstration project under which the Secretary enters into arrangements with vision care preferred provider organization networks to furnish and pay for conventional eyeglasses subsequent to each cataract surgery with insertion of an intraocular lens on behalf of Medicare beneficiaries. In such report, the Secretary shall include an estimate of potential cost savings to the Medicare program through the use of such networks, taking into consideration quality of service and beneficiary access to services offered by vision care preferred provider organization networks.

SEC. 346. MEDICARE HEALTH CARE QUALITY DEMONSTRATION PROGRAMS.

Title XVIII (42 U.S.C. 1395 et seq.) is amended by inserting after section 1866B the following new section:

''SEC. 1866C. HEALTH CARE QUALITY DEMONSTRATION PROGRAM.

''SEC. (a) DEFINITIONS.—In this section:

''(1) BENEFICIARY.—The term 'beneficiary' means an individual who is entitled to benefits under part A and enrolled under part B, including any individual who is enrolled in a Medicare Advantage plan under part C.

''(2) HEALTH CARE GROUP.—

''(A) IN GENERAL.—The term 'health care group' means—

''(i) a group of physicians that is organized at least in part for the purpose of providing physician's services under this title;

''(ii) an integrated health care delivery system that delivers care through coordinated hospitals, clinics, home health agencies, ambulatory surgery centers, skilled nursing facilities, rehabilitation facilities and clinics, and employed, independent, or contracted physicians; or

''(iii) an organization representing regional coalitions of groups or systems described in clause (i) or (ii).

''(B) INCLUSION.—As the Secretary determines appropriate, a health care group may include a hospital or any other individual or entity furnishing items or services for which payment may be made under this title that is affiliated with the health care group under an arrangement structured so that such hospital, individual, or entity participates in a demonstration project under this section.

''(3) PHYSICIAN.—Except as otherwise provided for by the Secretary, the term 'physician' means any individual who furnishes services that may be paid for as physicians' services under this title.

''(b) DEMONSTRATION PROJECTS.—The Secretary shall establish a 5-year demonstration program under which the Secretary shall approve demonstration projects that examine health delivery factors that encourage the delivery of improved quality in patient care, including—

''(1) the provision of incentives to improve the safety of care provided to beneficiaries;

''(2) the appropriate use of best practice guidelines by providers and services by beneficiaries;

''(3) reduced scientific uncertainty in the delivery of care through the examination of variations in the utilization and allocation of services, and outcomes measurement and research;

''(4) encourage shared decision making between providers and patients;

''(5) the provision of incentives for improving the quality and safety of care and achieving the efficient allocation of resources;

''(6) the appropriate use of culturally and ethnically sensitive health care delivery; and

''(7) the financial effects on the health care marketplace of altering the incentives for care delivery and changing the allocation of resources.

''(c) ADMINISTRATION BY CONTRACT.—

''(1) IN GENERAL.—Except as otherwise provided in this section, the Secretary may administer the demonstration program established under this section in a manner that is similar to the manner in which the demonstration program established under section 1866A is administered in accordance with section 1866B.

''(2) ALTERNATIVE PAYMENT SYSTEMS.—A health care group that receives assistance under this section may, with respect to the demonstration project to be carried out with such assistance, include proposals for the use of alternative payment systems for items and services provided to beneficiaries by the group that are designed to—

''(A) encourage the delivery of high quality care while accomplishing the objectives described in subsection (b); and

''(B) streamline documentation and reporting requirements otherwise required under this title.

''(3) BENEFITS.—A health care group that receives assistance under this section may, with respect to the demonstration project to be carried out with such assistance, include modifications to the package of benefits available under the original medicare fee-for-service program under parts A and B or the package of benefits available through a Medicare Advantage plan under part C. The criteria employed under the demonstration program under this section to evaluate outcomes and determine best practice guidelines and incentives shall not be used as a basis for the denial of medicare benefits under the demonstration program to patients against their wishes (or if the patient is incompetent, against the wishes of the patient's surrogate) on the basis of the patient's age or expected length of life or of the patient's present or predicted disability, degree of medical dependency, or quality of life.

''(d) ELIGIBILITY CRITERIA.—To be eligible to receive assistance under this section, an entity shall—

''(1) be a health care group;

''(2) meet quality standards established by the Secretary, including—

''(A) the implementation of continuous quality improvement mechanisms that are aimed at integrating community-based support services, primary care, and referral care;

''(B) the implementation of activities to increase the delivery of effective care to beneficiaries;

''(C) encouraging patient participation in preference-based decisions;

''(D) the implementation of activities to encourage the coordination and integration of medical service delivery; and

''(E) the implementation of activities to measure and document the financial impact on the health care marketplace of altering the incentives of health care delivery and changing the allocation of resources; and

''(3) meet such other requirements as the Secretary may establish.

''(e) WAIVER AUTHORITY.—The Secretary may waive such requirements of titles XI and XVIII as may be necessary to carry out the purposes of the demonstration program established under this section.

''(f) BUDGET NEUTRALITY.—With respect to the 5-year period of the demonstration program under subsection (b), the aggregate expenditures under this title for such period shall not exceed the aggregate expenditures that would have been expended under this title if the program established under this section had not been implemented.

''(g) NOTICE REQUIREMENTS.—In the case of an individual that receives health care items or services under a demonstration program carried out under this section, the Secretary shall ensure that such individual is notified of any waivers of coverage or payment rules that are applicable to such individual under this title as a result of the participation of the individual in such program.

''(h) PARTICIPATION AND SUPPORT BY FEDERAL AGENCIES.—In carrying out the demonstration program under this section, the Secretary may direct—

''(1) the Director of the National Institutes of Health to expand the efforts of the Institutes to evaluate current medical technologies and improve the foundation for evidence-based practice;

''(2) the Administrator of the Agency for Healthcare Research and Quality to, where possible and appropriate, use the program under this section as a laboratory for the study of quality improvement strategies and to evaluate, monitor, and disseminate information relevant to such program; and

''(3) the Administrator of the Centers for Medicare & Medicaid Services and the Administrator of the Center for Medicare Choices to support linkages of relevant medicare data to registry information from participating health care groups for the beneficiary populations served by the participating groups, for analysis supporting the purposes of the demonstration program, consistent with the applicable provisions of the Health Insurance Portability and Accountability Act of 1996.''.

SEC. 347. MEDPAC STUDY ON DIRECT ACCESS TO PHYSICAL THERAPY SERVICES.

(a) STUDY.—The Medicare Payment Advisory Commission (in this section referred to as the ''Commission'') shall conduct a study on the feasibility and advisability of allowing medicare fee-for-service beneficiaries direct access to outpatient physical therapy services and physical therapy services furnished as comprehensive rehabilitation facility services.

(b) REPORT.—Not later than January 1, 2005, the Commission shall submit to Congress a report on the study conducted under subsection (a) together with recommendations for such legislation or administrative action as the Commission determines to be appropriate.

(c) DIRECT ACCESS DEFINED.—The term ''direct access'' means, with respect to outpatient physical therapy services and physical therapy services furnished as comprehensive outpatient rehabilitation facility

services, coverage of and payment for such services in accordance with the provisions of title XVIII of the Social Security Act, except that sections 1835(a)(2), 1861(p), and 1861(cc) of such Act (42 U.S.C. 1395n(a)(2), 1395x(p), and 1395x(cc), respectively) shall be applied—

(1) without regard to any requirement that—

(A) an individual be under the care of (or referred by) a physician; or

(B) services be provided under the supervision of a physician; and

(2) by allowing a physician or a qualified physical therapist to satisfy any requirement for—

(A) certification and recertification; and

(B) establishment and periodic review of a plan of care.

SEC. 348. DEMONSTRATION PROJECT FOR CONSUMER-DIRECTED CHRONIC OUTPATIENT SERVICES.

(a) ESTABLISHMENT.—

(1) IN GENERAL.—Subject to the succeeding provisions of this section, the Secretary shall establish demonstration projects (in this section referred to as ''demonstration projects'') under which the Secretary shall evaluate methods that improve the quality of care provided to individuals with chronic conditions and that reduce expenditures that would otherwise be made under the medicare program on behalf of such individuals for such chronic conditions, such methods to include permitting those beneficiaries to direct their own health care needs and services.

(2) INDIVIDUALS WITH CHRONIC CONDITIONS DEFINED.—In this section, the term ''individuals with chronic conditions'' means an individual entitled to benefits under part A of title XVIII of the Social Security Act, and enrolled under part B of such title, but who is not enrolled under part C of such title who is diagnosed as having one or more chronic conditions (as defined by the Secretary), such as diabetes.

(b) DESIGN OF PROJECTS.—

(1) EVALUATION BEFORE IMPLEMENTATION OF PROJECT.—

(A) IN GENERAL.—In establishing the demonstration projects under this section, the Secretary shall evaluate best practices employed by group health plans and practices under State plans for medical assistance under the medicaid program under title XIX of the Social Security Act, as well as best practices in the private sector or other areas, of methods that permit patients to self-direct the provision of personal care services. The Secretary shall evaluate such practices for a 1-year period and, based on such evaluation, shall design the demonstration project.

(B) REQUIREMENT FOR ESTIMATE OF BUDGET NEUTRAL COSTS.—As part of the evaluation under subparagraph (A), the Secretary shall evaluate the costs of furnishing care under the projects. The Secretary may not implement the demonstration projects under this section unless the Secretary determines that the costs of providing care to individuals with chronic conditions under the project will not exceed the costs, in the aggregate, of furnishing care to such individuals under title XVIII of the Social Security Act, that would otherwise be paid without regard to the demonstration projects for the period of the project.

(2) SCOPE OF SERVICES.—The Secretary shall determine the appropriate scope of personal care services that would apply under the demonstration projects.

(c) VOLUNTARY PARTICIPATION.—Participation of providers of services and suppliers, and of individuals with chronic conditions, in the demonstration projects shall be voluntary.

(d) DEMONSTRATION PROJECTS SITES.—Not later than 2 years after the date of the enactment of this Act, the Secretary shall conduct a demonstration project in at least one area that the Secretary determines has a population of individuals entitled to benefits under part A of title XVIII of the Social Security Act, and enrolled under part B of such title, with a rate of incidence of diabetes that significantly exceeds the national average rate of all areas.

(e) EVALUATION AND REPORT.—

(1) EVALUATIONS.—The Secretary shall conduct evaluations of the clinical and cost effectiveness of the demonstration projects.

(2) REPORTS.—Not later than 2 years after the commencement of the demonstration projects, and biannually thereafter, the Secretary shall submit to Congress a report on the evaluation, and shall include in the report the following:

(A) An analysis of the patient outcomes and costs of furnishing care to the individuals with chronic conditions participating in the projects as compared to such outcomes and costs to other individuals for the same health conditions.

(B) Evaluation of patient satisfaction under the demonstration projects.

(C) Such recommendations regarding the extension, expansion, or termination of the projects as the Secretary determines appropriate.

(f) WAIVER AUTHORITY.—The Secretary shall waive compliance with the requirements of title XVIII of the Social Security Act (42 U.S.C. 1395 et seq.) to such extent and for such period as the Secretary determines is necessary to conduct demonstration projects.

(g) AUTHORIZATION OF APPROPRIATIONS.—(1) Payments for the costs of carrying out the demonstration project under this section shall be made from the Federal Supplementary Medical Insurance Trust Fund under section 1841 of such Act (42 U.S.C. 1395t).

(2) There are authorized to be appropriated from such Trust Fund such sums as may be necessary for the Secretary to enter into contracts with appropriate organizations for the deign, implementation, and evaluation of the demonstration project.

(3) In no case may expenditures under this section exceed the aggregate expenditures that would otherwise have been made for the provision of personal care services.

SEC. 349. MEDICARE CARE MANAGEMENT PERFORMANCE DEMONSTRATION.

(a) ESTABLISHMENT.—

(1) IN GENERAL.—The Secretary shall establish a pay-for-performance demonstration program with physicians to meet the needs of eligible beneficiaries through the adoption and use of health information technology and evidence-based outcomes measures for—

(A) promoting continuity of care;

(B) helping stabilize medical conditions;

(C) preventing or minimizing acute exacerbations of chronic conditions; and

(D) reducing adverse health outcomes, such as adverse drug interactions related to polypharmacy.

(2) SITES.—The Secretary shall designate no more than 4 sites at which to conduct the demonstration program under this section, of which—

(A) 2 shall be in an urban area;

(B) 1 shall be in a rural area; and

(C) 1 shall be in a State with a medical school with a Department of Geriatrics that manages rural outreach sites and is capable of managing patients with multiple chronic conditions, one of which is dementia.

(3) DURATION.—The Secretary shall conduct the demonstration program under this section for a 3-year period.

(4) CONSULTATION.—In carrying out the demonstration program under this section, the Secretary shall consult with private sector and non-profit groups that are undertaking similar efforts to improve quality and reduce avoidable hospitalizations for chronically ill patients.

(b) PARTICIPATION.—

(1) IN GENERAL.—A physician who provides care for a minimum number of eligible beneficiaries (as specified by the Secretary) may participate in the demonstration program under this section if such physician agrees, to phase-in over the course of the 3-year demonstration period and with the assistance provided under subsection (d)(2)—

(A) the use of health information technology to manage the clinical care of eligible beneficiaries consistent with paragraph (3); and

(B) the electronic reporting of clinical quality and outcomes measures in accordance with requirements established by the Secretary under the demonstration program.

(2) SPECIAL RULE.—In the case of the sites referred to in subparagraphs (B) and (C) of subsection (a)(2), a physician who provides care for a minimum number of beneficiaries with two or more chronic conditions, including dementia (as specified by the Secretary), may participate in the program under this section if such physician agrees to the requirements in subparagraphs (A) and (B) of paragraph (1).

(3) PRACTICE STANDARDS.—Each physician participating in the demonstration program under this section must demonstrate the ability—

(A) to assess each eligible beneficiary for conditions other than chronic conditions, such as impaired cognitive ability and comorbidities, for the purposes of developing care management requirements;

(B) to serve as the primary contact of eligible beneficiaries in accessing items and services for which payment may be made under the medicare program;

(C) to establish and maintain health care information system for such beneficiaries;

(D) to promote continuity of care across providers and settings;

(E) to use evidence-based guidelines and meet such clinical quality and outcome measures as the Secretary shall require;

(F) to promote self-care through the provision of patient education and support for patients or, where appropriate, family caregivers;

(G) when appropriate, to refer such beneficiaries to community service organizations; and

(H) to meet such other complex care management requirements as the Secretary may specify.

The guidelines and measures required under subparagraph (E) shall be designed to take into account beneficiaries with multiple chronic conditions.

(c) PAYMENT METHODOLOGY.—Under the demonstration program under this section the Secretary shall pay a per beneficiary amount to each participating physician who meets or exceeds specific performance standards established by the Secretary with respect to the clinical quality and outcome measures reported under subsection (b)(1)(B). Such amount may vary based on different levels of performance or improvement.

(d) ADMINISTRATION.—

(1) USE OF QUALITY IMPROVEMENT ORGANIZATIONS.—The Secretary shall contract with quality improvement organizations or such other entities as the Secretary deems appropriate to enroll physicians and evaluate their performance under the demonstration program under this section.

(2) TECHNICAL ASSISTANCE.—The Secretary shall require in such contracts that the contractor be responsible for technical assistance and education as needed to physicians

enrolled in the demonstration program under this section for the purpose of aiding their adoption of health information technology, meeting practice standards, and implementing required clinical and outcomes measures.

(e) FUNDING.—

(1) IN GENERAL.—The Secretary shall provide for the transfer from the Federal Supplementary Medical Insurance Trust Fund established under section 1841 of the Social Security Act (42 U.S.C. 1395t) of such funds as are necessary for the costs of carrying out the demonstration program under this section.

(2) BUDGET NEUTRALITY.—In conducting the demonstration program under this section, the Secretary shall ensure that the aggregate payments made by the Secretary do not exceed the amount which the Secretary estimates would have been paid if the demonstration program under this section was not implemented.

(f) WAIVER AUTHORITY.—The Secretary may waive such requirements of titles XI and XVIII of the Social Security Act (42 U.S.C. 1301 et seq.; 1395 et seq.) as may be necessary for the purpose of carrying out the demonstration program under this section.

(g) REPORT.—Not later than 12 months after the date of completion of the demonstration program under this section, the Secretary shall submit to Congress a report on such program, together with recommendations for such legislation and administrative action as the Secretary determines to be appropriate.

(h) DEFINITIONS.—In this section:

(1) ELIGIBLE BENEFICIARY.—The term ''eligible beneficiary'' means any individual who—

(A) is entitled to benefits under part A and enrolled for benefits under part B of title XVIII of the Social Security Act and is not enrolled in a plan under part C of such title; and

(B) has one or more chronic medical conditions specified by the Secretary (one of which may be cognitive impairment).

(2) HEALTH INFORMATION TECHNOLOGY.—The term ''health information technology'' means email communication, clinical alerts and reminders, and other information technology that meets such functionality, interoperability, and other standards as prescribed by the Secretary.

SEC. 350. GAO STUDY AND REPORT ON THE PROPAGATION OF CONCIERGE CARE.

(a) STUDY.—

(1) IN GENERAL.—The Comptroller General of the United States shall conduct a study on concierge care (as defined in paragraph (2)) to determine the extent to which such care—

(A) is used by medicare beneficiaries (as defined in section 1802(b)(5)(A) of the Social Security Act (42 U.S.C. 1395a(b)(5)(A))); and

(B) has impacted upon the access of medicare beneficiaries (as so defined) to items and services for which reimbursement is provided under the medicare program under title XVIII of the Social Security Act (42 U.S.C. 1395 et seq.).

(2) CONCIERGE CARE.—In this section, the term ''concierge care'' means an arrangement under which, as a prerequisite for the provision of a health care item or service to an individual, a physician, practitioner (as described in section 1842(b)(18)(C) of the Social Security Act (42 U.S.C. 1395u(b)(18)(C))), or other individual—

(A) charges a membership fee or another incidental fee to an individual desiring to receive the health care item or service from such physician, practitioner, or other individual; or

(B) requires the individual desiring to receive the health care item or service from such physician, practitioner, or other individual to purchase an item or service.

(b) REPORT.—Not later than the date that is 12 months after the date of enactment of this Act, the Comptroller General of the United States shall submit to Congress a report on the study conducted under subsection (a)(1) together with such recommendations for legislative or administrative action as the Comptroller General determines to be appropriate.

SEC. 351. DEMONSTRATION OF COVERAGE OF CHIROPRACTIC SERVICES UNDER MEDICARE.

(a) DEFINITIONS.—In this section:

(1) CHIROPRACTIC SERVICES.—The term ''chiropractic services'' has the meaning given that term by the Secretary for purposes of the demonstration projects, but shall include, at a minimum—

(A) care for neuromusculoskeletal conditions typical among eligible beneficiaries; and

(B) diagnostic and other services that a chiropractor is legally authorized to perform by the State or jurisdiction in which such treatment is provided.

(2) DEMONSTRATION PROJECT.—The term ''demonstration project'' means a demonstration project established by the Secretary under subsection (b)(1).

(3) ELIGIBLE BENEFICIARY.—The term ''eligible beneficiary'' means an individual who is enrolled under part B of the medicare program.

(4) MEDICARE PROGRAM.—The term ''medicare program'' means the health benefits program under title XVIII of the Social Security Act (42 U.S.C. 1395 et seq.).

(b) DEMONSTRATION OF COVERAGE OF CHIROPRACTIC SERVICES UNDER MEDICARE.—

(1) ESTABLISHMENT.—The Secretary shall establish demonstration projects in accordance with the provisions of this section for the purpose of evaluating the feasibility and advisability of covering chiropractic services under the medicare program (in addition to the coverage provided for services consisting of treatment by means of manual manipulation of the spine to correct a subluxation described in section 1861(r)(5) of the Social Security Act (42 U.S.C. 1395x(r)(5))).

(2) NO PHYSICIAN APPROVAL REQUIRED.—In establishing the demonstration projects, the Secretary shall ensure that an eligible beneficiary who participates in a demonstration project, including an eligible beneficiary who is enrolled for coverage under a Medicare+Choice plan (or, on and after January 1, 2006, under a Medicare Advantage plan), is not required to receive approval from a physician or other health care provider in order to receive a chiropractic service under a demonstration project.

(3) CONSULTATION.—In establishing the demonstration projects, the Secretary shall consult with chiropractors, organizations representing chiropractors, eligible beneficiaries, and organizations representing eligible beneficiaries.

(4) PARTICIPATION.—Any eligible beneficiary may participate in the demonstration projects on a voluntary basis.

(c) CONDUCT OF DEMONSTRATION PROJECTS.—

(1) DEMONSTRATION SITES.—

(A) SELECTION OF DEMONSTRATION SITES.—The Secretary shall conduct demonstration projects at 4 demonstration sites.

(B) GEOGRAPHIC DIVERSITY.—Of the sites described in subparagraph (A)—

(i) 2 shall be in rural areas; and

(ii) 2 shall be in urban areas.

(C) SITES LOCATED IN HPSAS.—At least 1 site described in clause (i) of subparagraph (B) and at least 1 site described in clause (ii) of such subparagraph shall be located in an area that is designated under section 332(a)(1)(A) of the Public Health Service Act (42 U.S.C. 254e(a)(1)(A)) as a health professional shortage area.

(2) IMPLEMENTATION; DURATION.—

(A) IMPLEMENTATION.—The Secretary shall not implement the demonstration projects before October 1, 2004.

(B) DURATION.—The Secretary shall complete the demonstration projects by the date that is 2 years after the date on which the first demonstration project is implemented.

(d) EVALUATION AND REPORT.—

(1) EVALUATION.—The Secretary shall conduct an evaluation of the demonstration projects—

(A) to determine whether eligible beneficiaries who use chiropractic services use a lesser overall amount of items and services for which payment is made under the medicare program than eligible beneficiaries who do not use such services;

(B) to determine the cost of providing payment for chiropractic services under the medicare program;

(C) to determine the satisfaction of eligible beneficiaries participating in the demonstration projects and the quality of care received by such beneficiaries; and

(D) to evaluate such other matters as the Secretary determines is appropriate.

(2) REPORT.—Not later than the date that is 1 year after the date on which the demonstration projects conclude, the Secretary shall submit to Congress a report on the evaluation conducted under paragraph (1) together with such recommendations for legislation or administrative action as the Secretary determines is appropriate.

(e) WAIVER OF MEDICARE REQUIREMENTS.—The Secretary shall waive compliance with such requirements of the medicare program to the extent and for the period the Secretary finds necessary to conduct the demonstration projects.

(f) FUNDING.—

(1) DEMONSTRATION PROJECTS.—

(A) IN GENERAL.—Subject to subparagraph (B) and paragraph (2), the Secretary shall provide for the transfer from the Federal Supplementary Insurance Trust Fund under section 1841 of the Social Security Act (42 U.S.C. 1395t) of such funds as are necessary for the costs of carrying out the demonstration projects under this section.

(B) LIMITATION.—In conducting the demonstration projects under this section, the Secretary shall ensure that the aggregate payments made by the Secretary under the medicare program do not exceed the amount which the Secretary would have paid under the medicare program if the demonstration projects under this section were not implemented.

(2) EVALUATION AND REPORT.—There are authorized to be appropriated such sums as are necessary for the purpose of developing and submitting the report to Congress under subsection (d).

TITLE IV—PROVISIONS RELATING TO PARTS A AND B

Subtitle A—Home Health Services

SEC. 401. DEMONSTRATION PROJECT TO CLARIFY THE DEFINITION OF HOMEBOUND.

(a) DEMONSTRATION PROJECT.—Not later than 180 days after the date of the enactment of this Act, the Secretary shall conduct a 2-year demonstration project under part B of title XVIII of the Social Security Act under which medicare beneficiaries with chronic conditions described in subsection (b) are deemed to be homebound for purposes of receiving home health services under the medicare program.

(b) MEDICARE BENEFICIARY DESCRIBED.—For purposes of subsection (a), a medicare beneficiary is eligible to be deemed to be homebound, without regard to the purpose, frequency, or duration of absences from the home, if—

(1) the beneficiary has been certified by one physician as an individual who has a permanent and severe, disabling condition that is not expected to improve;

(2) the beneficiary is dependent upon assistance from another individual with at least 3 out of the 5 activities of daily living for the rest of the beneficiary's life;

(3) the beneficiary requires skilled nursing services for the rest of the beneficiary's life and the skilled nursing is more than medication management;

(4) an attendant is required to visit the beneficiary on a daily basis to monitor and treat the beneficiary's medical condition or to assist the beneficiary with activities of daily living;

(5) the beneficiary requires technological assistance or the assistance of another person to leave the home; and

(6) the beneficiary does not regularly work in a paid position full-time or part-time outside the home.

(c) DEMONSTRATION PROJECT SITES.—The demonstration project established under this section shall be conducted in 3 States selected by the Secretary to represent the Northeast, Midwest, and Western regions of the United States.

(d) LIMITATION ON NUMBER OF PARTICIPANTS.—The aggregate number of such beneficiaries that may participate in the project may not exceed 15,000.

(e) DATA.—The Secretary shall collect such data on the demonstration project with respect to the provision of home health services to medicare beneficiaries that relates to quality of care, patient outcomes, and additional costs, if any, to the medicare program.

(f) REPORT TO CONGRESS.—Not later than 1 year after the date of the completion of the demonstration project under this section, the Secretary shall submit to Congress a report on the project using the data collected under subsection (e). The report shall include the following:

(1) An examination of whether the provision of home health services to medicare beneficiaries under the project has had any of the following effects:

(A) Has adversely affected the provision of home health services under the medicare program.

(B) Has directly caused an increase of expenditures under the medicare program for the provision of such services that is directly attributable to such clarification.

(2) The specific data evidencing the amount of any increase in expenditures that is directly attributable to the demonstration project (expressed both in absolute dollar terms and as a percentage) above expenditures that would otherwise have been incurred for home health services under the medicare program.

(3) Specific recommendations to exempt permanently and severely disabled homebound beneficiaries from restrictions on the length, frequency, and purpose of their absences from the home to qualify for home health services without incurring additional costs to the medicare program.

(g) WAIVER AUTHORITY.—The Secretary shall waive compliance with the requirements of title XVIII of the Social Security Act (42 U.S.C. 1395 et seq.) to such extent and for such period as the Secretary determines is necessary to conduct demonstration projects.

(h) CONSTRUCTION.—Nothing in this section shall be construed as waiving any applicable civil monetary penalty, criminal penalty, or other remedy available to the Secretary under title XI or title XVIII of the Social Security Act for acts prohibited under such titles, including penalties for false certifications for purposes of receipt of items or services under the medicare program.

(i) AUTHORIZATION OF APPROPRIATIONS.—Payments for the costs of carrying out the demonstration project under this section shall be made from the Federal Supplementary Medical Insurance Trust Fund under section 1841 of such Act (42 U.S.C. 1395t).

(j) DEFINITIONS.—In this section:

(1) MEDICARE BENEFICIARY.—The term ''medicare beneficiary'' means an individual who is enrolled under part B of title XVIII of the Social Security Act.

(2) HOME HEALTH SERVICES.—The term ''home health services'' has the meaning given such term in section 1861(m) of the Social Security Act (42 U.S.C. 1395x(m)).

(3) ACTIVITIES OF DAILY LIVING DEFINED.—The term ''activities of daily living'' means eating, toileting, transferring, bathing, and dressing.

SEC. 402. DEMONSTRATION PROJECT FOR MEDICAL ADULT DAY-CARE SERVICES.

(a) ESTABLISHMENT.—Subject to the succeeding provisions of this section, the Secretary shall establish a demonstration project (in this section referred to as the ''demonstration project'') under which the Secretary shall, as part of a plan of an episode of care for home health services established for a medicare beneficiary, permit a home health agency, directly or under arrangements with a medical adult day-care facility, to provide medical adult day-care services as a substitute for a portion of home health services that would otherwise be provided in the beneficiary's home.

(b) PAYMENT.—

(1) IN GENERAL.—Subject to paragraph (2), the amount of payment for an episode of care for home health services, a portion of which consists of substitute medical adult day-care services, under the demonstration project shall be made at a rate equal to 95 percent of the amount that would otherwise apply for such home health services under section 1895 of the Social Security Act (42 U.S.C. 1395fff). In no case may a home health agency, or a medical adult day-care facility under arrangements with a home health agency, separately charge a beneficiary for medical adult day-care services furnished under the plan of care.

(2) ADJUSTMENT IN CASE OF OVERUTILIZATION OF SUBSTITUTE ADULT DAY-CARE SERVICES TO ENSURE BUDGET NEUTRALITY.—The Secretary shall monitor the expenditures under the demonstration project and under title XVIII of the Social Security Act for home health services. If the Secretary estimates that the total expenditures under the demonstration project and under such title XVIII for home health services for a period determined by the Secretary exceed expenditures that would have been made under such title XVIII for home health services for such period if the demonstration project had not been conducted, the Secretary shall adjust the rate of payment to medical adult day-care facilities under paragraph (1) in order to eliminate such excess.

(c) DEMONSTRATION PROJECT SITES.—The demonstration project established under this section shall be conducted in not more than 5 sites in States selected by the Secretary that license or certify providers of services that furnish medical adult day-care services.

(d) DURATION.—The Secretary shall conduct the demonstration project for a period of 3 years.

(e) VOLUNTARY PARTICIPATION.—Participation of medicare beneficiaries in the demonstration project shall be voluntary. The total number of such beneficiaries that may participate in the project at any given time may not exceed 15,000.

(f) PREFERENCE IN SELECTING AGENCIES.—In selecting home health agencies to participate under the demonstration project, the Secretary shall give preference to those agencies that are currently licensed or certified through common ownership and control to furnish medical adult day-care services.

(g) WAIVER AUTHORITY.—The Secretary may waive such requirements of title XVIII of the Social Security Act as may be necessary for the purposes of carrying out the demonstration project, other than waiving the requirement that an individual be homebound in order to be eligible for benefits for home health services.

(h) EVALUATION AND REPORT.—The Secretary shall conduct an evaluation of the clinical and cost-effectiveness of the demonstration project. Not later than 6 months after the completion of the project, the Secretary shall submit to Congress a report on the evaluation, and shall include in the report the following:

(1) An analysis of the patient outcomes and costs of furnishing care to the medicare beneficiaries participating in the project as compared to such outcomes and costs to beneficiaries receiving only home health services for the same health conditions.

(2) Such recommendations regarding the extension, expansion, or termination of the project as the Secretary determines appropriate.

(i) DEFINITIONS.—In this section:

(1) HOME HEALTH AGENCY.—The term ''home health agency'' has the meaning given such term in section 1861(o) of the Social Security Act (42 U.S.C. 1395x(o)).

(2) MEDICAL ADULT DAY-CARE FACILITY.—The term ''medical adult day-care facility'' means a facility that—

(A) has been licensed or certified by a State to furnish medical adult day-care services in the State for a continuous 2-year period;

(B) is engaged in providing skilled nursing services and other therapeutic services directly or under arrangement with a home health agency;

(C) is licensed and certified by the State in which it operates or meets such standards established by the Secretary to assure quality of care and such other requirements as the Secretary finds necessary in the interest of the health and safety of individuals who are furnished services in the facility; and

(D) provides medical adult day-care services.

(3) MEDICAL ADULT DAY-CARE SERVICES.—The term ''medical adult day-care services'' means—

(A) home health service items and services described in paragraphs (1) through (7) of section 1861(m) furnished in a medical adult day-care facility;

(B) a program of supervised activities furnished in a group setting in the facility that—

(i) meet such criteria as the Secretary determines appropriate; and

(ii) is designed to promote physical and mental health of the individuals; and

(C) such other services as the Secretary may specify.

(4) MEDICARE BENEFICIARY.—The term ''medicare beneficiary'' means an individual entitled to benefits under part A of this title, enrolled under part B of this title, or both.

SEC. 403. TEMPORARY SUSPENSION OF OASIS REQUIREMENT FOR COLLECTION OF DATA ON NON-MEDICARE AND NON-MEDICAID PATIENTS.

(a) IN GENERAL.—During the period described in subsection (b), the Secretary may

not require, under section 4602(e) of the Balanced Budget Act of 1997 (Public Law 105–33; 111 Stat. 467) or otherwise under OASIS, a home health agency to gather or submit information that relates to an individual who is not eligible for benefits under either title XVIII or title XIX of the Social Security Act (such information in this section referred to as ''non-medicare/medicaid OASIS information'').

(b) PERIOD OF SUSPENSION.—The period described in this subsection—

(1) begins on the date of the enactment of this Act; and

(2) ends on the last day of the second month beginning after the date as of which the Secretary has published final regulations regarding the collection and use by the Centers for Medicare & Medicaid Services of non-medicare/medicaid OASIS information following the submission of the report required under subsection (c).

(c) REPORT.—

(1) STUDY.—The Secretary shall conduct a study on how non-medicare/medicaid OASIS information is and can be used by large home health agencies. Such study shall examine—

(A) whether there are unique benefits from the analysis of such information that cannot be derived from other information available to, or collected by, such agencies; and

(B) the value of collecting such information by small home health agencies compared to the administrative burden related to such collection.

In conducting the study the Secretary shall obtain recommendations from quality assessment experts in the use of such information and the necessity of small, as well as large, home health agencies collecting such information.

(2) REPORT.—The Secretary shall submit to Congress a report on the study conducted under paragraph (1) by not later than 18 months after the date of the enactment of this Act.

(d) CONSTRUCTION.—Nothing in this section shall be construed as preventing home health agencies from collecting non-medicare/medicaid OASIS information for their own use.

SEC. 404. MEDPAC STUDY ON MEDICARE MARGINS OF HOME HEALTH AGENCIES.

(a) STUDY.—The Medicare Payment Advisory Commission shall conduct a study of payment margins of home health agencies under the home health prospective payment system under section 1895 of the Social Security Act (42 U.S.C. 1395fff). Such study shall examine whether systematic differences in payment margins are related to differences in case mix (as measured by home health resource groups (HHRGs)) among such agencies. The study shall use the partial or full-year cost reports filed by home health agencies.

(b) REPORT.—Not later than 2 years after the date of the enactment of this Act, the Commission shall submit to Congress a report on the study under subsection (a).

SEC. 405. COVERAGE OF RELIGIOUS NONMEDICAL HEALTH CARE INSTITUTION SERVICES FURNISHED IN THE HOME.

(a) IN GENERAL.—Section 1821(a) (42 U.S.C. 1395i–5(a)) is amended—

(1) in the matter preceding paragraph (1), by inserting ''and for home health services furnished an individual by a religious nonmedical health care institution'' after ''religious nonmedical health care institution''; and

(2) in paragraph (2)—

(A) by striking ''or extended care services'' and inserting '', extended care services, or home health services''; and

(B) by inserting '', or receiving services from a home health agency,'' after ''skilled nursing facility''.

(b) DEFINITION.—Section 1861 (42 U.S.C. 1395x), as amended by section 342, is amended by adding at the end the following new section:

''Extended Care in Religious Nonmedical Health Care Institutions

''(aaa)(1) The term 'home health agency' also includes a religious nonmedical health care institution (as defined in subsection (ss)(1)), but only with respect to items and services ordinarily furnished by such an institution to individuals in their homes, and that are comparable to items and services furnished to individuals by a home health agency that is not religious nonmedical health care institution.

''(2)(A) Subject to subparagraphs (B), payment may be made with respect to services provided by such an institution only to such extent and under such conditions, limitations, and requirements (in addition to or in lieu of the conditions, limitations, and requirements otherwise applicable) as may be provided in regulations consistent with section 1821.

''(B) Notwithstanding any other provision of this title, payment may not be made under subparagraph (A)—

''(i) in a year insofar as such payments exceed $700,000; and

''(ii) after December 31, 2006.''.

Subtitle B—Graduate Medical Education

SEC. 411. EXCEPTION TO INITIAL RESIDENCY PERIOD FOR GERIATRIC RESIDENCY OR FELLOWSHIP PROGRAMS.

(a) CLARIFICATION OF CONGRESSIONAL INTENT.—Congress intended section 1886(h)(5)(F)(ii) of the Social Security Act (42 U.S.C. 1395ww(h)(5)(F)(ii)), as added by section 9202 of the Consolidated Omnibus Budget Reconciliation Act of 1985 (Public Law 99–272), to provide an exception to the initial residency period for geriatric residency or fellowship programs such that, where a particular approved geriatric training program requires a resident to complete 2 years of training to initially become board eligible in the geriatric specialty, the 2 years spent in the geriatric training program are treated as part of the resident's initial residency period, but are not counted against any limitation on the initial residency period.

(b) INTERIM FINAL REGULATORY AUTHORITY AND EFFECTIVE DATE.—The Secretary shall promulgate interim final regulations consistent with the congressional intent expressed in this section after notice and pending opportunity for public comment to be effective for cost reporting periods beginning on or after October 1, 2003.

SEC. 412. TREATMENT OF VOLUNTEER SUPERVISION.

(a) MORATORIUM ON CHANGES IN TREATMENT.—During the 1-year period beginning on January 1, 2004, for purposes of applying subsections (d)(5)(B) and (h) of section 1886 of the Social Security Act (42 U.S.C. 1395ww), the Secretary shall allow all hospitals to count residents in osteopathic and allopathic family practice programs in existence as of January 1, 2002, who are training at non-hospital sites, without regard to the financial arrangement between the hospital and the teaching physician practicing in the non-hospital site to which the resident has been assigned.

(b) STUDY AND REPORT.—

(1) STUDY.—The Inspector General of the Department of Health and Human Services shall conduct a study of the appropriateness of alternative payment methodologies under such sections for the costs of training residents in non-hospital settings.

(2) REPORT.—Not later than 1 year after the date of the enactment of this Act, the Inspector General shall submit to Congress a report on the study conducted under paragraph (1), together with such recommendations as the Inspector General determines appropriate.

Subtitle C—Chronic Care Improvement

SEC. 421. VOLUNTARY CHRONIC CARE IMPROVEMENT UNDER TRADITIONAL FEE-FOR-SERVICE.

(a) IN GENERAL.—Title XVIII is amended by inserting after section 1806 the following new section:

''CHRONIC CARE IMPROVEMENT

''SEC. 1807. (a) IMPLEMENTATION OF CHRONIC CARE IMPROVEMENT PROGRAMS.—

''(1) IN GENERAL.—The Secretary shall provide for the phased-in development, testing, evaluation, and implementation of chronic care improvement programs in accordance with this section. Each such program shall be designed to improve clinical quality and beneficiary satisfaction and achieve spending targets with respect to expenditures under this title for targeted beneficiaries with one or more threshold conditions.

''(2) DEFINITIONS.—For purposes of this section:

''(A) CHRONIC CARE IMPROVEMENT PROGRAM.—The term 'chronic care improvement program' means a program described in paragraph (1) that is offered under an agreement under subsection (b) or (c).

''(B) CHRONIC CARE IMPROVEMENT ORGANIZATION.—The term 'chronic care improvement organization' means an entity that has entered into an agreement under subsection (b) or (c) to provide, directly or through contracts with subcontractors, a chronic care improvement program under this section. Such an entity may be a disease management organization, health insurer, integrated delivery system, physician group practice, a consortium of such entities, or any other legal entity that the Secretary determines appropriate to carry out a chronic care improvement program under this section.

''(C) CARE MANAGEMENT PLAN.—The term 'care management plan' means a plan established under subsection (d) for a participant in a chronic care improvement program.

''(D) THRESHOLD CONDITION.—The term 'threshold condition' means a chronic condition, such as congestive heart failure, diabetes, chronic obstructive pulmonary disease (COPD), or other diseases or conditions, as selected by the Secretary as appropriate for the establishment of a chronic care improvement program.

''(E) TARGETED BENEFICIARY.—The term 'targeted beneficiary' means, with respect to a chronic care improvement program, an individual who—

''(i) is entitled to benefits under part A and enrolled under part B, but not enrolled in a plan under part C;

''(ii) has one or more threshold conditions covered under such program; and

''(iii) has been identified under subsection (d)(1) as a potential participant in such program.

''(3) CONSTRUCTION.—Nothing in this section shall be construed as—

''(A) expanding the amount, duration, or scope of benefits under this title;

''(B) providing an entitlement to participate in a chronic care improvement program under this section;

''(C) providing for any hearing or appeal rights under section 1869, 1878, or otherwise, with respect to a chronic care improvement program under this section; or

''(D) providing benefits under a chronic care improvement program for which a claim may be submitted to the Secretary by any provider of services or supplier (as defined in section 1861(d)).

''(b) DEVELOPMENTAL PHASE (PHASE I).—

''(1) IN GENERAL.—In carrying out this section, the Secretary shall enter into agreements consistent with subsection (f) with chronic care improvement organizations for the development, testing, and evaluation of chronic care improvement programs using randomized controlled trials. The first such agreement shall be entered into not later than 12 months after the date of the enactment of this section.

''(2) AGREEMENT PERIOD.—The period of an agreement under this subsection shall be for 3 years.

''(3) MINIMUM PARTICIPATION.—

''(A) IN GENERAL.—The Secretary shall enter into agreements under this subsection in a manner so that chronic care improvement programs offered under this section are offered in geographic areas that, in the aggregate, consist of areas in which at least 10 percent of the aggregate number of medicare beneficiaries reside.

''(B) MEDICARE BENEFICIARY DEFINED.—In this paragraph, the term 'medicare beneficiary' means an individual who is entitled to benefits under part A, enrolled under part B, or both, and who resides in the United States.

''(4) SITE SELECTION.—In selecting geographic areas in which agreements are entered into under this subsection, the Secretary shall ensure that each chronic care improvement program is conducted in a geographic area in which at least 10,000 targeted beneficiaries reside among other individuals entitled to benefits under part A, enrolled under part B, or both to serve as a control population.

''(5) INDEPENDENT EVALUATIONS OF PHASE I PROGRAMS.—The Secretary shall contract for an independent evaluation of the programs conducted under this subsection. Such evaluation shall be done by a contractor with knowledge of chronic care management programs and demonstrated experience in the evaluation of such programs. Each evaluation shall include an assessment of the following factors of the programs:

''(A) Quality improvement measures, such as adherence to evidence-based guidelines and rehospitalization rates.

''(B) Beneficiary and provider satisfaction.

''(C) Health outcomes.

''(D) Financial outcomes, including any cost savings to the program under this title.

''(c) EXPANDED IMPLEMENTATION PHASE (PHASE II).—

''(1) IN GENERAL.—With respect to chronic care improvement programs conducted under subsection (b), if the Secretary finds that the results of the independent evaluation conducted under subsection (b)(6) indicate that the conditions specified in paragraph (2) have been met by a program (or components of such program), the Secretary shall enter into agreements consistent with subsection (f) to expand the implementation of the program (or components) to additional geographic areas not covered under the program as conducted under subsection (b), which may include the implementation of the program on a national basis. Such expansion shall begin not earlier than 2 years after the program is implemented under subsection (b) and not later than 6 months after the date of completion of such program.

''(2) CONDITIONS FOR EXPANSION OF PROGRAMS.—The conditions specified in this paragraph are, with respect to a chronic care improvement program conducted under subsection (b) for a threshold condition, that the program is expected to—

''(A) improve the clinical quality of care;

''(B) improve beneficiary satisfaction; and

''(C) achieve targets for savings to the program under this title specified by the Secretary in the agreement within a range determined to be appropriate by the Secretary, subject to the application of budget neutrality with respect to the program and not taking into account any payments by the organization under the agreement under the program for risk under subsection (f)(3)(B).

''(3) INDEPENDENT EVALUATIONS OF PHASE II PROGRAMS.—The Secretary shall carry out evaluations of programs expanded under this subsection as the Secretary determines appropriate. Such evaluations shall be carried out in the similar manner as is provided under subsection (b)(5).

''(d) IDENTIFICATION AND ENROLLMENT OF PROSPECTIVE PROGRAM PARTICIPANTS.—

''(1) IDENTIFICATION OF PROSPECTIVE PROGRAM PARTICIPANTS.—The Secretary shall establish a method for identifying targeted beneficiaries who may benefit from participation in a chronic care improvement program.

''(2) INITIAL CONTACT BY SECRETARY.—The Secretary shall communicate with each targeted beneficiary concerning participation in a chronic care improvement program. Such communication may be made by the Secretary and shall include information on the following:

''(A) A description of the advantages to the beneficiary in participating in a program.

''(B) Notification that the organization offering a program may contact the beneficiary directly concerning such participation.

''(C) Notification that participation in a program is voluntary.

''(D) A description of the method for the beneficiary to participate or for declining to participate and the method for obtaining additional information concerning such participation.

''(3) VOLUNTARY PARTICIPATION.—A targeted beneficiary may participate in a chronic care improvement program on a voluntary basis and may terminate participation at any time.

''(e) CHRONIC CARE IMPROVEMENT PROGRAMS.—

''(1) IN GENERAL.—Each chronic care improvement program shall—

''(A) have a process to screen each targeted beneficiary for conditions other than threshold conditions, such as impaired cognitive ability and co-morbidities, for the purposes of developing an individualized, goal-oriented care management plan under paragraph (2);

''(B) provide each targeted beneficiary participating in the program with such plan; and

''(C) carry out such plan and other chronic care improvement activities in accordance with paragraph (3).

''(2) ELEMENTS OF CARE MANAGEMENT PLANS.—A care management plan for a targeted beneficiary shall be developed with the beneficiary and shall, to the extent appropriate, include the following:

''(A) A designated point of contact responsible for communications with the beneficiary and for facilitating communications with other health care providers under the plan.

''(B) Self-care education for the beneficiary (through approaches such as disease management or medical nutrition therapy) and education for primary caregivers and family members.

''(C) Education for physicians and other providers and collaboration to enhance communication of relevant clinical information.

''(D) The use of monitoring technologies that enable patient guidance through the exchange of pertinent clinical information, such as vital signs, symptomatic information, and health self-assessment.

''(E) The provision of information about hospice care, pain and palliative care, and end-of-life care.

''(3) CONDUCT OF PROGRAMS.—In carrying out paragraph (1)(C) with respect to a participant, the chronic care improvement organization shall—

''(A) guide the participant in managing the participant's health (including all co-morbidities, relevant health care services, and pharmaceutical needs) and in performing activities as specified under the elements of the care management plan of the participant;

''(B) use decision-support tools such as evidence-based practice guidelines or other criteria as determined by the Secretary; and

''(C) develop a clinical information database to track and monitor each participant across settings and to evaluate outcomes.

''(4) ADDITIONAL RESPONSIBILITIES.—

''(A) OUTCOMES REPORT.—Each chronic care improvement organization offering a chronic care improvement program shall monitor and report to the Secretary, in a manner specified by the Secretary, on health care quality, cost, and outcomes.

''(B) ADDITIONAL REQUIREMENTS.—Each such organization and program shall comply with such additional requirements as the Secretary may specify.

''(5) ACCREDITATION.—The Secretary may provide that chronic care improvement programs and chronic care improvement organizations that are accredited by qualified organizations (as defined by the Secretary) may be deemed to meet such requirements under this section as the Secretary may specify.

''(f) TERMS OF AGREEMENTS.—

''(1) TERMS AND CONDITIONS.—

''(A) IN GENERAL.—An agreement under this section with a chronic care improvement organization shall contain such terms and conditions as the Secretary may specify consistent with this section.

''(B) CLINICAL, QUALITY IMPROVEMENT, AND FINANCIAL REQUIREMENTS.—The Secretary may not enter into an agreement with such an organization under this section for the operation of a chronic care improvement program unless—

''(i) the program and organization meet the requirements of subsection (e) and such clinical, quality improvement, financial, and other requirements as the Secretary deems to be appropriate for the targeted beneficiaries to be served; and

''(ii) the organization demonstrates to the satisfaction of the Secretary that the organization is able to assume financial risk for performance under the agreement (as applied under paragraph (3)(B)) with respect to payments made to the organization under such agreement through available reserves, reinsurance, withholds, or such other means as the Secretary determines appropriate.

''(2) MANNER OF PAYMENT.—Subject to paragraph (3)(B), the payment under an agreement under—

''(A) subsection (b) shall be computed on a per-member per-month basis; or

''(B) subsection (c) may be on a per-member per-month basis or such other basis as the Secretary and organization may agree.

''(3) APPLICATION OF PERFORMANCE STANDARDS.—

''(A) SPECIFICATION OF PERFORMANCE STANDARDS.—Each agreement under this section with a chronic care improvement organization shall specify performance standards for each of the factors specified in subsection (c)(2), including clinical quality and spending targets under this title, against which the performance of the chronic care improvement organization under the agreement is measured.

''(B) ADJUSTMENT OF PAYMENT BASED ON PERFORMANCE.—

''(i) IN GENERAL.—Each such agreement shall provide for adjustments in payment

rates to an organization under the agreement insofar as the Secretary determines that the organization failed to meet the performance standards specified in the agreement under subparagraph (A).

''(ii) FINANCIAL RISK FOR PERFORMANCE.—In the case of an agreement under subsection (b) or (c), the agreement shall provide for a full recovery for any amount by which the fees paid to the organization under the agreement exceed the estimated savings to the programs under this title attributable to implementation of such agreement.

''(4) BUDGET NEUTRAL PAYMENT CONDITION.—Under this section, the Secretary shall ensure that the aggregate sum of medicare program benefit expenditures for beneficiaries participating in chronic care improvement programs and funds paid to chronic care improvement organizations under this section, shall not exceed the medicare program benefit expenditures that the Secretary estimates would have been made for such targeted beneficiaries in the absence of such programs.

''(g) FUNDING.—(1) Subject to paragraph (2), there are appropriated to the Secretary, in appropriate part from the Federal Hospital Insurance Trust Fund and the Federal Supplementary Medical Insurance Trust Fund, such sums as may be necessary to provide for agreements with chronic care improvement programs under this section.

''(2) In no case shall the funding under this section exceed $100,000,000 in aggregate increased expenditures under this title (after taking into account any savings attributable to the operation of this section) over the 3-fiscal-year period beginning on October 1, 2003.''.

(b) REPORTS.—The Secretary shall submit to Congress reports on the operation of section 1807 of the Social Security Act, as added by subsection (a), as follows:

(1) Not later than 2 years after the date of the implementation of such section, the Secretary shall submit to Congress an interim report on the scope of implementation of the programs under subsection (b) of such section, the design of the programs, and preliminary cost and quality findings with respect to those programs based on the following measures of the programs:

(A) Quality improvement measures, such as adherence to evidence-based guidelines and rehospitalization rates.

(B) Beneficiary and provider satisfaction.

(C) Health outcomes.

(D) Financial outcomes.

(2) Not later than 3 years and 6 months after the date of the implementation of such section the Secretary shall submit to Congress an update to the report required under paragraph (1) on the results of such programs.

(3) The Secretary shall submit to Congress 2 additional biennial reports on the chronic care improvement programs conducted under such section. The first such report shall be submitted not later than 2 years after the report is submitted under paragraph (2). Each such report shall include information on—

(A) the scope of implementation (in terms of both regions and chronic conditions) of the chronic care improvement programs;

(B) the design of the programs; and

(C) the improvements in health outcomes and financial efficiencies that result from such implementation.

SEC. 422. MEDICARE ADVANTAGE QUALITY IMPROVEMENT PROGRAMS.

(a) IN GENERAL.—Section 1852(e) (42 U.S.C. 1395w–22(e)) is amended—

(1) in the heading, by striking ''ASSURANCE'' and inserting ''IMPROVEMENT'';

(2) by amending paragraphs (1) through (3) to read as follows:

''(1) IN GENERAL.—Each MA organization shall have an ongoing quality improvement program for the purpose of improving the quality of care provided to enrollees in each MA plan offered by such organization (other than an MA private fee-for-service plan or an MSA plan).

''(2) CHRONIC CARE IMPROVEMENT PROGRAMS.—As part of the quality improvement program under paragraph (1), each MA organization shall have a chronic care improvement program. Each chronic care improvement program shall have a method for monitoring and identifying enrollees with multiple or sufficiently severe chronic conditions that meet criteria established by the organization for participation under the program.

''(3) DATA.—

''(A) COLLECTION, ANALYSIS, AND REPORTING.—

''(i) IN GENERAL.—Except as provided in clauses (ii) and (iii) with respect to plans described in such clauses and subject to subparagraph (B), as part of the quality improvement program under paragraph (1), each MA organization shall provide for the collection, analysis, and reporting of data that permits the measurement of health outcomes and other indices of quality.

''(ii) APPLICATION TO MA REGIONAL PLANS.—The Secretary shall establish as appropriate by regulation requirements for the collection, analysis, and reporting of data that permits the measurement of health outcomes and other indices of quality for MA organizations with respect to MA regional plans. Such requirements may not exceed the requirements under this subparagraph with respect to MA local plans that are preferred provider organization plans.

''(iii) APPLICATION TO PREFERRED PROVIDER ORGANIZATIONS.—Clause (i) shall apply to MA organizations with respect to MA local plans that are preferred provider organization plans only insofar as services are furnished by providers or services, physicians, and other health care practitioners and suppliers that have contracts with such organization to furnish services under such plans.

''(iv) DEFINITION OF PREFERRED PROVIDER ORGANIZATION PLAN.—In this subparagraph, the term 'preferred provider organization plan' means an MA plan that—

''(I) has a network of providers that have agreed to a contractually specified reimbursement for covered benefits with the organization offering the plan;

''(II) provides for reimbursement for all covered benefits regardless of whether such benefits are provided within such network of providers; and

''(III) is offered by an organization that is not licensed or organized under State law as a health maintenance organization.

''(B) LIMITATIONS.—

''(i) TYPES OF DATA.—The Secretary shall not collect under subparagraph (A) data on quality, outcomes, and beneficiary satisfaction to facilitate consumer choice and program administration other than the types of data that were collected by the Secretary as of November 1, 2003.

''(ii) CHANGES IN TYPES OF DATA.—Subject to subclause (iii), the Secretary may only change the types of data that are required to be submitted under subparagraph (A) after submitting to Congress a report on the reasons for such changes that was prepared in consultation with MA organizations and private accrediting bodies.

''(iii) CONSTRUCTION.—Nothing in the subsection shall be construed as restricting the ability of the Secretary to carry out the duties under section 1851(d)(4)(D).'';

(3) in paragraph (4)(B), by amending clause (i) to read as follows:

''(i) Paragraphs (1) through (3) of this subsection (relating to quality improvement programs).''; and

(4) by striking paragraph (5).

(b) CONFORMING AMENDMENT.—Section 1852(c)(1)(I) (42 U.S.C. 1395w–22(c)(1)(I)) is amended to read as follows:

''(I) QUALITY IMPROVEMENT PROGRAM.—A description of the organization's quality improvement program under subsection (e).''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to contract years beginning on and after January 1, 2006.

SEC. 423. CHRONICALLY ILL MEDICARE BENEFICIARY RESEARCH, DATA, DEMONSTRATION STRATEGY.

(a) DEVELOPMENT OF PLAN.—Not later than 6 months after the date of the enactment of this Act, the Secretary shall develop a plan to improve quality of care and reduce the cost of care for chronically ill medicare beneficiaries.

(b) PLAN REQUIREMENTS.—The plan will utilize existing data and identify data gaps, develop research initiatives, and propose intervention demonstration programs to provide better health care for chronically ill medicare beneficiaries. The plan shall—

(1) integrate existing data sets including, the Medicare Current Beneficiary Survey (MCBS), Minimum Data Set (MDS), Outcome and Assessment Information Set (OASIS), data from Quality Improvement Organizations (QIO), and claims data;

(2) identify any new data needs and a methodology to address new data needs;

(3) plan for the collection of such data in a data warehouse; and

(4) develop a research agenda using such data.

(c) CONSULTATION.—In developing the plan under this section, the Secretary shall consult with experts in the fields of care for the chronically ill (including clinicians).

(d) IMPLEMENTATION.—Not later than 2 years after the date of the enactment of this Act, the Secretary shall implement the plan developed under this section. The Secretary may contract with appropriate entities to implement such plan.

(e) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary such sums as may be necessary in fiscal years 2004 and 2005 to carry out this section.

Subtitle D—Other Provisions

SEC. 431. IMPROVEMENTS IN NATIONAL AND LOCAL COVERAGE DETERMINATION PROCESS TO RESPOND TO CHANGES IN TECHNOLOGY.

(a) NATIONAL AND LOCAL COVERAGE DETERMINATION PROCESS.—

(1) IN GENERAL.—Section 1862 (42 U.S.C. 1395y), as amended by sections 948 and 950, is amended—

(A) in the third sentence of subsection (a), by inserting ''consistent with subsection (l)'' after ''the Secretary shall ensure''; and

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

''(l) NATIONAL AND LOCAL COVERAGE DETERMINATION PROCESS.—

''(1) FACTORS AND EVIDENCE USED IN MAKING NATIONAL COVERAGE DETERMINATIONS.—The Secretary shall make available to the public the factors considered in making national coverage determinations of whether an item or service is reasonable and necessary. The Secretary shall develop guidance documents to carry out this paragraph in a manner similar to the development of guidance documents under section 701(h) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 371(h)).

''(2) TIMEFRAME FOR DECISIONS ON REQUESTS FOR NATIONAL COVERAGE DETERMINATIONS.—In

the case of a request for a national coverage determination that—

''(A) does not require a technology assessment from an outside entity or deliberation from the Medicare Coverage Advisory Committee, the decision on the request shall be made not later than 6 months after the date of the request; or

''(B) requires such an assessment or deliberation and in which a clinical trial is not requested, the decision on the request shall be made not later than 9 months after the date of the request.

''(3) PROCESS FOR PUBLIC COMMENT IN NATIONAL COVERAGE DETERMINATIONS.—

''(A) PERIOD FOR PROPOSED DECISION.—Not later than the end of the 6-month period (or 9-month period for requests described in paragraph (2)(B)) that begins on the date a request for a national coverage determination is made, the Secretary shall make a draft of proposed decision on the request available to the public through the Internet website of the Centers for Medicare & Medicaid Services or other appropriate means.

''(B) 30-DAY PERIOD FOR PUBLIC COMMENT.—Beginning on the date the Secretary makes a draft of the proposed decision available under subparagraph (A), the Secretary shall provide a 30-day period for public comment on such draft.

''(C) 60-DAY PERIOD FOR FINAL DECISION.—Not later than 60 days after the conclusion of the 30-day period referred to under subparagraph (B), the Secretary shall—

''(i) make a final decision on the request;

''(ii) include in such final decision summaries of the public comments received and responses to such comments;

''(iii) make available to the public the clinical evidence and other data used in making such a decision when the decision differs from the recommendations of the Medicare Coverage Advisory Committee; and

''(iv) in the case of a final decision under clause (i) to grant the request for the national coverage determination, the Secretary shall assign a temporary or permanent code (whether existing or unclassified) and implement the coding change.

''(4) CONSULTATION WITH OUTSIDE EXPERTS IN CERTAIN NATIONAL COVERAGE DETERMINATIONS.—With respect to a request for a national coverage determination for which there is not a review by the Medicare Coverage Advisory Committee, the Secretary shall consult with appropriate outside clinical experts.

''(5) LOCAL COVERAGE DETERMINATION PROCESS.—

''(A) PLAN TO PROMOTE CONSISTENCY OF COVERAGE DETERMINATIONS.—The Secretary shall develop a plan to evaluate new local coverage determinations to determine which determinations should be adopted nationally and to what extent greater consistency can be achieved among local coverage determinations.

''(B) CONSULTATION.—The Secretary shall require the fiscal intermediaries or carriers providing services within the same area to consult on all new local coverage determinations within the area.

''(C) DISSEMINATION OF INFORMATION.—The Secretary should serve as a center to disseminate information on local coverage determinations among fiscal intermediaries and carriers to reduce duplication of effort.

''(6) NATIONAL AND LOCAL COVERAGE DETERMINATION DEFINED.—For purposes of this subsection—

''(A) NATIONAL COVERAGE DETERMINATION.—The term 'national coverage determination' means a determination by the Secretary with respect to whether or not a particular item or service is covered nationally under this title.

''(B) LOCAL COVERAGE DETERMINATION.—The term 'local coverage determination' has the meaning given that in section 1869(f)(2)(B).''.

(2) EFFECTIVE DATE.—The amendments made by paragraph (1) shall apply to national coverage determinations as of January 1, 2004, and section 1862(l)(5) of the Social Security Act, as added by such paragraph, shall apply to local coverage determinations made on or after July 1, 2004.

(b) MEDICARE COVERAGE OF ROUTINE COSTS ASSOCIATED WITH CERTAIN CLINICAL TRIALS OF CATEGORY A DEVICES.—

(1) IN GENERAL.—Section 1862 (42 U.S.C. 1395y), as amended by subsection (a), is amended by adding at the end the following new subsection:

''(m) COVERAGE OF ROUTINE COSTS ASSOCIATED WITH CERTAIN CLINICAL TRIALS OF CATEGORY A DEVICES.—

''(1) IN GENERAL.—In the case of an individual entitled to benefits under part A, or enrolled under part B, or both who participates in a category A clinical trial, the Secretary shall not exclude under subsection (a)(1) payment for coverage of routine costs of care (as defined by the Secretary) furnished to such individual in the trial.

''(2) CATEGORY A CLINICAL TRIAL.—For purposes of paragraph (1), a 'category A clinical trial' means a trial of a medical device if—

''(A) the trial is of an experimental/investigational (category A) medical device (as defined in regulations under section 405.201(b) of title 42, Code of Federal Regulations (as in effect as of September 1, 2003));

''(B) the trial meets criteria established by the Secretary to ensure that the trial conforms to appropriate scientific and ethical standards; and

''(C) in the case of a trial initiated before January 1, 2010, the device involved in the trial has been determined by the Secretary to be intended for use in the diagnosis, monitoring, or treatment of an immediately life-threatening disease or condition.''.

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall apply to routine costs incurred on and after January 1, 2005, and, as of such date, section 411.15(o) of title 42, Code of Federal Regulations, is superseded to the extent inconsistent with section 1862(m) of the Social Security Act, as added by such paragraph.

(3) RULE OF CONSTRUCTION.—Nothing in the amendment made by paragraph (1) shall be construed as applying to, or affecting, coverage or payment for a nonexperimental/investigational (category B) device.

(c) ISSUANCE OF TEMPORARY NATIONAL CODES.—Not later than July 1, 2004, the Secretary shall implement revised procedures for the issuance of temporary national HCPCS codes under part B of title XVIII of the Social Security Act.

SEC. 432. EXTENSION OF TREATMENT OF CERTAIN PHYSICIAN PATHOLOGY SERVICES UNDER MEDICARE.

Section 542(c) of BIPA (114 Stat. 2763A–551) is amended by inserting '', and for services furnished during 2005 and 2006'' before the period at the end.

SEC. 433. PAYMENT FOR PANCREATIC ISLET CELL INVESTIGATIONAL TRANSPLANTS FOR MEDICARE BENEFICIARIES IN CLINICAL TRIALS.

(a) CLINICAL TRIAL.—

(1) IN GENERAL.—The Secretary, acting through the National Institute of Diabetes and Digestive and Kidney Disorders, shall conduct a clinical investigation of pancreatic islet cell transplantation which includes medicare beneficiaries.

(2) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary such sums as may be necessary to conduct the clinical investigation under paragraph (1).

(b) MEDICARE PAYMENT.—Not earlier than October 1, 2004, the Secretary shall pay for the routine costs as well as transplantation and appropriate related items and services (as described in subsection (c)) in the case of medicare beneficiaries who are participating in a clinical trial described in subsection (a) as if such transplantation were covered under title XVIII of such Act and as would be paid under part A or part B of such title for such beneficiary.

(c) SCOPE OF PAYMENT.—For purposes of subsection (b):

(1) The term ''routine costs'' means reasonable and necessary routine patient care costs (as defined in the Centers for Medicare & Medicaid Services Coverage Issues Manual, section 30–1), including immunosuppressive drugs and other followup care.

(2) The term ''transplantation and appropriate related items and services'' means items and services related to the acquisition and delivery of the pancreatic islet cell transplantation, notwithstanding any national noncoverage determination contained in the Centers for Medicare & Medicaid Services Coverage Issues Manual.

(3) The term ''medicare beneficiary'' means an individual who is entitled to benefits under part A of title XVIII of the Social Security Act, or enrolled under part B of such title, or both.

(d) CONSTRUCTION.—The provisions of this section shall not be construed—

(1) to permit payment for partial pancreatic tissue or islet cell transplantation under title XVIII of the Social Security Act other than payment as described in subsection (b); or

(2) as authorizing or requiring coverage or payment conveying—

(A) benefits under part A of such title to a beneficiary not entitled to such part A; or

(B) benefits under part B of such title to a beneficiary not enrolled in such part B.

SEC. 434. RESTORATION OF MEDICARE TRUST FUNDS.

(a) DEFINITIONS.—In this section:

(1) CLERICAL ERROR.—The term ''clerical error'' means a failure that occurs on or after April 15, 2001, to have transferred the correct amount from the general fund of the Treasury to a Trust Fund.

(2) TRUST FUND.—The term ''Trust Fund'' means the Federal Hospital Insurance Trust Fund established under section 1817 of the Social Security Act (42 U.S.C. 1395i) and the Federal Supplementary Medical Insurance Trust Fund established under section 1841 of such Act (42 U.S.C. 1395t).

(b) CORRECTION OF TRUST FUND HOLDINGS.—

(1) IN GENERAL.—The Secretary of the Treasury shall take the actions described in paragraph (2) with respect to the Trust Fund with the goal being that, after such actions are taken, the holdings of the Trust Fund will replicate, to the extent practicable in the judgment of the Secretary of the Treasury, in consultation with the Secretary, the holdings that would have been held by the Trust Fund if the clerical error involved had not occurred.

(2) OBLIGATIONS ISSUED AND REDEEMED.—The Secretary of the Treasury shall—

(A) issue to the Trust Fund obligations under chapter 31 of title 31, United States Code, that bear issue dates, interest rates, and maturity dates that are the same as those for the obligations that—

(i) would have been issued to the Trust Fund if the clerical error involved had not occurred; or

(ii) were issued to the Trust Fund and were redeemed by reason of the clerical error involved; and

(B) redeem from the Trust Fund obligations that would have been redeemed from

the Trust Fund if the clerical error involved had not occurred.

(c) APPROPRIATION.—There is appropriated to the Trust Fund, out of any money in the Treasury not otherwise appropriated, an amount determined by the Secretary of the Treasury, in consultation with the Secretary, to be equal to the interest income lost by the Trust Fund through the date on which the appropriation is being made as a result of the clerical error involved.

(d) CONGRESSIONAL NOTICE.—In the case of a clerical error that occurs after April 15, 2001, the Secretary of the Treasury, before taking action to correct the error under this section, shall notify the appropriate committees of Congress concerning such error and the actions to be taken under this section in response to such error.

(e) DEADLINE.—With respect to the clerical error that occurred on April 15, 2001, not later than 120 days after the date of the enactment of this Act—

(1) the Secretary of the Treasury shall take the actions under subsection (b)(1); and

(2) the appropriation under subsection (c) shall be made.

SEC. 435. MODIFICATIONS TO MEDICARE PAYMENT ADVISORY COMMISSION (MEDPAC).

(a) EXAMINATION OF BUDGET CONSEQUENCES.—Section 1805(b) (42 U.S.C. 1395b–6(b)) is amended by adding at the end the following new paragraph:

''(8) EXAMINATION OF BUDGET CONSEQUENCES.—Before making any recommendations, the Commission shall examine the budget consequences of such recommendations, directly or through consultation with appropriate expert entities.''.

(b) CONSIDERATION OF EFFICIENT PROVISION OF SERVICES.—Section 1805(b)(2)(B)(i) (42 U.S.C. 1395b–6(b)(2)(B)(i)) is amended by inserting ''the efficient provision of'' after ''expenditures for''.

(c) APPLICATION OF DISCLOSURE REQUIREMENTS.—

(1) IN GENERAL.—Section 1805(c)(2)(D) (42 U.S.C. 1395b–6(c)(2)(D)) is amended by adding at the end the following: ''Members of the Commission shall be treated as employees of Congress for purposes of applying title I of the Ethics in Government Act of 1978 (Public Law 95–521).''.

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall take effect on January 1, 2004.

(d) ADDITIONAL REPORTS.—

(1) DATA NEEDS AND SOURCES.—The Medicare Payment Advisory Commission shall conduct a study, and submit a report to Congress by not later than June 1, 2004, on the need for current data, and sources of current data available, to determine the solvency and financial circumstances of hospitals and other medicare providers of services.

(2) USE OF TAX-RELATED RETURNS.—Using return information provided under Form 990 of the Internal Revenue Service, the Commission shall submit to Congress, by not later than June 1, 2004, a report on the following:

(A) Investments, endowments, and fundraising of hospitals participating under the medicare program and related foundations.

(B) Access to capital financing for private and for not-for-profit hospitals.

(e) REPRESENTATION OF EXPERTS IN PRESCRIPTION DRUGS.—

(1) IN GENERAL.—Section 1805(c)(2)(B) (42 U.S.C. 1395b–6(c)(2)(B)) is amended by inserting ''experts in the area of pharmaco-economics or prescription drug benefit programs,'' after ''other health professionals,''.

(2) APPOINTMENT.—The Comptroller General of the United States shall ensure that the membership of the Commission complies with the amendment made by paragraph (1) with respect to appointments made on or after the date of the enactment of this Act.

SEC. 436. TECHNICAL AMENDMENTS.

(a) PART A.—(1) Section 1814(a) (42 U.S.C. 1395f(a)) is amended—

(A) by striking the seventh sentence, as added by section 322(a)(1) of BIPA (114 Stat. 2763A–501); and

(B) in paragraph (7)(A)—

(i) in clause (i), by inserting before the comma at the end the following: ''based on the physician's or medical director's clinical judgment regarding the normal course of the individual's illness''; and

(ii) in clause (ii), by inserting before the semicolon at the end the following: ''based on such clinical judgment''.

(2) Section 1814(b) (42 U.S.C. 1395f(b)), in the matter preceding paragraph (1), is amended by inserting a comma after ''1813''.

(3) Section 1815(e)(1)(B) (42 U.S.C. 1395g(e)(1)(B)), in the matter preceding clause (i), is amended by striking ''of hospital'' and inserting ''of a hospital''.

(4) Section 1816(c)(2)(B)(ii) (42 U.S.C. 1395h(c)(2)(B)(ii)) is amended—

(A) by striking ''and'' at the end of subclause (III); and

(B) by striking the period at the end of subclause (IV) and inserting '', and''.

(5) Section 1817(k)(3)(A) (42 U.S.C. 1395i(k)(3)(A)) is amended—

(A) in clause (i)(I), by striking the comma at the end and inserting a semicolon; and

(B) in clause (ii), by striking ''the Medicare and medicaid programs'' and inserting ''the programs under this title and title XIX''.

(6) Section 1817(k)(6)(B) (42 U.S.C. 1395i(k)(6)(B)) is amended by striking ''Medicare program under title XVIII'' and inserting ''program under this title''.

(7) Section 1818 (42 U.S.C. 1395i–2) is amended—

(A) in subsection (d)(6)(A) is amended by inserting ''of such Code'' after ''3111(b)''; and

(B) in subsection (g)(2)(B) is amended by striking ''subsection (b).'' and inserting ''subsection (b)''.

(8) Section 1819 (42 U.S.C. 1395i–3) is amended—

(A) in subsection (b)(4)(C)(i), by striking ''at least at least'' and inserting ''at least'';

(B) in subsection (d)(1)(A), by striking ''physical mental'' and inserting ''physical, mental''; and

(C) in subsection (f)(2)(B)(iii), by moving the last sentence 2 ems to the left.

(9) Section 1886(b)(3)(I)(i)(I) (42 U.S.C. 1395ww(b)(3)(I)(i)(I)) is amended by striking ''the the'' and inserting ''the''.

(10) The heading of subsection (mm) of section 1861 (42 U.S.C. 1395x) is amended to read as follows:

''Critical Access Hospital; Critical Access Hospital Services''.

(11) Paragraphs (1) and (2) of section 1861(tt) (42 U.S.C. 1395x(tt)) are each amended by striking ''rural primary care'' and inserting ''critical access''.

(12) Section 1865(b)(3)(B) (42 U.S.C. 1395bb(b)(3)(B)) is amended by striking ''section 1819 and 1861(j)'' and inserting ''sections 1819 and 1861(j)''.

(13) Section 1866(b)(2) (42 U.S.C. 1395cc(b)(2)) is amended by moving subparagraph (D) 2 ems to the left.

(14) Section 1867 (42 U.S.C. 1395dd) is amended—

(A) in the matter following clause (ii) of subsection (d)(1)(B), by striking ''is is'' and inserting ''is'';

(B) in subsection (e)(1)(B), by striking ''a pregnant women'' and inserting ''a pregnant woman''; and

(C) in subsection (e)(2), by striking ''means hospital'' and inserting ''means a hospital''.

(15) Section 1886(g)(3)(B) (42 U.S.C. 1395ww(g)(3)(B)) is amended by striking ''(as defined in subsection (d)(5)(D)(iii)'' and inserting ''(as defined in subsection (d)(5)(D)(iii))''.

(b) PART B.—(1) Section 1833(h)(5)(D) (42 U.S.C. 13951(h)(5)(D)) is amended by striking ''clinic,,'' and inserting ''clinic,''.

(2) Section 1833(t)(3)(C)(ii) (42 U.S.C. 13951(t)(3)(C)(ii)) is amended by striking ''clause (iii)'' and inserting ''clause (iv)''.

(3) Section 1861(v)(1)(S)(ii)(III) (42 U.S.C. 1395x(v)(1)(S)(ii)(III)) is amended by striking ''(as defined in section 1886(d)(5)(D)(iii)'' and inserting ''(as defined in section 1886(d)(5)(D)(iii))''.

(4) Section 1834(b)(4)(D)(iv) (42 U.S.C. 1395m(b)(4)(D)(iv)) is amended by striking ''clauses (vi)'' and inserting ''clause (vi)''.

(5) Section 1834(m)(4)(C)(ii)(III) (42 U.S.C. 1395m(m)(4)(C)(ii)(III)) is amended by striking ''1861(aa)(s)'' and inserting ''1861(aa)(2)''.

(6) Section 1838(a)(1) (42 U.S.C. 1395q(a)(1)) is amended by inserting a comma after ''1966''.

(7) The second sentence of section 1839(a)(4) (42 U.S.C. 1395r(a)(4)) is amended by striking ''which will'' and inserting ''will''.

(8) Section 1842(c)(2)(B)(ii) (42 U.S.C. 1395u(c)(2)(B)(ii)) is amended—

(A) by striking ''and'' at the end of subclause (III); and

(B) by striking the period at the end of subclause (IV) and inserting '', and''.

(9) Section 1842(i)(2) (42 U.S.C. 1395u(i)(2)) is amended by striking ''services, a physician'' and inserting ''services, to a physician''.

(10) Section 1848(i)(3)(A) (42 U.S.C. 1395w–4(i)(3)(A)) is amended by striking ''a comparable services'' and inserting ''comparable services''.

(11) Section 1861(s)(2)(K)(i) (42 U.S.C. 1395x(s)(2)(K)(i)) is amended by striking ''; and but'' and inserting '', but''.

(12) Section 1861(aa)(1)(B) (42 U.S.C. 1395x(aa)(1)(B)) is amended by striking ''.,'' and inserting a comma.

(13) Section 128(b)(2) of BIPA (114 Stat. 2763A–480) is amended by striking ''Not later that'' and inserting ''Not later than'' each place it appears.

(c) PARTS A AND B.—(1) Section 1812(a)(3) (42 U.S.C. 1395d(a)(3)) is amended—

(A) by striking ''for individuals not'' and inserting ''in the case of individuals not''; and

(B) by striking ''for individuals so'' and inserting ''in the case of individuals so''.

(2)(A) Section 1814(a) (42 U.S.C. 1395f(a)) is amended in the sixth sentence by striking ''leave home,'' and inserting ''leave home and''.

(B) Section 1835(a) (42 U.S.C. 1395n(a)) is amended in the seventh sentence by striking ''leave home,'' and inserting ''leave home and''.

(3) Section 1891(d)(1) (42 U.S.C. 1395bbb(d)(1)) is amended by striking ''subsection (c)(2)(C)(I)'' and inserting ''subsection (c)(2)(C)(i)(I)''.

(4) Section 1861(v) (42 U.S.C. 1395x(v)) is amended by moving paragraph (8) (including clauses (i) through (v) of such paragraph) 2 ems to the left.

(5) Section 1866B(b)(7)(D) (42 U.S.C. 1395cc–2(b)(7)(D)) is amended by striking ''(c)(2)(A)(ii)'' and inserting ''(c)(2)(B)''.

(6) Section 1886(h)(3)(D)(ii)(III) (42 U.S.C. 1395ww(h)(3)(D)(ii)(III)) is amended by striking ''and'' after the comma at the end.

(7) Section 1893(a) (42 U.S.C. 1395ddd(a)) is amended by striking ''Medicare program'' and inserting ''medicare program''.

(8) Section 1896(b)(4) (42 U.S.C. 1395ggg(b)(4)) is amended by striking ''701(f)'' and inserting ''712(f)''.

(d) PART C.—(1) Section 1853 (42 U.S.C. 1395w–23), as amended by section 307 of BIPA (114 Stat. 2763A–558), is amended—

(A) in subsection (a)(3)(C)(ii), by striking ''clause (iii)'' and inserting ''clause (iv)'';

(B) in subsection (a)(3)(C), by redesignating the clause (iii) added by such section 307 as clause (iv); and

(C) in subsection (c)(5), by striking ''(a)(3)(C)(iii)'' and inserting ''(a)(3)(C)(iv)''.

(2) Section 1876 (42 U.S.C. 1395mm) is amended—

(A) in subsection (c)(2)(B), by striking ''signifcant'' and inserting ''significant''; and

(B) in subsection (j)(2), by striking ''this setion'' and inserting ''this section''.

(e) MEDIGAP.—Section 1882 (42 U.S.C. 1395ss) is amended—

(1) in subsection (d)(3)(A)(i)(II), by striking ''plan a medicare supplemental policy'' and inserting ''plan, a medicare supplemental policy'';

(2) in subsection (d)(3)(B)(iii)(II), by striking ''to the best of the issuer or seller's knowledge'' and inserting ''to the best of the issuer's or seller's knowledge'';

(3) in subsection (g)(2)(A), by striking ''medicare supplement policies'' and inserting ''medicare supplemental policies'';

(4) in subsection (p)(2)(B), by striking '', and'' and inserting ''; and''; and

(5) in subsection (s)(3)(A)(iii), by striking ''pre-existing'' and inserting ''preexisting''.

TITLE V—ADMINISTRATIVE IMPROVEMENTS, REGULATORY REDUCTION, AND CONTRACTING REFORM

SEC. 500. ADMINISTRATIVE IMPROVEMENTS WITHIN THE CENTERS FOR MEDICARE & MEDICAID SERVICES (CMS).

(a) COORDINATED ADMINISTRATION OF MEDICARE PRESCRIPTION DRUG AND MEDICARE ADVANTAGE PROGRAMS.—Title XVIII (42 U.S.C. 1395 et seq.), as amended by section 421, is amended by inserting after 1807 the following new section:

''PROVISIONS RELATING TO ADMINISTRATION

''SEC. 1808. (a) COORDINATED ADMINISTRATION OF MEDICARE PRESCRIPTION DRUG AND MEDICARE ADVANTAGE PROGRAMS.—

''(1) IN GENERAL.—There is within the Centers for Medicare & Medicaid Services a center to carry out the duties described in paragraph (3).

''(2) DIRECTOR.—Such center shall be headed by a director who shall report directly to the Administrator of the Centers for Medicare & Medicaid Services.

''(3) DUTIES.—The duties described in this paragraph are the following:

''(A) The administration of parts C and D.

''(B) The provision of notice and information under section 1804.

''(C) Such other duties as the Secretary may specify.

''(4) DEADLINE.—The Secretary shall ensure that the center is carrying out the duties described in paragraph (3) by not later than January 1, 2008.''.

(b) MANAGEMENT STAFF FOR THE CENTERS FOR MEDICARE & MEDICAID SERVICES.—Such section is further amended by adding at the end the following new subsection:

''(b) EMPLOYMENT OF MANAGEMENT STAFF.—

''(1) IN GENERAL.—The Secretary may employ, within the Centers for Medicare & Medicaid Services, such individuals as management staff as the Secretary determines to be appropriate. With respect to the administration of parts C and D, such individuals shall include individuals with private sector expertise in negotiations with health benefits plans.

''(2) ELIGIBILITY.—To be eligible for employment under paragraph (1) an individual shall be required to have demonstrated, by their education and experience (either in the public or private sector), superior expertise in at least one of the following areas:

''(A) The review, negotiation, and administration of health care contracts.

''(B) The design of health care benefit plans.

''(C) Actuarial sciences.

''(D) Compliance with health plan contracts.

''(E) Consumer education and decision making.

''(F) Any other area specified by the Secretary that requires specialized management or other expertise.

''(3) RATES OF PAYMENT.—

''(A) PERFORMANCE-RELATED PAY.—Subject to subparagraph (B), the Secretary shall establish the rate of pay for an individual employed under paragraph (1). Such rate shall take into account expertise, experience, and performance.

''(B) LIMITATION.—In no case may the rate of compensation determined under subparagraph (A) exceed the highest rate of basic pay for the Senior Executive Service under section 5382(b) of title 5, United States Code.''.

(c) REQUIREMENT FOR DEDICATED ACTUARY FOR PRIVATE HEALTH PLANS.—Section 1117(b) (42 U.S.C. 1317(b)) is amended by adding at the end the following new paragraph:

''(3) In the office of the Chief Actuary there shall be an actuary whose duties relate exclusively to the programs under parts C and D of title XVIII and related provisions of such title.''.

(d) INCREASE IN GRADE TO EXECUTIVE LEVEL III FOR THE ADMINISTRATOR OF THE CENTERS FOR MEDICARE & MEDICAID SERVICES.—

(1) IN GENERAL.—Section 5314 of title 5, United States Code, is amended by adding at the end the following:

''Administrator of the Centers for Medicare & Medicaid Services.''.

(2) CONFORMING AMENDMENT.—Section 5315 of such title is amended by striking ''Administrator of the Health Care Financing Administration.''.

(3) EFFECTIVE DATE.—The amendments made by this subsection take effect on January 1, 2004.

(e) CONFORMING AMENDMENTS RELATING TO HEALTH CARE FINANCING ADMINISTRATION.—

(1) AMENDMENTS TO THE SOCIAL SECURITY ACT.—The Social Security Act is amended—

(A) in section 1117 (42 U.S.C. 1317)—

(i) in the heading to read as follows:

''APPOINTMENT OF THE ADMINISTRATOR AND CHIEF ACTUARY OF THE CENTERS FOR MEDICARE & MEDICAID SERVICES'';

(ii) in subsection (a), by striking ''Health Care Financing Administration'' and inserting ''Centers for Medicare & Medicaid Services''; and

(iii) in subsection (b)(1)—

(I) by striking ''Health Care Financing Administration'' and inserting ''Centers for Medicare & Medicaid Services''; and

(II) by striking ''Administration'' and inserting ''Centers'';

(B) in section 1140(a) (42 U.S.C. 1320b–10(a))—

(i) in paragraph (1), by striking ''Health Care Financing Administration'' both places it appears in the

matter following subparagraph (B) and inserting ''Centers for Medicare & Medicaid Services'';

(ii) in paragraph (1)(A)—

(I) by striking ''Health Care Financing Administration'' and inserting ''Centers for Medicare & Medicaid Services''; and

(II) by striking ''HCFA'' and inserting ''CMS''; and

(iii) in paragraph (1)(B), by striking ''Health Care Financing Administration'' both places it appears and inserting ''Centers for Medicare & Medicaid Services'';

(C) in section 1142(b)(3) (42 U.S.C. 1320b–12(b)(3)), by striking ''Health Care Financing Administration'' and inserting ''Centers for Medicare & Medicaid Services'';

(D) in section 1817(b) (42 U.S.C. 1395i(b))—

(i) by striking ''Health Care Financing Administration'', both in the fifth sentence of the matter preceding paragraph (1) and in the second sentence of the

matter following paragraph (4), and inserting ''Centers for Medicare & Medicaid Services''; and

(ii) by striking ''Chief Actuarial Officer'' in the second sentence of the

matter following paragraph (4) and inserting ''Chief Actuary'';

(E) in section 1841(b) (42 U.S.C. 1395t(b))—

(i) by striking ''Health Care Financing Administration'', both in the fifth sentence of the matter preceding paragraph (1) and in the second sentence of the

matter following paragraph (4), and inserting ''Centers for Medicare & Medicaid Services''; and

(ii) by striking ''Chief Actuarial Officer'' in the second sentence of the

matter following paragraph (4) and inserting ''Chief Actuary'';

(F) in section 1852(a)(5) (42 U.S.C. 1395w–22(a)(5)), by striking ''Health Care Financing Administration'' in the

matter following subparagraph (B) and inserting ''Centers for Medicare & Medicaid Services'';

(G) in section 1853 (42 U.S.C. 1395w–23)—

(i) in subsection (b)(4), by striking ''Health Care Financing Administration'' in the first sentence and inserting ''Centers for Medicare & Medicaid Services''; and

(ii) in subsection (c)(7), by striking ''Health Care Financing Administration'' in the last sentence and inserting ''Centers for Medicare & Medicaid Services'';

(H) in section 1854(a)(5)(A) (42 U.S.C. 1395w–24(a)(5)(A)), by striking ''Health Care Financing Administration''and inserting ''Centers for Medicare & Medicaid Services'';

(I) in section 1857(d)(4)(A)(ii) (42 U.S.C. 1395w–27(d)(4)(A)(ii)), by striking ''Health Care Financing Administration'' and inserting ''Secretary'';

(J) in section 1862(b)(5)(A)(ii) (42 U.S.C. 1395y(b)(5)(A)(ii)), by striking ''Health Care Financing Administration'' and inserting ''Centers for Medicare & Medicaid Services'';

(K) in section 1927(e)(4) (42 U.S.C. 1396r–8(e)(4)), by striking ''HCFA'' and inserting ''The Secretary'';

(L) in section 1927(f)(2) (42 U.S.C. 1396r–8(f)(2)), by striking ''HCFA'' and inserting ''The Secretary''; and

(M) in section 2104(g)(3) (42 U.S.C. 1397dd(g)(3)) by inserting ''or CMS Form 64 or CMS Form 21, as the case may be,'' after ''HCFA Form 64 or HCFA Form 21''

(2) AMENDMENTS TO THE PUBLIC HEALTH SERVICE ACT.—The Public Health Service Act is amended—

(A) in section 501(d)(18) (42 U.S.C. 290aa(d)(18)), by striking ''Health Care Financing Administration'' and inserting ''Centers for Medicare & Medicaid Services'';

(B) in section 507(b)(6) (42 U.S.C. 290bb(b)(6)), by striking ''Health Care Financing Administration'' and inserting ''Centers for Medicare & Medicaid Services'';

(C) in section 916 (42 U.S.C. 299b–5)—

(i) in subsection (b)(2), by striking ''Health Care Financing Administration'' and inserting ''Centers for Medicare & Medicaid Services''; and

(ii) in subsection (c)(2), by striking ''Health Care Financing Administration'' and inserting ''Centers for Medicare & Medicaid Services'';

(D) in section 921(c)(3)(A) (42 U.S.C. 299c(c)(3)(A)), by striking ''Health Care Financing Administration'' and inserting ''Centers for Medicare & Medicaid Services'';

(E) in section 1318(a)(2) (42 U.S.C. 300e–17(a)(2)), by striking ''Health Care Financing

Administration'' and inserting ''Centers for Medicare & Medicaid Services'';

(F) in section 2102(a)(7) (42 U.S.C. 300aa–2(a)(7)), by striking ''Health Care Financing Administration'' and inserting ''Centers for Medicare & Medicaid Services''; and

(G) in section 2675(a) (42 U.S.C. 300ff–75(a)), by striking ''Health Care Financing Administration'' in the first sentence and inserting ''Centers for Medicare & Medicaid Services''.

(3) AMENDMENTS TO THE INTERNAL REVENUE CODE OF 1986.—Section 6103(l)(12) of the Internal Revenue Code of 1986 is amended—

(A) in subparagraph (B), by striking ''Health Care Financing Administration'' in the matter preceding clause (i) and inserting ''Centers for Medicare & Medicaid Services''; and

(B) in subparagraph (C)—

(i) by striking ''HEALTH CARE FINANCING ADMINISTRATION'' in the heading and inserting ''CENTERS FOR MEDICARE & MEDICAID SERVICES''; and

(ii) by striking ''Health Care Financing Administration'' in the matter preceding clause (i) and inserting ''Centers for Medicare & Medicaid Services''.

(4) AMENDMENTS TO TITLE 10, UNITED STATES CODE.—Title 10, United States Code, is amended—

(A) in section 1086(d)(4), by striking ''administrator of the Health Care Financing Administration'' in the last sentence and inserting ''Administrator of the Centers for Medicare & Medicaid Services''; and

(B) in section 1095(k)(2), by striking ''Health Care Financing Administration'' in the second sentence and inserting ''Centers for Medicare & Medicaid Services''.

(5) AMENDMENTS TO THE ALZHEIMER'S DISEASE AND RELATED DEMENTIAS SERVICES RESEARCH ACT OF 1992.—The Alzheimer's Disease and Related Dementias Research Act of 1992 (42 U.S.C. 11271 et seq.) is amended—

(A) in the heading of subpart 3 of part D to read as follows:

''Subpart 3—Responsibilities of the Centers for Medicare & Medicaid Services'';

(B) in section 937 (42 U.S.C. 11271)—

(i) in subsection (a), by striking ''National Health Care Financing Administration'' and inserting ''Centers for Medicare & Medicaid Services'';

(ii) in subsection (b)(1), by striking ''Health Care Financing Administration'' and inserting ''Centers for Medicare & Medicaid Services'';

(iii) in subsection (b)(2), by striking ''Health Care Financing Administration'' and inserting ''Centers for Medicare & Medicaid Services''; and

(iv) in subsection (c), by striking ''Health Care Financing Administration'' and inserting ''Centers for Medicare & Medicaid Services''; and

(C) in section 938 (42 U.S.C. 11272), by striking ''Health Care Financing Administration'' and inserting ''Centers for Medicare & Medicaid Services''.

(6) MISCELLANEOUS AMENDMENTS.—

(A) REHABILITATION ACT OF 1973.—Section 202(b)(8) of the Rehabilitation Act of 1973 (29 U.S.C. 762(b)(8)) is amended by striking ''Health Care Financing Administration'' and inserting ''Centers for Medicare & Medicaid Services''.

(B) INDIAN HEALTH CARE IMPROVEMENT ACT.—Section 405(d)(1) of the Indian Health Care Improvement Act (25 U.S.C. 1645(d)(1)) is amended by striking ''Health Care Financing Administration'' in the matter preceding subparagraph (A) and inserting ''Centers for Medicare & Medicaid Services''.

(C) INDIVIDUALS WITH DISABILITIES EDUCATION ACT.—Section 644(b)(5) of the Individuals with Disabilities Education Act (20 U.S.C. 1444(b)(5)) is amended by striking ''Health Care Financing Administration'' and inserting ''Centers for Medicare & Medicaid Services''.

(D) THE HOME HEALTH CARE AND ALZHEIMER'S DISEASE AMENDMENTS OF 1990.—Section 302(a)(9) of the Home Health Care and Alzheimer's Disease Amendments of 1990 (42 U.S.C. 242q–1(a)(9)) is amended by striking ''Health Care Financing Administration'' and inserting ''Centers for Medicare & Medicaid Services''.

(E) THE CHILDREN'S HEALTH ACT OF 2000.—Section 2503(a) of the Children's Health Act of 2000 (42 U.S.C. 247b–3a(a)) is amended by striking ''Health Care Financing Administration'' and inserting ''Centers for Medicare & Medicaid Services''.

(F) THE NATIONAL INSTITUTES OF HEALTH REVITALIZATION ACT OF 1993.—Section 1909 of the National Institutes of Health Revitalization Act of 1993 (42 U.S.C. 299a note) is amended by striking ''Health Care Financing Administration'' and inserting ''Centers for Medicare & Medicaid Services''.

(G) THE OMNIBUS BUDGET RECONCILIATION ACT OF 1990.—Section 4359(d) of the Omnibus Budget Reconciliation Act of 1990 (42 U.S.C. 1395b–3(d)) is amended by striking ''Health Care Financing Administration'' and inserting ''Centers for Medicare & Medicaid Services''.

(H) THE MEDICARE, MEDICAID, AND SCHIP BENEFITS IMPROVEMENT AND PROTECTION ACT OF 2000.—Section 104(d)(4) of the Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000 (42 U.S.C. 1395m note) is amended by striking ''Health Care Financing Administration'' and inserting ''Health Care''.

(7) ADDITIONAL AMENDMENT.—Section 403 of the Act entitled, ''An Act to authorize certain appropriations for the territories of the United States, to amend certain Acts relating thereto, and for other purposes'', enacted October 15, 1977 (48 U.S.C. 1574–1; 48 U.S.C. 1421q–1), is amended by striking ''Health Care Financing Administration'' and inserting ''Centers for Medicare & Medicaid Services''.

Subtitle A—Regulatory Reform

SEC. 501. CONSTRUCTION; DEFINITION OF SUPPLIER.

(a) CONSTRUCTION.—Nothing in this title shall be construed—

(1) to compromise or affect existing legal remedies for addressing fraud or abuse, whether it be criminal prosecution, civil enforcement, or administrative remedies, including under sections 3729 through 3733 of title 31, United States Code (commonly known as the ''False Claims Act''); or

(2) to prevent or impede the Department of Health and Human Services in any way from its ongoing efforts to eliminate waste, fraud, and abuse in the medicare program.

Furthermore, the consolidation of medicare administrative contracting set forth in this division does not constitute consolidation of the Federal Hospital Insurance Trust Fund and the Federal Supplementary Medical Insurance Trust Fund or reflect any position on that issue.

(b) DEFINITION OF SUPPLIER.—Section 1861 (42 U.S.C. 1395x) is amended by inserting after subsection (c) the following new subsection:

''Supplier

''(d) The term 'supplier' means, unless the context otherwise requires, a physician or other practitioner, a facility, or other entity (other than a provider of services) that furnishes items or services under this title.''.

SEC. 502. ISSUANCE OF REGULATIONS.

(a) REGULAR TIMELINE FOR PUBLICATION OF FINAL RULES.—

(1) IN GENERAL.—Section 1871(a) (42 U.S.C. 1395hh(a)) is amended by adding at the end the following new paragraph:

''(3)(A) The Secretary, in consultation with the Director of the Office of Management and Budget, shall establish and publish a regular timeline for the publication of final regulations based on the previous publication of a proposed regulation or an interim final regulation.

''(B) Such timeline may vary among different regulations based on differences in the complexity of the regulation, the number and scope of comments received, and other relevant factors, but shall not be longer than 3 years except under exceptional circumstances. If the Secretary intends to vary such timeline with respect to the publication of a final regulation, the Secretary shall cause to have published in the Federal Register notice of the different timeline by not later than the timeline previously established with respect to such regulation. Such notice shall include a brief explanation of the justification for such variation.

''(C) In the case of interim final regulations, upon the expiration of the regular timeline established under this paragraph for the publication of a final regulation after opportunity for public comment, the interim final regulation shall not continue in effect unless the Secretary publishes (at the end of the regular timeline and, if applicable, at the end of each succeeding 1-year period) a notice of continuation of the regulation that includes an explanation of why the regular timeline (and any subsequent 1-year extension) was not complied with. If such a notice is published, the regular timeline (or such timeline as previously extended under this paragraph) for publication of the final regulation shall be treated as having been extended for 1 additional year.

''(D) The Secretary shall annually submit to Congress a report that describes the instances in which the Secretary failed to publish a final regulation within the applicable regular timeline under this paragraph and that provides an explanation for such failures.''.

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall take effect on the date of the enactment of this Act. The Secretary shall provide for an appropriate transition to take into account the backlog of previously published interim final regulations.

(b) LIMITATIONS ON NEW MATTER IN FINAL REGULATIONS.—

(1) IN GENERAL.—Section 1871(a) (42 U.S.C. 1395hh(a)), as amended by subsection (a), is amended by adding at the end the following new paragraph:

''(4) If the Secretary publishes a final regulation that includes a provision that is not a logical outgrowth of a previously published notice of proposed rulemaking or interim final rule, such provision shall be treated as a proposed regulation and shall not take effect until there is the further opportunity for public comment and a publication of the provision again as a final regulation.''.

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall apply to final regulations published on or after the date of the enactment of this Act.

SEC. 503. COMPLIANCE WITH CHANGES IN REGULATIONS AND POLICIES.

(a) NO RETROACTIVE APPLICATION OF SUBSTANTIVE CHANGES.—

(1) IN GENERAL.—Section 1871 (42 U.S.C. 1395hh), as amended by section 502(a), is amended by adding at the end the following new subsection:

''(e)(1)(A) A substantive change in regulations, manual instructions, interpretative rules, statements of policy, or guidelines of general applicability under this title shall

not be applied (by extrapolation or otherwise) retroactively to items and services furnished before the effective date of the change, unless the Secretary determines that—

''(i) such retroactive application is necessary to comply with statutory requirements; or

''(ii) failure to apply the change retroactively would be contrary to the public interest.''.

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall apply to substantive changes issued on or after the date of the enactment of this Act.

(b) TIMELINE FOR COMPLIANCE WITH SUBSTANTIVE CHANGES AFTER NOTICE.—

(1) IN GENERAL.—Section 1871(e)(1), as added by subsection (a), is amended by adding at the end the following:

''(B)(i) Except as provided in clause (ii), a substantive change referred to in subparagraph (A) shall not become effective before the end of the 30-day period that begins on the date that the Secretary has issued or published, as the case may be, the substantive change.

''(ii) The Secretary may provide for such a substantive change to take effect on a date that precedes the end of the 30-day period under clause (i) if the Secretary finds that waiver of such 30-day period is necessary to comply with statutory requirements or that the application of such 30-day period is contrary to the public interest. If the Secretary provides for an earlier effective date pursuant to this clause, the Secretary shall include in the issuance or publication of the substantive change a finding described in the first sentence, and a brief statement of the reasons for such finding.

''(C) No action shall be taken against a provider of services or supplier with respect to noncompliance with such a substantive change for items and services furnished before the effective date of such a change.''.

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall apply to compliance actions undertaken on or after the date of the enactment of this Act.

(c) RELIANCE ON GUIDANCE.—

(1) IN GENERAL.—Section 1871(e), as added by subsection (a), is further amended by adding at the end the following new paragraph:

''(2)(A) If—

''(i) a provider of services or supplier follows the written guidance (which may be transmitted electronically) provided by the Secretary or by a medicare contractor (as defined in section 1889(g)) acting within the scope of the contractor's contract authority, with respect to the furnishing of items or services and submission of a claim for benefits for such items or services with respect to such provider or supplier;

''(ii) the Secretary determines that the provider of services or supplier has accurately presented the circumstances relating to such items, services, and claim to the contractor in writing; and

''(iii) the guidance was in error;

the provider of services or supplier shall not be subject to any penalty or interest under this title or the provisions of title XI insofar as they relate to this title (including interest under a repayment plan under section 1893 or otherwise) relating to the provision of such items or service or such claim if the provider of services or supplier reasonably relied on such guidance.

''(B) Subparagraph (A) shall not be construed as preventing the recoupment or repayment (without any additional penalty) relating to an overpayment insofar as the overpayment was solely the result of a clerical or technical operational error.''.

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall take effect on the date of the enactment of this Act and shall only apply to a penalty or interest imposed with respect to guidance provided on or after July 24, 2003.

SEC. 504. REPORTS AND STUDIES RELATING TO REGULATORY REFORM.

(a) GAO STUDY ON ADVISORY OPINION AUTHORITY.—

(1) STUDY.—The Comptroller General of the United States shall conduct a study to determine the feasibility and appropriateness of establishing in the Secretary authority to provide legally binding advisory opinions on appropriate interpretation and application of regulations to carry out the medicare program under title XVIII of the Social Security Act. Such study shall examine the appropriate timeframe for issuing such advisory opinions, as well as the need for additional staff and funding to provide such opinions.

(2) REPORT.—The Comptroller General shall submit to Congress a report on the study conducted under paragraph (1) by not later than 1 year after the date of the enactment of this Act.

(b) REPORT ON LEGAL AND REGULATORY INCONSISTENCIES.—Section 1871 (42 U.S.C. 1395hh), as amended by section 503(a)(1), is amended by adding at the end the following new subsection:

''(f)(1) Not later than 2 years after the date of the enactment of this subsection, and every 3 years thereafter, the Secretary shall submit to Congress a report with respect to the administration of this title and areas of inconsistency or conflict among the various provisions under law and regulation.

''(2) In preparing a report under paragraph (1), the Secretary shall collect—

''(A) information from individuals entitled to benefits under part A or enrolled under part B, or both, providers of services, and suppliers and from the Medicare Beneficiary Ombudsman with respect to such areas of inconsistency and conflict; and

''(B) information from medicare contractors that tracks the nature of written and telephone inquiries.

''(3) A report under paragraph (1) shall include a description of efforts by the Secretary to reduce such inconsistency or conflicts, and recommendations for legislation or administrative action that the Secretary determines appropriate to further reduce such inconsistency or conflicts.''.

Subtitle B—Contracting Reform

SEC. 511. INCREASED FLEXIBILITY IN MEDICARE ADMINISTRATION.

(a) CONSOLIDATION AND FLEXIBILITY IN MEDICARE ADMINISTRATION.—

(1) IN GENERAL.—Title XVIII is amended by inserting after section 1874 the following new section:

''CONTRACTS WITH MEDICARE ADMINISTRATIVE CONTRACTORS

''SEC. 1874A. (a) AUTHORITY.—

''(1) AUTHORITY TO ENTER INTO CONTRACTS.—The Secretary may enter into contracts with any eligible entity to serve as a medicare administrative contractor with respect to the performance of any or all of the functions described in paragraph (4) or parts of those functions (or, to the extent provided in a contract, to secure performance thereof by other entities).

''(2) ELIGIBILITY OF ENTITIES.—An entity is eligible to enter into a contract with respect to the performance of a particular function described in paragraph (4) only if—

''(A) the entity has demonstrated capability to carry out such function;

''(B) the entity complies with such conflict of interest standards as are generally applicable to Federal acquisition and procurement;

''(C) the entity has sufficient assets to financially support the performance of such function; and

''(D) the entity meets such other requirements as the Secretary may impose.

''(3) MEDICARE ADMINISTRATIVE CONTRACTOR DEFINED.—For purposes of this title and title XI—

''(A) IN GENERAL.—The term 'medicare administrative contractor' means an agency, organization, or other person with a contract under this section.

''(B) APPROPRIATE MEDICARE ADMINISTRATIVE CONTRACTOR.—With respect to the performance of a particular function in relation to an individual entitled to benefits under part A or enrolled under part B, or both, a specific provider of services or supplier (or class of such providers of services or suppliers), the 'appropriate' medicare administrative contractor is the medicare administrative contractor that has a contract under this section with respect to the performance of that function in relation to that individual, provider of services or supplier or class of provider of services or supplier.

''(4) FUNCTIONS DESCRIBED.—The functions referred to in paragraphs (1) and (2) are payment functions (including the function of developing local coverage determinations, as defined in section 1869(f)(2)(B)), provider services functions, and functions relating to services furnished to individuals entitled to benefits under part A or enrolled under part B, or both, as follows:

''(A) DETERMINATION OF PAYMENT AMOUNTS.—Determining (subject to the provisions of section 1878 and to such review by the Secretary as may be provided for by the contracts) the amount of the payments required pursuant to this title to be made to providers of services, suppliers and individuals.

''(B) MAKING PAYMENTS.—Making payments described in subparagraph (A) (including receipt, disbursement, and accounting for funds in making such payments).

''(C) BENEFICIARY EDUCATION AND ASSISTANCE.—Providing education and outreach to individuals entitled to benefits under part A or enrolled under part B, or both, and providing assistance to those individuals with specific issues, concerns, or problems.

''(D) PROVIDER CONSULTATIVE SERVICES.—Providing consultative services to institutions, agencies, and other persons to enable them to establish and maintain fiscal records necessary for purposes of this title and otherwise to qualify as providers of services or suppliers.

''(E) COMMUNICATION WITH PROVIDERS.—Communicating to providers of services and suppliers any information or instructions furnished to the medicare administrative contractor by the Secretary, and facilitating communication between such providers and suppliers and the Secretary.

''(F) PROVIDER EDUCATION AND TECHNICAL ASSISTANCE.—Performing the functions relating to provider education, training, and technical assistance.

''(G) ADDITIONAL FUNCTIONS.—Performing such other functions, including (subject to paragraph (5)) functions under the Medicare Integrity Program under section 1893, as are necessary to carry out the purposes of this title.

''(5) RELATIONSHIP TO MIP CONTRACTS.—

''(A) NONDUPLICATION OF DUTIES.—In entering into contracts under this section, the Secretary shall assure that functions of medicare administrative contractors in carrying out activities under parts A and B do not duplicate activities carried out under a contract entered into under the Medicare Integrity Program under section 1893. The previous sentence shall not apply with respect to the activity described in section 1893(b)(5)

(relating to prior authorization of certain items of durable medical equipment under section 1834(a)(15)).

''(B) CONSTRUCTION.—An entity shall not be treated as a medicare administrative contractor merely by reason of having entered into a contract with the Secretary under section 1893.

''(6) APPLICATION OF FEDERAL ACQUISITION REGULATION.—Except to the extent inconsistent with a specific requirement of this section, the Federal Acquisition Regulation applies to contracts under this section.

''(b) CONTRACTING REQUIREMENTS.—

''(1) USE OF COMPETITIVE PROCEDURES.—

''(A) IN GENERAL.—Except as provided in laws with general applicability to Federal acquisition and procurement or in subparagraph (B), the Secretary shall use competitive procedures when entering into contracts with medicare administrative contractors under this section, taking into account performance quality as well as price and other factors.

''(B) RENEWAL OF CONTRACTS.—The Secretary may renew a contract with a medicare administrative contractor under this section from term to term without regard to section 5 of title 41, United States Code, or any other provision of law requiring competition, if the medicare administrative contractor has met or exceeded the performance requirements applicable with respect to the contract and contractor, except that the Secretary shall provide for the application of competitive procedures under such a contract not less frequently than once every 5 years.

''(C) TRANSFER OF FUNCTIONS.—The Secretary may transfer functions among medicare administrative contractors consistent with the provisions of this paragraph. The Secretary shall ensure that performance quality is considered in such transfers. The Secretary shall provide public notice (whether in the Federal Register or otherwise) of any such transfer (including a description of the functions so transferred, a description of the providers of services and suppliers affected by such transfer, and contact information for the contractors involved).

''(D) INCENTIVES FOR QUALITY.—The Secretary shall provide incentives for medicare administrative contractors to provide quality service and to promote efficiency.

''(2) COMPLIANCE WITH REQUIREMENTS.—No contract under this section shall be entered into with any medicare administrative contractor unless the Secretary finds that such medicare administrative contractor will perform its obligations under the contract efficiently and effectively and will meet such requirements as to financial responsibility, legal authority, quality of services provided, and other matters as the Secretary finds pertinent.

''(3) PERFORMANCE REQUIREMENTS.—

''(A) DEVELOPMENT OF SPECIFIC PERFORMANCE REQUIREMENTS.—

''(i) IN GENERAL.—The Secretary shall develop contract performance requirements to carry out the specific requirements applicable under this title to a function described in subsection (a)(4) and shall develop standards for measuring the extent to which a contractor has met such requirements.

''(ii) CONSULTATION.—In developing such performance requirements and standards for measurement, the Secretary shall consult with providers of services, organizations representative of beneficiaries under this title, and organizations and agencies performing functions necessary to carry out the purposes of this section with respect to such performance requirements.

''(iii) PUBLICATION OF STANDARDS.—The Secretary shall make such performance requirements and measurement standards available to the public.

''(B) CONSIDERATIONS.—The Secretary shall include, as one of the standards developed under subparagraph (A), provider and beneficiary satisfaction levels.

''(C) INCLUSION IN CONTRACTS.—All contractor performance requirements shall be set forth in the contract between the Secretary and the appropriate medicare administrative contractor. Such performance requirements—

''(i) shall reflect the performance requirements published under subparagraph (A), but may include additional performance requirements;

''(ii) shall be used for evaluating contractor performance under the contract; and

''(iii) shall be consistent with the written statement of work provided under the contract.

''(4) INFORMATION REQUIREMENTS.—The Secretary shall not enter into a contract with a medicare administrative contractor under this section unless the contractor agrees—

''(A) to furnish to the Secretary such timely information and reports as the Secretary may find necessary in performing his functions under this title; and

''(B) to maintain such records and afford such access thereto as the Secretary finds necessary to assure the correctness and verification of the information and reports under subparagraph (A) and otherwise to carry out the purposes of this title.

''(5) SURETY BOND.—A contract with a medicare administrative contractor under this section may require the medicare administrative contractor, and any of its officers or employees certifying payments or disbursing funds pursuant to the contract, or otherwise participating in carrying out the contract, to give surety bond to the United States in such amount as the Secretary may deem appropriate.

''(c) TERMS AND CONDITIONS.—

''(1) IN GENERAL.—A contract with any medicare administrative contractor under this section may contain such terms and conditions as the Secretary finds necessary or appropriate and may provide for advances of funds to the medicare administrative contractor for the making of payments by it under subsection (a)(4)(B).

''(2) PROHIBITION ON MANDATES FOR CERTAIN DATA COLLECTION.—The Secretary may not require, as a condition of entering into, or renewing, a contract under this section, that the medicare administrative contractor match data obtained other than in its activities under this title with data used in the administration of this title for purposes of identifying situations in which the provisions of section 1862(b) may apply.

''(d) LIMITATION ON LIABILITY OF MEDICARE ADMINISTRATIVE CONTRACTORS AND CERTAIN OFFICERS.—

''(1) CERTIFYING OFFICER.—No individual designated pursuant to a contract under this section as a certifying officer shall, in the absence of the reckless disregard of the individual's obligations or the intent by that individual to defraud the United States, be liable with respect to any payments certified by the individual under this section.

''(2) DISBURSING OFFICER.—No disbursing officer shall, in the absence of the reckless disregard of the officer's obligations or the intent by that officer to defraud the United States, be liable with respect to any payment by such officer under this section if it was based upon an authorization (which meets the applicable requirements for such internal controls established by the Comptroller General of the United States) of a certifying officer designated as provided in paragraph (1) of this subsection.

''(3) LIABILITY OF MEDICARE ADMINISTRATIVE CONTRACTOR.—

''(A) IN GENERAL.—No medicare administrative contractor shall be liable to the United States for a payment by a certifying or disbursing officer unless, in connection with such payment, the medicare administrative contractor acted with reckless disregard of its obligations under its medicare administrative contract or with intent to defraud the United States.

''(B) RELATIONSHIP TO FALSE CLAIMS ACT.—Nothing in this subsection shall be construed to limit liability for conduct that would constitute a violation of sections 3729 through 3731 of title 31, United States Code.

''(4) INDEMNIFICATION BY SECRETARY.—

''(A) IN GENERAL.—Subject to subparagraphs (B) and (D), in the case of a medicare administrative contractor (or a person who is a director, officer, or employee of such a contractor or who is engaged by the contractor to participate directly in the claims administration process) who is made a party to any judicial or administrative proceeding arising from or relating directly to the claims administration process under this title, the Secretary may, to the extent the Secretary determines to be appropriate and as specified in the contract with the contractor, indemnify the contractor and such persons.

''(B) CONDITIONS.—The Secretary may not provide indemnification under subparagraph (A) insofar as the liability for such costs arises directly from conduct that is determined by the judicial proceeding or by the Secretary to be criminal in nature, fraudulent, or grossly negligent. If indemnification is provided by the Secretary with respect to a contractor before a determination that such costs arose directly from such conduct, the contractor shall reimburse the Secretary for costs of indemnification.

''(C) SCOPE OF INDEMNIFICATION.—Indemnification by the Secretary under subparagraph (A) may include payment of judgments, settlements (subject to subparagraph (D)), awards, and costs (including reasonable legal expenses).

''(D) WRITTEN APPROVAL FOR SETTLEMENTS OR COMPROMISES.—A contractor or other person described in subparagraph (A) may not propose to negotiate a settlement or compromise of a proceeding described in such subparagraph without the prior written approval of the Secretary to negotiate such settlement or compromise. Any indemnification under subparagraph (A) with respect to amounts paid under a settlement or compromise of a proceeding described in such subparagraph are conditioned upon prior written approval by the Secretary of the final settlement or compromise.

''(E) CONSTRUCTION.—Nothing in this paragraph shall be construed—

''(i) to change any common law immunity that may be available to a medicare administrative contractor or person described in subparagraph (A); or

''(ii) to permit the payment of costs not otherwise allowable, reasonable, or allocable under the Federal Acquisition Regulation.''.

(2) CONSIDERATION OF INCORPORATION OF CURRENT LAW STANDARDS.—In developing contract performance requirements under section 1874A(b) of the Social Security Act, as inserted by paragraph (1), the Secretary shall consider inclusion of the performance standards described in sections 1816(f)(2) of such Act (relating to timely processing of reconsiderations and applications for exemptions) and section 1842(b)(2)(B) of such Act (relating to timely review of determinations and fair hearing requests), as such sections were in effect before the date of the enactment of this Act.

(b) CONFORMING AMENDMENTS TO SECTION 1816 (RELATING TO FISCAL INTERMEDIARIES).—Section 1816 (42 U.S.C. 1395h) is amended as follows:

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

''PROVISIONS RELATING TO THE ADMINISTRATION OF PART A''.

(2) Subsection (a) is amended to read as follows:

''(a) The administration of this part shall be conducted through contracts with medicare administrative contractors under section 1874A.''.

(3) Subsection (b) is repealed.

(4) Subsection (c) is amended—

(A) by striking paragraph (1); and

(B) in each of paragraphs (2)(A) and (3)(A), by striking ''agreement under this section'' and inserting ''contract under section 1874A that provides for making payments under this part''.

(5) Subsections (d) through (i) are repealed.

(6) Subsections (j) and (k) are each amended—

(A) by striking ''An agreement with an agency or organization under this section'' and inserting ''A contract with a medicare administrative contractor under section 1874A with respect to the administration of this part''; and

(B) by striking ''such agency or organization'' and inserting ''such medicare administrative contractor'' each place it appears.

(7) Subsection (l) is repealed.

(c) CONFORMING AMENDMENTS TO SECTION 1842 (RELATING TO CARRIERS).—Section 1842 (42 U.S.C. 1395u) is amended as follows:

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

''PROVISIONS RELATING TO THE ADMINISTRATION OF PART B''.

(2) Subsection (a) is amended to read as follows:

''(a) The administration of this part shall be conducted through contracts with medicare administrative contractors under section 1874A.''.

(3) Subsection (b) is amended—

(A) by striking paragraph (1);

(B) in paragraph (2)—

(i) by striking subparagraphs (A) and (B);

(ii) in subparagraph (C), by striking ''carriers'' and inserting ''medicare administrative contractors''; and

(iii) by striking subparagraphs (D) and (E);

(C) in paragraph (3)—

(i) in the matter before subparagraph (A), by striking ''Each such contract shall provide that the carrier'' and inserting ''The Secretary'';

(ii) by striking ''will'' the first place it appears in each of subparagraphs (A), (B), (F), (G), (H), and (L) and inserting ''shall'';

(iii) in subparagraph (B), in the matter before clause (i), by striking ''to the policyholders and subscribers of the carrier'' and inserting ''to the policyholders and subscribers of the medicare administrative contractor'';

(iv) by striking subparagraphs (C), (D), and (E);

(v) in subparagraph (H)—

(I) by striking ''if it makes determinations or payments with respect to physicians' services,'' in the matter preceding clause (i); and

(II) by striking ''carrier'' and inserting ''medicare administrative contractor'' in clause (i);

(vi) by striking subparagraph (I);

(vii) in subparagraph (L), by striking the semicolon and inserting a period;

(viii) in the first sentence, after subparagraph (L), by striking ''and shall contain'' and all that follows through the period; and

(ix) in the seventh sentence, by inserting ''medicare administrative contractor,'' after ''carrier,'';

(D) by striking paragraph (5);

(E) in paragraph (6)(D)(iv), by striking ''carrier'' and inserting ''medicare administrative contractor''; and

(F) in paragraph (7), by striking ''the carrier'' and inserting ''the Secretary'' each place it appears.

(4) Subsection (c) is amended—

(A) by striking paragraph (1);

(B) in paragraph (2)(A), by striking ''contract under this section which provides for the disbursement of funds, as described in subsection (a)(1)(B),'' and inserting ''contract under section 1874A that provides for making payments under this part'';

(C) in paragraph (3)(A), by striking ''subsection (a)(1)(B)'' and inserting ''section 1874A(a)(3)(B)'';

(D) in paragraph (4), in the matter preceding subparagraph (A), by striking ''carrier'' and inserting ''medicare administrative contractor''; and

(E) by striking paragraphs (5) and (6).

(5) Subsections (d), (e), and (f) are repealed.

(6) Subsection (g) is amended by striking ''carrier or carriers'' and inserting ''medicare administrative contractor or contractors''.

(7) Subsection (h) is amended—

(A) in paragraph (2)—

(i) by striking ''Each carrier having an agreement with the Secretary under subsection (a)'' and inserting ''The Secretary''; and

(ii) by striking ''Each such carrier'' and inserting ''The Secretary'';

(B) in paragraph (3)(A)—

(i) by striking ''a carrier having an agreement with the Secretary under subsection (a)'' and inserting ''medicare administrative contractor having a contract under section 1874A that provides for making payments under this part''; and

(ii) by striking ''such carrier'' and inserting ''such contractor'';

(C) in paragraph (3)(B)—

(i) by striking ''a carrier'' and inserting ''a medicare administrative contractor'' each place it appears; and

(ii) by striking ''the carrier'' and inserting ''the contractor'' each place it appears; and

(D) in paragraphs (5)(A) and (5)(B)(iii), by striking ''carriers'' and inserting ''medicare administrative contractors'' each place it appears.

(8) Subsection (l) is amended—

(A) in paragraph (1)(A)(iii), by striking ''carrier'' and inserting ''medicare administrative contractor''; and

(B) in paragraph (2), by striking ''carrier'' and inserting ''medicare administrative contractor''.

(9) Subsection (p)(3)(A) is amended by striking ''carrier'' and inserting ''medicare administrative contractor''.

(10) Subsection (q)(1)(A) is amended by striking ''carrier''.

(d) EFFECTIVE DATE; TRANSITION RULE.—

(1) EFFECTIVE DATE.—

(A) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by this section shall take effect on October 1, 2005, and the Secretary is authorized to take such steps before such date as may be necessary to implement such amendments on a timely basis.

(B) CONSTRUCTION FOR CURRENT CONTRACTS.—Such amendments shall not apply to contracts in effect before the date specified under subparagraph (A) that continue to retain the terms and conditions in effect on such date (except as otherwise provided under this Act, other than under this section) until such date as the contract is let out for competitive bidding under such amendments.

(C) DEADLINE FOR COMPETITIVE BIDDING.—The Secretary shall provide for the letting by competitive bidding of all contracts for functions of medicare administrative contractors for annual contract periods that begin on or after October 1, 2011.

(2) GENERAL TRANSITION RULES.—

(A) AUTHORITY TO CONTINUE TO ENTER INTO NEW AGREEMENTS AND CONTRACTS AND WAIVER OF PROVIDER NOMINATION PROVISIONS DURING TRANSITION.—Prior to October 1, 2005, the Secretary may, consistent with subparagraph (B), continue to enter into agreements under section 1816 and contracts under section 1842 of the Social Security Act (42 U.S.C. 1395h, 1395u). The Secretary may enter into new agreements under section 1816 prior to October 1, 2005, without regard to any of the provider nomination provisions of such section.

(B) APPROPRIATE TRANSITION.—The Secretary shall take such steps as are necessary to provide for an appropriate transition from agreements under section 1816 and contracts under section 1842 of the Social Security Act (42 U.S.C. 1395h, 1395u) to contracts under section 1874A, as added by subsection (a)(1).

(3) AUTHORIZING CONTINUATION OF MIP FUNCTIONS UNDER CURRENT CONTRACTS AND AGREEMENTS AND UNDER TRANSITION CONTRACTS.—Notwithstanding the amendments made by this section, the provisions contained in the exception in section 1893(d)(2) of the Social Security Act (42 U.S.C. 1395ddd(d)(2)) shall continue to apply during the period that begins on the date of the enactment of this Act and ends on October 1, 2011, and any reference in such provisions to an agreement or contract shall be deemed to include a contract under section 1874A of such Act, as inserted by subsection (a)(1), that continues the activities referred to in such provisions.

(e) REFERENCES.—On and after the effective date provided under subsection (d)(1), any reference to a fiscal intermediary or carrier under title XI or XVIII of the Social Security Act (or any regulation, manual instruction, interpretative rule, statement of policy, or guideline issued to carry out such titles) shall be deemed a reference to a medicare administrative contractor (as provided under section 1874A of the Social Security Act).

(f) SECRETARIAL SUBMISSION OF LEGISLATIVE PROPOSAL.—Not later than 6 months after the date of the enactment of this Act, the Secretary shall submit to the appropriate committees of Congress a legislative proposal providing for such technical and conforming amendments in the law as are required by the provisions of this section.

(g) REPORTS ON IMPLEMENTATION.—

(1) PLAN FOR IMPLEMENTATION.—By not later than October 1, 2004, the Secretary shall submit a report to Congress and the Comptroller General of the United States that describes the plan for implementation of the amendments made by this section. The Comptroller General shall conduct an evaluation of such plan and shall submit to Congress, not later than 6 months after the date the report is received, a report on such evaluation and shall include in such report such recommendations as the Comptroller General deems appropriate.

(2) STATUS OF IMPLEMENTATION.—The Secretary shall submit a report to Congress not later than October 1, 2008, that describes the status of implementation of such amendments and that includes a description of the following:

(A) The number of contracts that have been competitively bid as of such date.

(B) The distribution of functions among contracts and contractors.

(C) A timeline for complete transition to full competition.

(D) A detailed description of how the Secretary has modified oversight and management of medicare contractors to adapt to full competition.

SEC. 512. REQUIREMENTS FOR INFORMATION SECURITY FOR MEDICARE ADMINISTRATIVE CONTRACTORS.

(a) IN GENERAL.—Section 1874A, as added by section 511(a)(1), is amended by adding at the end the following new subsection:

''(e) REQUIREMENTS FOR INFORMATION SECURITY.—

''(1) DEVELOPMENT OF INFORMATION SECURITY PROGRAM.—A medicare administrative contractor that performs the functions referred to in subparagraphs (A) and (B) of subsection (a)(4) (relating to determining and making payments) shall implement a contractor-wide information security program to provide information security for the operation and assets of the contractor with respect to such functions under this title. An information security program under this paragraph shall meet the requirements for information security programs imposed on Federal agencies under paragraphs (1) through (8) of section 3544(b) of title 44, United States Code (other than the requirements under paragraphs (2)(D)(i), (5)(A), and (5)(B) of such section).

''(2) INDEPENDENT AUDITS.—

''(A) PERFORMANCE OF ANNUAL EVALUATIONS.—Each year a medicare administrative contractor that performs the functions referred to in subparagraphs (A) and (B) of subsection (a)(4) (relating to determining and making payments) shall undergo an evaluation of the information security of the contractor with respect to such functions under this title. The evaluation shall—

''(i) be performed by an entity that meets such requirements for independence as the Inspector General of the Department of Health and Human Services may establish; and

''(ii) test the effectiveness of information security control techniques of an appropriate subset of the contractor's information systems (as defined in section 3502(8) of title 44, United States Code) relating to such functions under this title and an assessment of compliance with the requirements of this subsection and related information security policies, procedures, standards and guidelines, including policies and procedures as may be prescribed by the Director of the Office of Management and Budget and applicable information security standards promulgated under section 11331 of title 40, United States Code.

''(B) DEADLINE FOR INITIAL EVALUATION.—

''(i) NEW CONTRACTORS.—In the case of a medicare administrative contractor covered by this subsection that has not previously performed the functions referred to in subparagraphs (A) and (B) of subsection (a)(4) (relating to determining and making payments) as a fiscal intermediary or carrier under section 1816 or 1842, the first independent evaluation conducted pursuant to subparagraph (A) shall be completed prior to commencing such functions.

''(ii) OTHER CONTRACTORS.—In the case of a medicare administrative contractor covered by this subsection that is not described in clause (i), the first independent evaluation conducted pursuant to subparagraph (A) shall be completed within 1 year after the date the contractor commences functions referred to in clause (i) under this section.

''(C) REPORTS ON EVALUATIONS.—

''(i) TO THE DEPARTMENT OF HEALTH AND HUMAN SERVICES.—The results of independent evaluations under subparagraph (A) shall be submitted promptly to the Inspector General of the Department of Health and Human Services and to the Secretary.

''(ii) TO CONGRESS.—The Inspector General of the Department of Health and Human Services shall submit to Congress annual reports on the results of such evaluations, including assessments of the scope and sufficiency of such evaluations.

''(iii) AGENCY REPORTING.—The Secretary shall address the results of such evaluations in reports required under section 3544(c) of title 44, United States Code.''.

(b) APPLICATION OF REQUIREMENTS TO FISCAL INTERMEDIARIES AND CARRIERS.—

(1) IN GENERAL.—The provisions of section 1874A(e)(2) of the Social Security Act (other than subparagraph (B)), as added by subsection (a), shall apply to each fiscal intermediary under section 1816 of the Social Security Act (42 U.S.C. 1395h) and each carrier under section 1842 of such Act (42 U.S.C. 1395u) in the same manner as they apply to medicare administrative contractors under such provisions.

(2) DEADLINE FOR INITIAL EVALUATION.—In the case of such a fiscal intermediary or carrier with an agreement or contract under such respective section in effect as of the date of the enactment of this Act, the first evaluation under section 1874A(e)(2)(A) of the Social Security Act (as added by subsection (a)), pursuant to paragraph (1), shall be completed (and a report on the evaluation submitted to the Secretary) by not later than 1 year after such date.

Subtitle C—Education and Outreach

SEC. 521. PROVIDER EDUCATION AND TECHNICAL ASSISTANCE.

(a) COORDINATION OF EDUCATION FUNDING.—

(1) IN GENERAL.—Title XVIII is amended by inserting after section 1888 the following new section:

''PROVIDER EDUCATION AND TECHNICAL ASSISTANCE

''SEC. 1889. (a) COORDINATION OF EDUCATION FUNDING.—The Secretary shall coordinate the educational activities provided through medicare contractors (as defined in subsection (g), including under section 1893) in order to maximize the effectiveness of Federal education efforts for providers of services and suppliers.''.

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall take effect on the date of the enactment of this Act.

(3) REPORT.—Not later than October 1, 2004, the Secretary shall submit to Congress a report that includes a description and evaluation of the steps taken to coordinate the funding of provider education under section 1889(a) of the Social Security Act, as added by paragraph (1).

(b) INCENTIVES TO IMPROVE CONTRACTOR PERFORMANCE.—

(1) IN GENERAL.—Section 1874A, as added by section 511(a)(1) and as amended by section 512(a), is amended by adding at the end the following new subsection:

''(f) INCENTIVES TO IMPROVE CONTRACTOR PERFORMANCE IN PROVIDER EDUCATION AND OUTREACH.—The Secretary shall use specific claims payment error rates or similar methodology of medicare administrative contractors in the processing or reviewing of medicare claims in order to give such contractors an incentive to implement effective education and outreach programs for providers of services and suppliers.''.

(2) APPLICATION TO FISCAL INTERMEDIARIES AND CARRIERS.—The provisions of section 1874A(f) of the Social Security Act, as added by paragraph (1), shall apply to each fiscal intermediary under section 1816 of the Social Security Act (42 U.S.C. 1395h) and each carrier under section 1842 of such Act (42 U.S.C. 1395u) in the same manner as they apply to medicare administrative contractors under such provisions.

(3) GAO REPORT ON ADEQUACY OF METHODOLOGY.—Not later than October 1, 2004, the Comptroller General of the United States shall submit to Congress and to the Secretary a report on the adequacy of the methodology under section 1874A(f) of the Social Security Act, as added by paragraph (1), and shall include in the report such recommendations as the Comptroller General determines appropriate with respect to the methodology.

(4) REPORT ON USE OF METHODOLOGY IN ASSESSING CONTRACTOR PERFORMANCE.—Not later than October 1, 2004, the Secretary shall submit to Congress a report that describes how the Secretary intends to use such methodology in assessing medicare contractor performance in implementing effective education and outreach programs, including whether to use such methodology as a basis for performance bonuses. The report shall include an analysis of the sources of identified errors and potential changes in systems of contractors and rules of the Secretary that could reduce claims error rates.

(c) PROVISION OF ACCESS TO AND PROMPT RESPONSES FROM MEDICARE ADMINISTRATIVE CONTRACTORS.—

(1) IN GENERAL.—Section 1874A, as added by section 511(a)(1) and as amended by section 512(a) and subsection (b), is further amended by adding at the end the following new subsection:

''(g) COMMUNICATIONS WITH BENEFICIARIES, PROVIDERS OF SERVICES AND SUPPLIERS.—

''(1) COMMUNICATION STRATEGY.—The Secretary shall develop a strategy for communications with individuals entitled to benefits under part A or enrolled under part B, or both, and with providers of services and suppliers under this title.

''(2) RESPONSE TO WRITTEN INQUIRIES.—Each medicare administrative contractor shall, for those providers of services and suppliers which submit claims to the contractor for claims processing and for those individuals entitled to benefits under part A or enrolled under part B, or both, with respect to whom claims are submitted for claims processing, provide general written responses (which may be through electronic transmission) in a clear, concise, and accurate manner to inquiries of providers of services, suppliers, and individuals entitled to benefits under part A or enrolled under part B, or both, concerning the programs under this title within 45 business days of the date of receipt of such inquiries.

''(3) RESPONSE TO TOLL-FREE LINES.—The Secretary shall ensure that each medicare administrative contractor shall provide, for those providers of services and suppliers which submit claims to the contractor for claims processing and for those individuals entitled to benefits under part A or enrolled under part B, or both, with respect to whom claims are submitted for claims processing, a toll-free telephone number at which such individuals, providers of services, and suppliers may obtain information regarding billing, coding, claims, coverage, and other appropriate information under this title.

''(4) MONITORING OF CONTRACTOR RESPONSES.—

''(A) IN GENERAL.—Each medicare administrative contractor shall, consistent with standards developed by the Secretary under subparagraph (B)—

''(i) maintain a system for identifying who provides the information referred to in paragraphs (2) and (3); and

''(ii) monitor the accuracy, consistency, and timeliness of the information so provided.

''(B) DEVELOPMENT OF STANDARDS.—

''(i) IN GENERAL.—The Secretary shall establish and make public standards to monitor the accuracy, consistency, and timeliness of the information provided in response to written and telephone inquiries under this subsection. Such standards shall be consistent with the performance requirements established under subsection (b)(3).

''(ii) EVALUATION.—In conducting evaluations of individual medicare administrative contractors, the Secretary shall take into account the results of the monitoring conducted under subparagraph (A) taking into account as performance requirements the standards established under clause (i). The Secretary shall, in consultation with organizations representing providers of services, suppliers, and individuals entitled to benefits under part A or enrolled under part B, or both, establish standards relating to the accuracy, consistency, and timeliness of the information so provided.

''(C) DIRECT MONITORING.—Nothing in this paragraph shall be construed as preventing the Secretary from directly monitoring the accuracy, consistency, and timeliness of the information so provided.

''(5) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as are necessary to carry out this subsection.''.

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall take effect October 1, 2004.

(3) APPLICATION TO FISCAL INTERMEDIARIES AND CARRIERS.—The provisions of section 1874A(g) of the Social Security Act, as added by paragraph (1), shall apply to each fiscal intermediary under section 1816 of the Social Security Act (42 U.S.C. 1395h) and each carrier under section 1842 of such Act (42 U.S.C. 1395u) in the same manner as they apply to medicare administrative contractors under such provisions.

(d) IMPROVED PROVIDER EDUCATION AND TRAINING.—

(1) IN GENERAL.—Section 1889, as added by subsection (a), is amended by adding at the end the following new subsections:

''(b) ENHANCED EDUCATION AND TRAINING.—

''(1) ADDITIONAL RESOURCES.—There are authorized to be appropriated to the Secretary (in appropriate part from the Federal Hospital Insurance Trust Fund and the Federal Supplementary Medical Insurance Trust Fund) such sums as may be necessary for fiscal years beginning with fiscal year 2005.

''(2) USE.—The funds made available under paragraph (1) shall be used to increase the conduct by medicare contractors of education and training of providers of services and suppliers regarding billing, coding, and other appropriate items and may also be used to improve the accuracy, consistency, and timeliness of contractor responses.

''(c) TAILORING EDUCATION AND TRAINING ACTIVITIES FOR SMALL PROVIDERS OR SUPPLIERS.—

''(1) IN GENERAL.—Insofar as a medicare contractor conducts education and training activities, it shall tailor such activities to meet the special needs of small providers of services or suppliers (as defined in paragraph (2)). Such education and training activities for small providers of services and suppliers may include the provision of technical assistance (such as review of billing systems and internal controls to determine program compliance and to suggest more efficient and effective means of achieving such compliance).

''(2) SMALL PROVIDER OF SERVICES OR SUPPLIER.—In this subsection, the term 'small provider of services or supplier' means—

''(A) a provider of services with fewer than 25 full-time-equivalent employees; or

''(B) a supplier with fewer than 10 full-time-equivalent employees.''.

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall take effect on October 1, 2004.

(e) REQUIREMENT TO MAINTAIN INTERNET WEBSITES.—

(1) IN GENERAL.—Section 1889, as added by subsection (a) and as amended by subsection (d), is further amended by adding at the end the following new subsection:

''(d) INTERNET WEBSITES; FAQS.—The Secretary, and each medicare contractor insofar as it provides services (including claims processing) for providers of services or suppliers, shall maintain an Internet website which—

''(1) provides answers in an easily accessible format to frequently asked questions, and

''(2) includes other published materials of the contractor,

that relate to providers of services and suppliers under the programs under this title (and title XI insofar as it relates to such programs).''.

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall take effect on October 1, 2004.

(f) ADDITIONAL PROVIDER EDUCATION PROVISIONS.—

(1) IN GENERAL.—Section 1889, as added by subsection (a) and as amended by subsections (d) and (e), is further amended by adding at the end the following new subsections:

''(e) ENCOURAGEMENT OF PARTICIPATION IN EDUCATION PROGRAM ACTIVITIES.—A medicare contractor may not use a record of attendance at (or failure to attend) educational activities or other information gathered during an educational program conducted under this section or otherwise by the Secretary to select or track providers of services or suppliers for the purpose of conducting any type of audit or prepayment review.

''(f) CONSTRUCTION.—Nothing in this section or section 1893(g) shall be construed as providing for disclosure by a medicare contractor—

''(1) of the screens used for identifying claims that will be subject to medical review; or

''(2) of information that would compromise pending law enforcement activities or reveal findings of law enforcement-related audits.

''(g) DEFINITIONS.—For purposes of this section, the term 'medicare contractor' includes the following:

''(1) A medicare administrative contractor with a contract under section 1874A, including a fiscal intermediary with a contract under section 1816 and a carrier with a contract under section 1842.

''(2) An eligible entity with a contract under section 1893.

Such term does not include, with respect to activities of a specific provider of services or supplier an entity that has no authority under this title or title IX with respect to such activities and such provider of services or supplier.''.

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall take effect on the date of the enactment of this Act.

SEC. 522. SMALL PROVIDER TECHNICAL ASSISTANCE DEMONSTRATION PROGRAM.

(a) ESTABLISHMENT.—

(1) IN GENERAL.—The Secretary shall establish a demonstration program (in this section referred to as the ''demonstration program'') under which technical assistance described in paragraph (2) is made available, upon request and on a voluntary basis, to small providers of services or suppliers in order to improve compliance with the applicable requirements of the programs under medicare program under title XVIII of the Social Security Act (including provisions of title XI of such Act insofar as they relate to such title and are not administered by the Office of the Inspector General of the Department of Health and Human Services).

(2) FORMS OF TECHNICAL ASSISTANCE.—The technical assistance described in this paragraph is—

(A) evaluation and recommendations regarding billing and related systems; and

(B) information and assistance regarding policies and procedures under the medicare program, including coding and reimbursement.

(3) SMALL PROVIDERS OF SERVICES OR SUPPLIERS.—In this section, the term ''small providers of services or suppliers'' means—

(A) a provider of services with fewer than 25 full-time-equivalent employees; or

(B) a supplier with fewer than 10 full-time-equivalent employees.

(b) QUALIFICATION OF CONTRACTORS.—In conducting the demonstration program, the Secretary shall enter into contracts with qualified organizations (such as peer review organizations or entities described in section 1889(g)(2) of the Social Security Act, as inserted by section 521(f)(1)) with appropriate expertise with billing systems of the full range of providers of services and suppliers to provide the technical assistance. In awarding such contracts, the Secretary shall consider any prior investigations of the entity's work by the Inspector General of Department of Health and Human Services or the Comptroller General of the United States.

(c) DESCRIPTION OF TECHNICAL ASSISTANCE.—The technical assistance provided under the demonstration program shall include a direct and in-person examination of billing systems and internal controls of small providers of services or suppliers to determine program compliance and to suggest more efficient or effective means of achieving such compliance.

(d) GAO EVALUATION.—Not later than 2 years after the date the demonstration program is first implemented, the Comptroller General, in consultation with the Inspector General of the Department of Health and Human Services, shall conduct an evaluation of the demonstration program. The evaluation shall include a determination of whether claims error rates are reduced for small providers of services or suppliers who participated in the program and the extent of improper payments made as a result of the demonstration program. The Comptroller General shall submit a report to the Secretary and the Congress on such evaluation and shall include in such report recommendations regarding the continuation or extension of the demonstration program.

(e) FINANCIAL PARTICIPATION BY PROVIDERS.—The provision of technical assistance to a small provider of services or supplier under the demonstration program is conditioned upon the small provider of services or supplier paying an amount estimated (and disclosed in advance of a provider's or supplier's participation in the program) to be equal to 25 percent of the cost of the technical assistance.

(f) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated, from amounts not otherwise appropriated in the Treasury, such sums as may be necessary to carry out this section.

SEC. 523. MEDICARE BENEFICIARY OMBUDSMAN.

(a) IN GENERAL.—Section 1808, as added and amended by section 500, is amended by adding at the end the following new subsection:

''(c) MEDICARE BENEFICIARY OMBUDSMAN.—

''(1) IN GENERAL.—The Secretary shall appoint within the Department of Health and

Human Services a Medicare Beneficiary Ombudsman who shall have expertise and experience in the fields of health care and education of (and assistance to) individuals entitled to benefits under this title.

''(2) DUTIES.—The Medicare Beneficiary Ombudsman shall—

''(A) receive complaints, grievances, and requests for information submitted by individuals entitled to benefits under part A or enrolled under part B, or both, with respect to any aspect of the medicare program;

''(B) provide assistance with respect to complaints, grievances, and requests referred to in subparagraph (A), including—

''(i) assistance in collecting relevant information for such individuals, to seek an appeal of a decision or determination made by a fiscal intermediary, carrier, MA organization, or the Secretary;

''(ii) assistance to such individuals with any problems arising from disenrollment from an MA plan under part C; and

''(iii) assistance to such individuals in presenting information under section 1839(i)(4)(C) (relating to income-related premium adjustment; and

''(C) submit annual reports to Congress and the Secretary that describe the activities of the Office and that include such recommendations for improvement in the administration of this title as the Ombudsman determines appropriate.

The Ombudsman shall not serve as an advocate for any increases in payments or new coverage of services, but may identify issues and problems in payment or coverage policies.

''(3) WORKING WITH HEALTH INSURANCE COUNSELING PROGRAMS.—To the extent possible, the Ombudsman shall work with health insurance counseling programs (receiving funding under section 4360 of Omnibus Budget Reconciliation Act of 1990) to facilitate the provision of information to individuals entitled to benefits under part A or enrolled under part B, or both regarding MA plans and changes to those plans. Nothing in this paragraph shall preclude further collaboration between the Ombudsman and such programs.''.

(b) DEADLINE FOR APPOINTMENT.—By not later than 1 year after the date of the enactment of this Act, the Secretary shall appoint the Medicare Beneficiary Ombudsman under section 1808(c) of the Social Security Act, as added by subsection (a).

(c) FUNDING.—There are authorized to be appropriated to the Secretary (in appropriate part from the Federal Hospital Insurance Trust Fund, established under section 1817 of the Social Security Act (42 U.S.C. 1395i), and the Federal Supplementary Medical Insurance Trust Fund, established under section 1841 of such Act (42 U.S.C. 1395t)) to carry out section 1808(c) of such Act (relating to the Medicare Beneficiary Ombudsman), as added by subsection (a), such sums as are necessary for fiscal year 2004 and each succeeding fiscal year.

(d) USE OF CENTRAL, TOLL-FREE NUMBER (1–800–MEDICARE).—

(1) PHONE TRIAGE SYSTEM; LISTING IN MEDICARE HANDBOOK INSTEAD OF OTHER TOLL-FREE NUMBERS.—Section 1804(b) (42 U.S.C. 1395b–2(b)) is amended by adding at the end the following: ''The Secretary shall provide, through the toll-free telephone number 1–800–MEDICARE, for a means by which individuals seeking information about, or assistance with, such programs who phone such toll-free number are transferred (without charge) to appropriate entities for the provision of such information or assistance. Such toll-free number shall be the toll-free number listed for general information and assistance in the annual notice under subsection (a) instead of the listing of numbers of individual contractors.''.

(2) MONITORING ACCURACY.—

(A) STUDY.—The Comptroller General of the United States shall conduct a study to monitor the accuracy and consistency of information provided to individuals entitled to benefits under part A or enrolled under part B, or both, through the toll-free telephone number 1–800–MEDICARE, including an assessment of whether the information provided is sufficient to answer questions of such individuals. In conducting the study, the Comptroller General shall examine the education and training of the individuals providing information through such number.

(B) REPORT.—Not later than 1 year after the date of the enactment of this Act, the Comptroller General shall submit to Congress a report on the study conducted under subparagraph (A).

SEC. 524. BENEFICIARY OUTREACH DEMONSTRATION PROGRAM.

(a) IN GENERAL.—The Secretary shall establish a demonstration program (in this section referred to as the ''demonstration program'') under which medicare specialists employed by the Department of Health and Human Services provide advice and assistance to individuals entitled to benefits under part A of title XVIII of the Social Security Act, or enrolled under part B of such title, or both, regarding the medicare program at the location of existing local offices of the Social Security Administration.

(b) LOCATIONS.—

(1) IN GENERAL.—The demonstration program shall be conducted in at least 6 offices or areas. Subject to paragraph (2), in selecting such offices and areas, the Secretary shall provide preference for offices with a high volume of visits by individuals referred to in subsection (a).

(2) ASSISTANCE FOR RURAL BENEFICIARIES.—The Secretary shall provide for the selection of at least 2 rural areas to participate in the demonstration program. In conducting the demonstration program in such rural areas, the Secretary shall provide for medicare specialists to travel among local offices in a rural area on a scheduled basis.

(c) DURATION.—The demonstration program shall be conducted over a 3-year period.

(d) EVALUATION AND REPORT.—

(1) EVALUATION.—The Secretary shall provide for an evaluation of the demonstration program. Such evaluation shall include an analysis of—

(A) utilization of, and satisfaction of those individuals referred to in subsection (a) with, the assistance provided under the program; and

(B) the cost-effectiveness of providing beneficiary assistance through out-stationing medicare specialists at local offices of the Social Security Administration.

(2) REPORT.—The Secretary shall submit to Congress a report on such evaluation and shall include in such report recommendations regarding the feasibility of permanently out-stationing medicare specialists at local offices of the Social Security Administration.

SEC. 525. INCLUSION OF ADDITIONAL INFORMATION IN NOTICES TO BENEFICIARIES ABOUT SKILLED NURSING FACILITY BENEFITS.

(a) IN GENERAL.—The Secretary shall provide that in medicare beneficiary notices provided (under section 1806(a) of the Social Security Act, 42 U.S.C. 1395b–7(a)) with respect to the provision of post-hospital extended care services under part A of title XVIII of the Social Security Act, there shall be included information on the number of days of coverage of such services remaining under such part for the medicare beneficiary and spell of illness involved.

(b) EFFECTIVE DATE.—Subsection (a) shall apply to notices provided during calendar quarters beginning more than 6 months after the date of the enactment of this Act.

SEC. 526. INFORMATION ON MEDICARE-CERTIFIED SKILLED NURSING FACILITIES IN HOSPITAL DISCHARGE PLANS.

(a) AVAILABILITY OF DATA.—The Secretary shall publicly provide information that enables hospital discharge planners, medicare beneficiaries, and the public to identify skilled nursing facilities that are participating in the medicare program.

(b) INCLUSION OF INFORMATION IN CERTAIN HOSPITAL DISCHARGE PLANS.—

(1) IN GENERAL.—Section 1861(ee)(2)(D) (42 U.S.C. 1395x(ee)(2)(D)) is amended—

(A) by striking ''hospice services'' and inserting ''hospice care and post-hospital extended care services''; and

(B) by inserting before the period at the end the following: ''and, in the case of individuals who are likely to need post-hospital extended care services, the availability of such services through facilities that participate in the program under this title and that serve the area in which the patient resides''.

(2) EFFECTIVE DATE.—The amendments made by paragraph (1) shall apply to discharge plans made on or after such date as the Secretary shall specify, but not later than 6 months after the date the Secretary provides for availability of information under subsection (a).

Subtitle D—Appeals and Recovery

SEC. 531. TRANSFER OF RESPONSIBILITY FOR MEDICARE APPEALS.

(a) TRANSITION PLAN.—

(1) IN GENERAL.—Not later than April 1, 2004, the Commissioner of Social Security and the Secretary shall develop and transmit to Congress and the Comptroller General of the United States a plan under which the functions of administrative law judges responsible for hearing cases under title XVIII of the Social Security Act (and related provisions in title XI of such Act) are transferred from the responsibility of the Commissioner and the Social Security Administration to the Secretary and the Department of Health and Human Services.

(2) CONTENTS.—The plan shall include information on the following:

(A) WORKLOAD.—The number of such administrative law judges and support staff required now and in the future to hear and decide such cases in a timely manner, taking into account the current and anticipated claims volume, appeals, number of beneficiaries, and statutory changes.

(B) COST PROJECTIONS AND FINANCING.—Funding levels required for fiscal year 2005 and subsequent fiscal years to carry out the functions transferred under the plan.

(C) TRANSITION TIMETABLE.—A timetable for the transition.

(D) REGULATIONS.—The establishment of specific regulations to govern the appeals process.

(E) CASE TRACKING.—The development of a unified case tracking system that will facilitate the maintenance and transfer of case specific data across both the fee-for-service and managed care components of the medicare program.

(F) FEASIBILITY OF PRECEDENTIAL AUTHORITY.—The feasibility of developing a process to give decisions of the Departmental Appeals Board in the Department of Health and Human Services addressing broad legal issues binding, precedential authority.

(G) ACCESS TO ADMINISTRATIVE LAW JUDGES.—The feasibility of—

(i) filing appeals with administrative law judges electronically; and

(ii) conducting hearings using tele- or video-conference technologies.

(H) INDEPENDENCE OF ADMINISTRATIVE LAW JUDGES.—The steps that should be taken to ensure the independence of administrative law judges consistent with the requirements of subsection (b)(2).

(I) GEOGRAPHIC DISTRIBUTION.—The steps that should be taken to provide for an appropriate geographic distribution of administrative law judges throughout the United States to carry out subsection (b)(3).

(J) HIRING.—The steps that should be taken to hire administrative law judges (and support staff) to carry out subsection (b)(4).

(K) PERFORMANCE STANDARDS.—The appropriateness of establishing performance standards for administrative law judges with respect to timelines for decisions in cases under title XVIII of the Social Security Act taking into account requirements under subsection (b)(2) for the independence of such judges and consistent with the applicable provisions of title 5, United States Code relating to impartiality.

(L) SHARED RESOURCES.—The steps that should be taken to carry out subsection (b)(6) (relating to the arrangements with the Commissioner of Social Security to share office space, support staff, and other resources, with appropriate reimbursement).

(M) TRAINING.—The training that should be provided to administrative law judges with respect to laws and regulations under title XVIII of the Social Security Act.

(3) ADDITIONAL INFORMATION.—The plan may also include recommendations for further congressional action, including modifications to the requirements and deadlines established under section 1869 of the Social Security Act (42 U.S.C. 1395ff) (as amended by this Act).

(4) GAO EVALUATION.—The Comptroller General of the United States shall evaluate the plan and, not later than the date that is 6 months after the date on which the plan is received by the Comptroller General, shall submit to Congress a report on such evaluation.

(b) TRANSFER OF ADJUDICATION AUTHORITY.—

(1) IN GENERAL.—Not earlier than July 1, 2005, and not later than October 1, 2005, the Commissioner of Social Security and the Secretary shall implement the transition plan under subsection (a) and transfer the administrative law judge functions described in such subsection from the Social Security Administration to the Secretary.

(2) ASSURING INDEPENDENCE OF JUDGES.—The Secretary shall assure the independence of administrative law judges performing the administrative law judge functions transferred under paragraph (1) from the Centers for Medicare & Medicaid Services and its contractors. In order to assure such independence, the Secretary shall place such judges in an administrative office that is organizationally and functionally separate from such Centers. Such judges shall report to, and be under the general supervision of, the Secretary, but shall not report to, or be subject to supervision by, another officer of the Department of Health and Human Services.

(3) GEOGRAPHIC DISTRIBUTION.—The Secretary shall provide for an appropriate geographic distribution of administrative law judges performing the administrative law judge functions transferred under paragraph (1) throughout the United States to ensure timely access to such judges.

(4) HIRING AUTHORITY.—Subject to the amounts provided in advance in appropriations Acts, the Secretary shall have authority to hire administrative law judges to hear such cases, taking into consideration those judges with expertise in handling medicare appeals and in a manner consistent with paragraph (3), and to hire support staff for such judges.

(5) FINANCING.—Amounts payable under law to the Commissioner for administrative law judges performing the administrative law judge functions transferred under paragraph (1) from the Federal Hospital Insurance Trust Fund and the Federal Supplementary Medical Insurance Trust Fund shall become payable to the Secretary for the functions so transferred.

(6) SHARED RESOURCES.—The Secretary shall enter into such arrangements with the Commissioner as may be appropriate with respect to transferred functions of administrative law judges to share office space, support staff, and other resources, with appropriate reimbursement from the Trust Funds described in paragraph (5).

(c) INCREASED FINANCIAL SUPPORT.—In addition to any amounts otherwise appropriated, to ensure timely action on appeals before administrative law judges and the Departmental Appeals Board consistent with section 1869 of the Social Security Act (42 U.S.C. 1395ff) (as amended by this Act), there are authorized to be appropriated (in appropriate part from the Federal Hospital Insurance Trust Fund, established under section 1817 of the Social Security Act (42 U.S.C. 1395i), and the Federal Supplementary Medical Insurance Trust Fund, established under section 1841 of such Act (42 U.S.C. 1395t)) to the Secretary such sums as are necessary for fiscal year 2005 and each subsequent fiscal year to—

(1) increase the number of administrative law judges (and their staffs) under subsection (b)(4);

(2) improve education and training opportunities for administrative law judges (and their staffs); and

(3) increase the staff of the Departmental Appeals Board.

(d) CONFORMING AMENDMENT.—Section 1869(f)(2)(A)(i) (42 U.S.C. 1395ff(f)(2)(A)(i)) is amended by striking ''of the Social Security Administration''.

SEC. 532. PROCESS FOR EXPEDITED ACCESS TO REVIEW.

(a) EXPEDITED ACCESS TO JUDICIAL REVIEW.—

(1) IN GENERAL.—Section 1869(b) (42 U.S.C. 1395ff(b)) is amended—

(A) in paragraph (1)(A), by inserting '', subject to paragraph (2),'' before ''to judicial review of the Secretary's final decision''; and

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

''(2) EXPEDITED ACCESS TO JUDICIAL REVIEW.—

''(A) IN GENERAL.—The Secretary shall establish a process under which a provider of services or supplier that furnishes an item or service or an individual entitled to benefits under part A or enrolled under part B, or both, who has filed an appeal under paragraph (1) (other than an appeal filed under paragraph (1)(F)(i)) may obtain access to judicial review when a review entity (described in subparagraph (D)), on its own motion or at the request of the appellant, determines that the Departmental Appeals Board does not have the authority to decide the question of law or regulation relevant to the matters in controversy and that there is no material issue of fact in dispute. The appellant may make such request only once with respect to a question of law or regulation for a specific matter in dispute in a case of an appeal.

''(B) PROMPT DETERMINATIONS.—If, after or coincident with appropriately filing a request for an administrative hearing, the appellant requests a determination by the appropriate review entity that the Departmental Appeals Board does not have the authority to decide the question of law or regulations relevant to the matters in controversy and that there is no material issue of fact in dispute, and if such request is accompanied by the documents and materials as the appropriate review entity shall require for purposes of making such determination, such review entity shall make a determination on the request in writing within 60 days after the date such review entity receives the request and such accompanying documents and materials. Such a determination by such review entity shall be considered a final decision and not subject to review by the Secretary.

''(C) ACCESS TO JUDICIAL REVIEW.—

''(i) IN GENERAL.—If the appropriate review entity—

''(I) determines that there are no material issues of fact in dispute and that the only issues to be adjudicated are ones of law or regulation that the Departmental Appeals Board does not have authority to decide; or

''(II) fails to make such determination within the period provided under subparagraph (B),

then the appellant may bring a civil action as described in this subparagraph.

''(ii) DEADLINE FOR FILING.—Such action shall be filed, in the case described in—

''(I) clause (i)(I), within 60 days of the date of the determination described in such clause; or

''(II) clause (i)(II), within 60 days of the end of the period provided under subparagraph (B) for the determination.

''(iii) VENUE.—Such action shall be brought in the district court of the United States for the judicial district in which the appellant is located (or, in the case of an action brought jointly by more than one applicant, the judicial district in which the greatest number of applicants are located) or in the District Court for the District of Columbia.

''(iv) INTEREST ON ANY AMOUNTS IN CONTROVERSY.—Where a provider of services or supplier is granted judicial review pursuant to this paragraph, the amount in controversy (if any) shall be subject to annual interest beginning on the first day of the first month beginning after the 60-day period as determined pursuant to clause (ii) and equal to the rate of interest on obligations issued for purchase by the Federal Supplementary Medical Insurance Trust Fund for the month in which the civil action authorized under this paragraph is commenced, to be awarded by the reviewing court in favor of the prevailing party. No interest awarded pursuant to the preceding sentence shall be deemed income or cost for the purposes of determining reimbursement due providers of services or suppliers under this title.

''(D) REVIEW ENTITY DEFINED.—For purposes of this subsection, the term 'review entity' means an entity of up to three reviewers who are administrative law judges or members of the Departmental Appeals Board selected for purposes of making determinations under this paragraph.''.

(2) CONFORMING AMENDMENT.—Section 1869(b)(1)(F)(ii) (42 U.S.C. 1395ff(b)(1)(F)(ii)) is amended to read as follows:

''(ii) REFERENCE TO EXPEDITED ACCESS TO JUDICIAL REVIEW.—For the provision relating to expedited access to judicial review, see paragraph (2).''.

(b) APPLICATION TO PROVIDER AGREEMENT DETERMINATIONS.—Section 1866(h)(1) (42 U.S.C. 1395cc(h)(1)) is amended—

(1) by inserting ''(A)'' after ''(h)(1)''; and

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

''(B) An institution or agency described in subparagraph (A) that has filed for a hearing under subparagraph (A) shall have expedited access to judicial review under this subparagraph in the same manner as providers of services, suppliers, and individuals entitled

to benefits under part A or enrolled under part B, or both, may obtain expedited access to judicial review under the process established under section 1869(b)(2). Nothing in this subparagraph shall be construed to affect the application of any remedy imposed under section 1819 during the pendency of an appeal under this subparagraph.''.

(c) EXPEDITED REVIEW OF CERTAIN PROVIDER AGREEMENT DETERMINATIONS.—

(1) TERMINATION AND CERTAIN OTHER IMMEDIATE REMEDIES.—Section 1866(h)(1) (42 U.S.C. 1395cc(h)(1)), as amended by subsection (b), is amended by adding at the end the following new subparagraph:

''(C)(i) The Secretary shall develop and implement a process to expedite proceedings under this subsection in which—

''(I) the remedy of termination of participation has been imposed;

''(II) a remedy described in clause (i) or (iii) of section 1819(h)(2)(B) has been imposed, but only if such remedy has been imposed on an immediate basis; or

''(III) a determination has been made as to a finding of substandard quality of care that results in the loss of approval of a skilled nursing facility's nurse aide training program.

''(ii) Under such process under clause (i), priority shall be provided in cases of termination described in clause (i)(I).

''(iii) Nothing in this subparagraph shall be construed to affect the application of any remedy imposed under section 1819 during the pendency of an appeal under this subparagraph.''.

(2) WAIVER OF DISAPPROVAL OF NURSE-AIDE TRAINING PROGRAMS.—Sections 1819(f)(2) and section 1919(f)(2) (42 U.S.C. 1395i–3(f)(2) and 1396r(f)(2)) are each amended—

(A) in subparagraph (B)(iii), by striking ''subparagraph (C)'' and inserting ''subparagraphs (C) and (D)''; and

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

''(D) WAIVER OF DISAPPROVAL OF NURSE-AIDE TRAINING PROGRAMS.—Upon application of a nursing facility, the Secretary may waive the application of subparagraph (B)(iii)(I)(c) if the imposition of the civil monetary penalty was not related to the quality of care provided to residents of the facility. Nothing in this subparagraph shall be construed as eliminating any requirement upon a facility to pay a civil monetary penalty described in the preceding sentence.''.

(3) INCREASED FINANCIAL SUPPORT.—In addition to any amounts otherwise appropriated, to reduce by 50 percent the average time for administrative determinations on appeals under section 1866(h) of the Social Security Act (42 U.S.C. 1395cc(h)), there are authorized to be appropriated (in appropriate part from the Federal Hospital Insurance Trust Fund, established under section 1817 of the Social Security Act (42 U.S.C. 1395i), and the Federal Supplementary Medical Insurance Trust Fund, established under section 1841 of such Act (42 U.S.C. 1395t)) to the Secretary such additional sums for fiscal year 2004 and each subsequent fiscal year as may be necessary. The purposes for which such amounts are available include increasing the number of administrative law judges (and their staffs) and the appellate level staff at the Departmental Appeals Board of the Department of Health and Human Services and educating such judges and staffs on long-term care issues.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to appeals filed on or after October 1, 2004.

SEC. 533. REVISIONS TO MEDICARE APPEALS PROCESS.

(a) REQUIRING FULL AND EARLY PRESENTATION OF EVIDENCE.—

(1) IN GENERAL.—Section 1869(b) (42 U.S.C. 1395ff(b)), as amended by section 532(a), is further amended by adding at the end the following new paragraph:

''(3) REQUIRING FULL AND EARLY PRESENTATION OF EVIDENCE BY PROVIDERS.—A provider of services or supplier may not introduce evidence in any appeal under this section that was not presented at the reconsideration conducted by the qualified independent contractor under subsection (c), unless there is good cause which precluded the introduction of such evidence at or before that reconsideration.''.

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall take effect on October 1, 2004.

(b) USE OF PATIENTS' MEDICAL RECORDS.—Section 1869(c)(3)(B)(i) (42 U.S.C. 1395ff(c)(3)(B)(i)) is amended by inserting ''(including the medical records of the individual involved)'' after ''clinical experience''.

(c) NOTICE REQUIREMENTS FOR MEDICARE APPEALS.—

(1) INITIAL DETERMINATIONS AND REDETERMINATIONS.—Section 1869(a) (42 U.S.C. 1395ff(a)) is amended by adding at the end the following new paragraphs:

''(4) REQUIREMENTS OF NOTICE OF DETERMINATIONS.—With respect to an initial determination insofar as it results in a denial of a claim for benefits—

''(A) the written notice on the determination shall include—

''(i) the reasons for the determination, including whether a local medical review policy or a local coverage determination was used;

''(ii) the procedures for obtaining additional information concerning the determination, including the information described in subparagraph (B); and

''(iii) notification of the right to seek a redetermination or otherwise appeal the determination and instructions on how to initiate such a redetermination under this section;

''(B) such written notice shall be provided in printed form and written in a manner calculated to be understood by the individual entitled to benefits under part A or enrolled under part B, or both; and

''(C) the individual provided such written notice may obtain, upon request, information on the specific provision of the policy, manual, or regulation used in making the redetermination.

''(5) REQUIREMENTS OF NOTICE OF REDETERMINATIONS.—With respect to a redetermination insofar as it results in a denial of a claim for benefits—

''(A) the written notice on the redetermination shall include—

''(i) the specific reasons for the redetermination;

''(ii) as appropriate, a summary of the clinical or scientific evidence used in making the redetermination;

''(iii) a description of the procedures for obtaining additional information concerning the redetermination; and

''(iv) notification of the right to appeal the redetermination and instructions on how to initiate such an appeal under this section;

''(B) such written notice shall be provided in printed form and written in a manner calculated to be understood by the individual entitled to benefits under part A or enrolled under part B, or both; and

''(C) the individual provided such written notice may obtain, upon request, information on the specific provision of the policy, manual, or regulation used in making the redetermination.''.

(2) RECONSIDERATIONS.—Section 1869(c)(3)(E) (42 U.S.C. 1395ff(c)(3)(E)) is amended—

(A) by inserting ''be written in a manner calculated to be understood by the individual entitled to benefits under part A or enrolled under part B, or both, and shall include (to the extent appropriate)'' after ''in writing,''; and

(B) by inserting ''and a notification of the right to appeal such determination and instructions on how to initiate such appeal under this section'' after ''such decision,''.

(3) APPEALS.—Section 1869(d) (42 U.S.C. 1395ff(d)) is amended—

(A) in the heading, by inserting ''; NOTICE'' after ''SECRETARY''; and

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

''(4) NOTICE.—Notice of the decision of an administrative law judge shall be in writing in a manner calculated to be understood by the individual entitled to benefits under part A or enrolled under part B, or both, and shall include—

''(A) the specific reasons for the determination (including, to the extent appropriate, a summary of the clinical or scientific evidence used in making the determination);

''(B) the procedures for obtaining additional information concerning the decision; and

''(C) notification of the right to appeal the decision and instructions on how to initiate such an appeal under this section.''.

(4) SUBMISSION OF RECORD FOR APPEAL.—Section 1869(c)(3)(J)(i) (42 U.S.C. 1395ff(c)(3)(J)(i)) is amended by striking ''prepare'' and inserting ''submit'' and by striking ''with respect to'' and all that follows through ''and relevant policies''.

(d) QUALIFIED INDEPENDENT CONTRACTORS.—

(1) ELIGIBILITY REQUIREMENTS OF QUALIFIED INDEPENDENT CONTRACTORS.—Section 1869(c)(3) (42 U.S.C. 1395ff(c)(3)) is amended—

(A) in subparagraph (A), by striking ''sufficient training and expertise in medical science and legal matters'' and inserting ''sufficient medical, legal, and other expertise (including knowledge of the program under this title) and sufficient staffing''; and

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

''(K) INDEPENDENCE REQUIREMENTS.—

''(i) IN GENERAL.—Subject to clause (ii), a qualified independent contractor shall not conduct any activities in a case unless the entity—

''(I) is not a related party (as defined in subsection (g)(5));

''(II) does not have a material familial, financial, or professional relationship with such a party in relation to such case; and

''(III) does not otherwise have a conflict of interest with such a party.

''(ii) EXCEPTION FOR REASONABLE COMPENSATION.—Nothing in clause (i) shall be construed to prohibit receipt by a qualified independent contractor of compensation from the Secretary for the conduct of activities under this section if the compensation is provided consistent with clause (iii).

''(iii) LIMITATIONS ON ENTITY COMPENSATION.—Compensation provided by the Secretary to a qualified independent contractor in connection with reviews under this section shall not be contingent on any decision rendered by the contractor or by any reviewing professional.''.

(2) ELIGIBILITY REQUIREMENTS FOR REVIEWERS.—Section 1869 (42 U.S.C. 1395ff) is amended—

(A) by amending subsection (c)(3)(D) to read as follows:

''(D) QUALIFICATIONS FOR REVIEWERS.—The requirements of subsection (g) shall be met (relating to qualifications of reviewing professionals).''; and

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

''(g) QUALIFICATIONS OF REVIEWERS.—

''(1) IN GENERAL.—In reviewing determinations under this section, a qualified independent contractor shall assure that—

''(A) each individual conducting a review shall meet the qualifications of paragraph (2);

''(B) compensation provided by the contractor to each such reviewer is consistent with paragraph (3); and

''(C) in the case of a review by a panel described in subsection (c)(3)(B) composed of physicians or other health care professionals (each in this subsection referred to as a 'reviewing professional'), a reviewing professional meets the qualifications described in paragraph (4) and, where a claim is regarding the furnishing of treatment by a physician (allopathic or osteopathic) or the provision of items or services by a physician (allopathic or osteopathic), a reviewing professional shall be a physician (allopathic or osteopathic).

''(2) INDEPENDENCE.—

''(A) IN GENERAL.—Subject to subparagraph (B), each individual conducting a review in a case shall—

''(i) not be a related party (as defined in paragraph (5));

''(ii) not have a material familial, financial, or professional relationship with such a party in the case under review; and

''(iii) not otherwise have a conflict of interest with such a party.

''(B) EXCEPTION.—Nothing in subparagraph (A) shall be construed to—

''(i) prohibit an individual, solely on the basis of a participation agreement with a fiscal intermediary, carrier, or other contractor, from serving as a reviewing professional if—

''(I) the individual is not involved in the provision of items or services in the case under review;

''(II) the fact of such an agreement is disclosed to the Secretary and the individual entitled to benefits under part A or enrolled under part B, or both, or such individual's authorized representative, and neither party objects; and

''(III) the individual is not an employee of the intermediary, carrier, or contractor and does not provide services exclusively or primarily to or on behalf of such intermediary, carrier, or contractor;

''(ii) prohibit an individual who has staff privileges at the institution where the treatment involved takes place from serving as a reviewer merely on the basis of having such staff privileges if the existence of such privileges is disclosed to the Secretary and such individual (or authorized representative), and neither party objects; or

''(iii) prohibit receipt of compensation by a reviewing professional from a contractor if the compensation is provided consistent with paragraph (3).

For purposes of this paragraph, the term 'participation agreement' means an agreement relating to the provision of health care services by the individual and does not include the provision of services as a reviewer under this subsection.

''(3) LIMITATIONS ON REVIEWER COMPENSATION.—Compensation provided by a qualified independent contractor to a reviewer in connection with a review under this section shall not be contingent on the decision rendered by the reviewer.

''(4) LICENSURE AND EXPERTISE.—Each reviewing professional shall be—

''(A) a physician (allopathic or osteopathic) who is appropriately credentialed or licensed in one or more States to deliver health care services and has medical expertise in the field of practice that is appropriate for the items or services at issue; or

''(B) a health care professional who is legally authorized in one or more States (in accordance with State law or the State regulatory mechanism provided by State law) to furnish the health care items or services at issue and has medical expertise in the field of practice that is appropriate for such items or services.

''(5) RELATED PARTY DEFINED.—For purposes of this section, the term 'related party' means, with respect to a case under this title involving a specific individual entitled to benefits under part A or enrolled under part B, or both, any of the following:

''(A) The Secretary, the medicare administrative contractor involved, or any fiduciary, officer, director, or employee of the Department of Health and Human Services, or of such contractor.

''(B) The individual (or authorized representative).

''(C) The health care professional that provides the items or services involved in the case.

''(D) The institution at which the items or services (or treatment) involved in the case are provided.

''(E) The manufacturer of any drug or other item that is included in the items or services involved in the case.

''(F) Any other party determined under any regulations to have a substantial interest in the case involved.''.

(3) REDUCING MINIMUM NUMBER OF QUALIFIED INDEPENDENT CONTRACTORS.—Section 1869(c)(4) (42 U.S.C. 1395ff(c)(4)) is amended by striking ''not fewer than 12 qualified independent contractors under this subsection'' and inserting ''with a sufficient number of qualified independent contractors (but not fewer than 4 such contractors) to conduct reconsiderations consistent with the timeframes applicable under this subsection''.

(4) EFFECTIVE DATE.—The amendments made by paragraphs (1) and (2) shall be effective as if included in the enactment of the respective provisions of subtitle C of title V of BIPA (114 Stat. 2763A–534).

(5) TRANSITION.—In applying section 1869(g) of the Social Security Act (as added by paragraph (2)), any reference to a medicare administrative contractor shall be deemed to include a reference to a fiscal intermediary under section 1816 of the Social Security Act (42 U.S.C. 1395h) and a carrier under section 1842 of such Act (42 U.S.C. 1395u).

SEC. 534. PREPAYMENT REVIEW.

(a) IN GENERAL.—Section 1874A, as added by section 511(a)(1) and as amended by sections 912(b), 921(b)(1), and 921(c)(1), is further amended by adding at the end the following new subsection:

''(h) CONDUCT OF PREPAYMENT REVIEW.—

''(1) CONDUCT OF RANDOM PREPAYMENT REVIEW.—

''(A) IN GENERAL.—A medicare administrative contractor may conduct random prepayment review only to develop a contractor-wide or program-wide claims payment error rates or under such additional circumstances as may be provided under regulations, developed in consultation with providers of services and suppliers.

''(B) USE OF STANDARD PROTOCOLS WHEN CONDUCTING PREPAYMENT REVIEWS.—When a medicare administrative contractor conducts a random prepayment review, the contractor may conduct such review only in accordance with a standard protocol for random prepayment audits developed by the Secretary.

''(C) CONSTRUCTION.—Nothing in this paragraph shall be construed as preventing the denial of payments for claims actually reviewed under a random prepayment review.

''(D) RANDOM PREPAYMENT REVIEW.—For purposes of this subsection, the term 'random prepayment review' means a demand for the production of records or documentation absent cause with respect to a claim.

''(2) LIMITATIONS ON NON-RANDOM PREPAYMENT REVIEW.—

''(A) LIMITATIONS ON INITIATION OF NON-RANDOM PREPAYMENT REVIEW.—A medicare administrative contractor may not initiate non-random prepayment review of a provider of services or supplier based on the initial identification by that provider of services or supplier of an improper billing practice unless there is a likelihood of sustained or high level of payment error under section 1893(f)(3)(A).

''(B) TERMINATION OF NON-RANDOM PREPAYMENT REVIEW.—The Secretary shall issue regulations relating to the termination, including termination dates, of non-random prepayment review. Such regulations may vary such a termination date based upon the differences in the circumstances triggering prepayment review.''.

(b) EFFECTIVE DATE.—

(1) IN GENERAL.—Except as provided in this subsection, the amendment made by subsection (a) shall take effect 1 year after the date of the enactment of this Act.

(2) DEADLINE FOR PROMULGATION OF CERTAIN REGULATIONS.—The Secretary shall first issue regulations under section 1874A(h) of the Social Security Act, as added by subsection (a), by not later than 1 year after the date of the enactment of this Act.

(3) APPLICATION OF STANDARD PROTOCOLS FOR RANDOM PREPAYMENT REVIEW.—Section 1874A(h)(1)(B) of the Social Security Act, as added by subsection (a), shall apply to random prepayment reviews conducted on or after such date (not later than 1 year after the date of the enactment of this Act) as the Secretary shall specify.

(c) APPLICATION TO FISCAL INTERMEDIARIES AND CARRIERS.—The provisions of section 1874A(h) of the Social Security Act, as added by subsection (a), shall apply to each fiscal intermediary under section 1816 of the Social Security Act (42 U.S.C. 1395h) and each carrier under section 1842 of such Act (42 U.S.C. 1395u) in the same manner as they apply to medicare administrative contractors under such provisions.

SEC. 535. RECOVERY OF OVERPAYMENTS.

(a) IN GENERAL.—Section 1893 (42 U.S.C. 1395ddd) is amended by adding at the end the following new subsection:

''(f) RECOVERY OF OVERPAYMENTS.—

''(1) USE OF REPAYMENT PLANS.—

''(A) IN GENERAL.—If the repayment, within 30 days by a provider of services or supplier, of an overpayment under this title would constitute a hardship (as described in subparagraph (B)), subject to subparagraph (C), upon request of the provider of services or supplier the Secretary shall enter into a plan with the provider of services or supplier for the repayment (through offset or otherwise) of such overpayment over a period of at least 6 months but not longer than 3 years (or not longer than 5 years in the case of extreme hardship, as determined by the Secretary). Interest shall accrue on the balance through the period of repayment. Such plan shall meet terms and conditions determined to be appropriate by the Secretary.

''(B) HARDSHIP.—

''(i) IN GENERAL.—For purposes of subparagraph (A), the repayment of an overpayment (or overpayments) within 30 days is deemed to constitute a hardship if—

''(I) in the case of a provider of services that files cost reports, the aggregate amount of the overpayments exceeds 10 percent of the amount paid under this title to the provider of services for the cost reporting period covered by the most recently submitted cost report; or

''(II) in the case of another provider of services or supplier, the aggregate amount of the overpayments exceeds 10 percent of the amount paid under this title to the provider of services or supplier for the previous calendar year.

''(ii) RULE OF APPLICATION.—The Secretary shall establish rules for the application of this subparagraph in the case of a provider of services or supplier that was not paid under this title during the previous year or was paid under this title only during a portion of that year.

''(iii) TREATMENT OF PREVIOUS OVERPAYMENTS.—If a provider of services or supplier has entered into a repayment plan under subparagraph (A) with respect to a specific overpayment amount, such payment amount under the repayment plan shall not be taken into account under clause (i) with respect to subsequent overpayment amounts.

''(C) EXCEPTIONS.—Subparagraph (A) shall not apply if—

''(i) the Secretary has reason to suspect that the provider of services or supplier may file for bankruptcy or otherwise cease to do business or discontinue participation in the program under this title; or

''(ii) there is an indication of fraud or abuse committed against the program.

''(D) IMMEDIATE COLLECTION IF VIOLATION OF REPAYMENT PLAN.—If a provider of services or supplier fails to make a payment in accordance with a repayment plan under this paragraph, the Secretary may immediately seek to offset or otherwise recover the total balance outstanding (including applicable interest) under the repayment plan.

''(E) RELATION TO NO FAULT PROVISION.—Nothing in this paragraph shall be construed as affecting the application of section 1870(c) (relating to no adjustment in the cases of certain overpayments).

''(2) LIMITATION ON RECOUPMENT.—

''(A) IN GENERAL.—In the case of a provider of services or supplier that is determined to have received an overpayment under this title and that seeks a reconsideration by a qualified independent contractor on such determination under section 1869(b)(1), the Secretary may not take any action (or authorize any other person, including any medicare contractor, as defined in subparagraph (C)) to recoup the overpayment until the date the decision on the reconsideration has been rendered. If the provisions of section 1869(b)(1) (providing for such a reconsideration by a qualified independent contractor) are not in effect, in applying the previous sentence any reference to such a reconsideration shall be treated as a reference to a redetermination by the fiscal intermediary or carrier involved.

''(B) COLLECTION WITH INTEREST.—Insofar as the determination on such appeal is against the provider of services or supplier, interest on the overpayment shall accrue on and after the date of the original notice of overpayment. Insofar as such determination against the provider of services or supplier is later reversed, the Secretary shall provide for repayment of the amount recouped plus interest at the same rate as would apply under the previous sentence for the period in which the amount was recouped.

''(C) MEDICARE CONTRACTOR DEFINED.—For purposes of this subsection, the term 'medicare contractor' has the meaning given such term in section 1889(g).

''(3) LIMITATION ON USE OF EXTRAPOLATION.—A medicare contractor may not use extrapolation to determine overpayment amounts to be recovered by recoupment, offset, or otherwise unless the Secretary determines that—

''(A) there is a sustained or high level of payment error; or

''(B) documented educational intervention has failed to correct the payment error.

There shall be no administrative or judicial review under section 1869, section 1878, or otherwise, of determinations by the Secretary of sustained or high levels of payment errors under this paragraph.

''(4) PROVISION OF SUPPORTING DOCUMENTATION.—In the case of a provider of services or supplier with respect to which amounts were previously overpaid, a medicare contractor may request the periodic production of records or supporting documentation for a limited sample of submitted claims to ensure that the previous practice is not continuing.

''(5) CONSENT SETTLEMENT REFORMS.—

''(A) IN GENERAL.—The Secretary may use a consent settlement (as defined in subparagraph (D)) to settle a projected overpayment.

''(B) OPPORTUNITY TO SUBMIT ADDITIONAL INFORMATION BEFORE CONSENT SETTLEMENT OFFER.—Before offering a provider of services or supplier a consent settlement, the Secretary shall—

''(i) communicate to the provider of services or supplier—

''(I) that, based on a review of the medical records requested by the Secretary, a preliminary evaluation of those records indicates that there would be an overpayment;

''(II) the nature of the problems identified in such evaluation; and

''(III) the steps that the provider of services or supplier should take to address the problems; and

''(ii) provide for a 45-day period during which the provider of services or supplier may furnish additional information concerning the medical records for the claims that had been reviewed.

''(C) CONSENT SETTLEMENT OFFER.—The Secretary shall review any additional information furnished by the provider of services or supplier under subparagraph (B)(ii). Taking into consideration such information, the Secretary shall determine if there still appears to be an overpayment. If so, the Secretary—

''(i) shall provide notice of such determination to the provider of services or supplier, including an explanation of the reason for such determination; and

''(ii) in order to resolve the overpayment, may offer the provider of services or supplier—

''(I) the opportunity for a statistically valid random sample; or

''(II) a consent settlement.

The opportunity provided under clause (ii)(I) does not waive any appeal rights with respect to the alleged overpayment involved.

''(D) CONSENT SETTLEMENT DEFINED.—For purposes of this paragraph, the term 'consent settlement' means an agreement between the Secretary and a provider of services or supplier whereby both parties agree to settle a projected overpayment based on less than a statistically valid sample of claims and the provider of services or supplier agrees not to appeal the claims involved.

''(6) NOTICE OF OVER-UTILIZATION OF CODES.—The Secretary shall establish, in consultation with organizations representing the classes of providers of services and suppliers, a process under which the Secretary provides for notice to classes of providers of services and suppliers served by the contractor in cases in which the contractor has identified that particular billing codes may be overutilized by that class of providers of services or suppliers under the programs under this title (or provisions of title XI insofar as they relate to such programs).

''(7) PAYMENT AUDITS.—

''(A) WRITTEN NOTICE FOR POST-PAYMENT AUDITS.—Subject to subparagraph (C), if a medicare contractor decides to conduct a post-payment audit of a provider of services or supplier under this title, the contractor shall provide the provider of services or supplier with written notice (which may be in electronic form) of the intent to conduct such an audit.

''(B) EXPLANATION OF FINDINGS FOR ALL AUDITS.—Subject to subparagraph (C), if a medicare contractor audits a provider of services or supplier under this title, the contractor shall—

''(i) give the provider of services or supplier a full review and explanation of the findings of the audit in a manner that is understandable to the provider of services or supplier and permits the development of an appropriate corrective action plan;

''(ii) inform the provider of services or supplier of the appeal rights under this title as well as consent settlement options (which are at the discretion of the Secretary);

''(iii) give the provider of services or supplier an opportunity to provide additional information to the contractor; and

''(iv) take into account information provided, on a timely basis, by the provider of services or supplier under clause (iii).

''(C) EXCEPTION.—Subparagraphs (A) and (B) shall not apply if the provision of notice or findings would compromise pending law enforcement activities, whether civil or criminal, or reveal findings of law enforcement-related audits.

''(8) STANDARD METHODOLOGY FOR PROBE SAMPLING.—The Secretary shall establish a standard methodology for medicare contractors to use in selecting a sample of claims for review in the case of an abnormal billing pattern.''.

(b) EFFECTIVE DATES AND DEADLINES.—

(1) USE OF REPAYMENT PLANS.—Section 1893(f)(1) of the Social Security Act, as added by subsection (a), shall apply to requests for repayment plans made after the date of the enactment of this Act.

(2) LIMITATION ON RECOUPMENT.—Section 1893(f)(2) of the Social Security Act, as added by subsection (a), shall apply to actions taken after the date of the enactment of this Act.

(3) USE OF EXTRAPOLATION.—Section 1893(f)(3) of the Social Security Act, as added by subsection (a), shall apply to statistically valid random samples initiated after the date that is 1 year after the date of the enactment of this Act.

(4) PROVISION OF SUPPORTING DOCUMENTATION.—Section 1893(f)(4) of the Social Security Act, as added by subsection (a), shall take effect on the date of the enactment of this Act.

(5) CONSENT SETTLEMENT.—Section 1893(f)(5) of the Social Security Act, as added by subsection (a), shall apply to consent settlements entered into after the date of the enactment of this Act.

(6) NOTICE OF OVERUTILIZATION.—Not later than 1 year after the date of the enactment of this Act, the Secretary shall first establish the process for notice of overutilization of billing codes under section 1893A(f)(6) of the Social Security Act, as added by subsection (a).

(7) PAYMENT AUDITS.—Section 1893A(f)(7) of the Social Security Act, as added by subsection (a), shall apply to audits initiated after the date of the enactment of this Act.

(8) STANDARD FOR ABNORMAL BILLING PATTERNS.—Not later than 1 year after the date of the enactment of this Act, the Secretary shall first establish a standard methodology for selection of sample claims for abnormal billing patterns under section 1893(f)(8) of the Social Security Act, as added by subsection (a).

SEC. 536. PROVIDER ENROLLMENT PROCESS; RIGHT OF APPEAL.

(a) IN GENERAL.—Section 1866 (42 U.S.C. 1395cc) is amended—

(1) by adding at the end of the heading the following: ''; ENROLLMENT PROCESSES''; and

(2) by adding at the end the following new subsection:

''(j) ENROLLMENT PROCESS FOR PROVIDERS OF SERVICES AND SUPPLIERS.—

''(1) ENROLLMENT PROCESS.—

''(A) IN GENERAL.—The Secretary shall establish by regulation a process for the enrollment of providers of services and suppliers under this title.

''(B) DEADLINES.—The Secretary shall establish by regulation procedures under which there are deadlines for actions on applications for enrollment (and, if applicable, renewal of enrollment). The Secretary shall monitor the performance of medicare administrative contractors in meeting the deadlines established under this subparagraph.

''(C) CONSULTATION BEFORE CHANGING PROVIDER ENROLLMENT FORMS.—The Secretary shall consult with providers of services and suppliers before making changes in the provider enrollment forms required of such providers and suppliers to be eligible to submit claims for which payment may be made under this title.

''(2) HEARING RIGHTS IN CASES OF DENIAL OR NON-RENEWAL.—A provider of services or supplier whose application to enroll (or, if applicable, to renew enrollment) under this title is denied may have a hearing and judicial review of such denial under the procedures that apply under subsection (h)(1)(A) to a provider of services that is dissatisfied with a determination by the Secretary.''.

(b) EFFECTIVE DATES.—

(1) ENROLLMENT PROCESS.—The Secretary shall provide for the establishment of the enrollment process under section 1866(j)(1) of the Social Security Act, as added by subsection (a)(2), within 6 months after the date of the enactment of this Act.

(2) CONSULTATION.—Section 1866(j)(1)(C) of the Social Security Act, as added by subsection (a)(2), shall apply with respect to changes in provider enrollment forms made on or after January 1, 2004.

(3) HEARING RIGHTS.—Section 1866(j)(2) of the Social Security Act, as added by subsection (a)(2), shall apply to denials occurring on or after such date (not later than 1 year after the date of the enactment of this Act) as the Secretary specifies.

SEC. 537. PROCESS FOR CORRECTION OF MINOR ERRORS AND OMISSIONS WITHOUT PURSUING APPEALS PROCESS.

(a) CLAIMS.—The Secretary shall develop, in consultation with appropriate medicare contractors (as defined in section 1889(g) of the Social Security Act, as inserted by section 301(a)(1)) and representatives of providers of services and suppliers, a process whereby, in the case of minor errors or omissions (as defined by the Secretary) that are detected in the submission of claims under the programs under title XVIII of such Act, a provider of services or supplier is given an opportunity to correct such an error or omission without the need to initiate an appeal. Such process shall include the ability to resubmit corrected claims.

(b) DEADLINE.—Not later than 1 year after the date of the enactment of this Act, the Secretary shall first develop the process under subsection (a).

SEC. 538. PRIOR DETERMINATION PROCESS FOR CERTAIN ITEMS AND SERVICES; ADVANCE BENEFICIARY NOTICES.

(a) IN GENERAL.—Section 1869 (42 U.S.C. 1395ff(b)), as amended by section 533(d)(2)(B), is further amended by adding at the end the following new subsection:

''(h) PRIOR DETERMINATION PROCESS FOR CERTAIN ITEMS AND SERVICES.—

''(1) ESTABLISHMENT OF PROCESS.—

''(A) IN GENERAL.—With respect to a medicare administrative contractor that has a contract under section 1874A that provides for making payments under this title with respect to physicians' services (as defined in section 1848(j)(3)), the Secretary shall establish a prior determination process that meets the requirements of this subsection and that shall be applied by such contractor in the case of eligible requesters.

''(B) ELIGIBLE REQUESTER.—For purposes of this subsection, each of the following shall be an eligible requester:

''(i) A participating physician, but only with respect to physicians' services to be furnished to an individual who is entitled to benefits under this title and who has consented to the physician making the request under this subsection for those physicians' services.

''(ii) An individual entitled to benefits under this title, but only with respect to a physicians' service for which the individual receives, from a physician, an advance beneficiary notice under section 1879(a).

''(2) SECRETARIAL FLEXIBILITY.—The Secretary shall establish by regulation reasonable limits on the physicians' services for which a prior determination of coverage may be requested under this subsection. In establishing such limits, the Secretary may consider the dollar amount involved with respect to the physicians' service, administrative costs and burdens, and other relevant factors.

''(3) REQUEST FOR PRIOR DETERMINATION.—

''(A) IN GENERAL.—Subject to paragraph (2), under the process established under this subsection an eligible requester may submit to the contractor a request for a determination, before the furnishing of a physicians' service, as to whether the physicians' service is covered under this title consistent with the applicable requirements of section 1862(a)(1)(A) (relating to medical necessity).

''(B) ACCOMPANYING DOCUMENTATION.—The Secretary may require that the request be accompanied by a description of the physicians' service, supporting documentation relating to the medical necessity for the physicians' service, and any other appropriate documentation. In the case of a request submitted by an eligible requester who is described in paragraph (1)(B)(ii), the Secretary may require that the request also be accompanied by a copy of the advance beneficiary notice involved.

''(4) RESPONSE TO REQUEST.—

''(A) IN GENERAL.—Under such process, the contractor shall provide the eligible requester with written notice of a determination as to whether—

''(i) the physicians' service is so covered;

''(ii) the physicians' service is not so covered; or

''(iii) the contractor lacks sufficient information to make a coverage determination with respect to the physicians' service.

''(B) CONTENTS OF NOTICE FOR CERTAIN DETERMINATIONS.—

''(i) NONCOVERAGE.—If the contractor makes the determination described in subparagraph (A)(ii), the contractor shall include in the notice a brief explanation of the basis for the determination, including on what national or local coverage or noncoverage determination (if any) the determination is based, and a description of any applicable rights under subsection (a).

''(ii) INSUFFICIENT INFORMATION.—If the contractor makes the determination described in subparagraph (A)(iii), the contractor shall include in the notice a description of the additional information required to make the coverage determination.

''(C) DEADLINE TO RESPOND.—Such notice shall be provided within the same time period as the time period applicable to the contractor providing notice of initial determinations on a claim for benefits under subsection (a)(2)(A).

''(D) INFORMING BENEFICIARY IN CASE OF PHYSICIAN REQUEST.—In the case of a request by a participating physician under paragraph (1)(B)(i), the process shall provide that the individual to whom the physicians' service is proposed to be furnished shall be informed of any determination described in subparagraph (A)(ii) (relating to a determination of noncoverage) and the right (referred to in paragraph (6)(B)) to obtain the physicians' service and have a claim submitted for the physicians' service.

''(5) BINDING NATURE OF POSITIVE DETERMINATION.—If the contractor makes the determination described in paragraph (4)(A)(i), such determination shall be binding on the contractor in the absence of fraud or evidence of misrepresentation of facts presented to the contractor.

''(6) LIMITATION ON FURTHER REVIEW.—

''(A) IN GENERAL.—Contractor determinations described in paragraph (4)(A)(ii) or (4)(A)(iii) (relating to pre-service claims) are not subject to further administrative appeal or judicial review under this section or otherwise.

''(B) DECISION NOT TO SEEK PRIOR DETERMINATION OR NEGATIVE DETERMINATION DOES NOT IMPACT RIGHT TO OBTAIN SERVICES, SEEK REIMBURSEMENT, OR APPEAL RIGHTS.—Nothing in this subsection shall be construed as affecting the right of an individual who—

''(i) decides not to seek a prior determination under this subsection with respect to physicians' services; or

''(ii) seeks such a determination and has received a determination described in paragraph (4)(A)(ii),

from receiving (and submitting a claim for) such physicians' services and from obtaining administrative or judicial review respecting such claim under the other applicable provisions of this section. Failure to seek a prior determination under this subsection with respect to physicians' service shall not be taken into account in such administrative or judicial review.

''(C) NO PRIOR DETERMINATION AFTER RECEIPT OF SERVICES.—Once an individual is provided physicians' services, there shall be no prior determination under this subsection with respect to such physicians' services.''.

(b) EFFECTIVE DATE; SUNSET; TRANSITION.—

(1) EFFECTIVE DATE.—The Secretary shall establish the prior determination process under the amendment made by subsection (a) in such a manner as to provide for the acceptance of requests for determinations under such process filed not later than 18 months after the date of the enactment of this Act.

(2) SUNSET.—Such prior determination process shall not apply to requests filed after the end of the 5-year period beginning on the first date on which requests for determinations under such process are accepted.

(3) TRANSITION.—During the period in which the amendment made by subsection (a) has become effective but contracts are not provided under section 1874A of the Social Security Act with medicare administrative contractors, any reference in section 1869(g) of such Act (as added by such amendment) to such a contractor is deemed a reference to a fiscal intermediary or carrier with an agreement under section 1816, or contract under section 1842, respectively, of such Act.

(4) LIMITATION ON APPLICATION TO SGR.—For purposes of applying section 1848(f)(2)(D) of the Social Security Act (42 U.S.C. 1395w–4(f)(2)(D)), the amendment made by subsection (a) shall not be considered to be a change in law or regulation.

(c) PROVISIONS RELATING TO ADVANCE BENEFICIARY NOTICES; REPORT ON PRIOR DETERMINATION PROCESS.—

(1) DATA COLLECTION.—The Secretary shall establish a process for the collection of information on the instances in which an advance beneficiary notice (as defined in paragraph (5)) has been provided and on instances in which a beneficiary indicates on such a notice that the beneficiary does not intend to seek to have the item or service that is the subject of the notice furnished.

(2) OUTREACH AND EDUCATION.—The Secretary shall establish a program of outreach and education for beneficiaries and providers of services and other persons on the appropriate use of advance beneficiary notices and coverage policies under the medicare program.

(3) GAO REPORT ON USE OF ADVANCE BENEFICIARY NOTICES.—Not later than 18 months after the date on which section 1869(h) of the Social Security Act (as added by subsection (a)) takes effect, the Comptroller General of the United States shall submit to Congress a report on the use of advance beneficiary notices under title XVIII of such Act. Such report shall include information concerning the providers of services and other persons that have provided such notices and the response of beneficiaries to such notices.

(4) GAO REPORT ON USE OF PRIOR DETERMINATION PROCESS.—Not later than 36 months after the date on which section 1869(h) of the Social Security Act (as added by subsection (a)) takes effect, the Comptroller General of the United States shall submit to Congress a report on the use of the prior determination process under such section. Such report shall include—

(A) information concerning—

(i) the number and types of procedures for which a prior determination has been sought;

(ii) determinations made under the process;

(iii) the percentage of beneficiaries prevailing;

(iv) in those cases in which the beneficiaries do not prevail, the reasons why such beneficiaries did not prevail; and

(v) changes in receipt of services resulting from the application of such process;

(B) an evaluation of whether the process was useful for physicians (and other suppliers) and beneficiaries, whether it was timely, and whether the amount of information required was burdensome to physicians and beneficiaries; and

(C) recommendations for improvements or continuation of such process.

(5) ADVANCE BENEFICIARY NOTICE DEFINED.—In this subsection, the term ''advance beneficiary notice'' means a written notice provided under section 1879(a) of the Social Security Act (42 U.S.C. 1395pp(a)) to an individual entitled to benefits under part A or enrolled under part B of title XVIII of such Act before items or services are furnished under such part in cases where a provider of services or other person that would furnish the item or service believes that payment will not be made for some or all of such items or services under such title.

SEC. 539. APPEALS BY PROVIDERS WHEN THERE IS NO OTHER PARTY AVAILABLE.

(a) IN GENERAL.—Section 1870 (42 U.S.C. 1395gg) is amended by adding at the end the following new subsection:

''(h) Notwithstanding subsection (f) or any other provision of law, the Secretary shall permit a provider of services or supplier to appeal any determination of the Secretary under this title relating to services rendered under this title to an individual who subsequently dies if there is no other party available to appeal such determination.''.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect on the date of the enactment of this Act and shall apply to items and services furnished on or after such date.

SEC. 540. REVISIONS TO APPEALS TIMEFRAMES AND AMOUNTS.

(a) TIMEFRAMES.—Section 1869 (42 U.S.C. 1395ff) is amended—

(1) in subsection (a)(3)(C)(ii), by striking ''30-day period'' each place it appears and inserting ''60-day period''; and

(2) in subsection (c)(3)(C)(i), by striking ''30-day period'' and inserting ''60-day period''.

(b) AMOUNTS.—

(1) IN GENERAL.—Section 1869(b)(1)(E) (42 U.S.C. 1395ff(b)(1)(E)) is amended by adding at the end the following new clause:

''(iii) ADJUSTMENT OF DOLLAR AMOUNTS.—For requests for hearings or judicial review made in a year after 2004, the dollar amounts specified in clause (i) shall be equal to such dollar amounts increased by the percentage increase in the medical care component of the consumer price index for all urban consumers (U.S. city average) for July 2003 to the July preceding the year involved. Any amount determined under the previous sentence that is not a multiple of $10 shall be rounded to the nearest multiple of $10.''.

(2) CONFORMING AMENDMENTS.—(A) Section 1852(g)(5) (42 U.S.C. 1395w–22(g)(5)) is amended by adding at the end the following: ''The provisions of section 1869(b)(1)(E)(iii) shall apply with respect to dollar amounts specified in the first 2 sentences of this paragraph in the same manner as they apply to the dollar amounts specified in section 1869(b)(1)(E)(i).''.

(B) Section 1876(b)(5)(B) (42 U.S.C. 1395mm(b)(5)(B)) is amended by adding at the end the following: ''The provisions of section 1869(b)(1)(E)(iii) shall apply with respect to dollar amounts specified in the first 2 sentences of this subparagraph in the same manner as they apply to the dollar amounts specified in section 1869(b)(1)(E)(i).''.

SEC. 540A. MEDIATION PROCESS FOR LOCAL COVERAGE DETERMINATIONS.

(a) IN GENERAL.—Section 1869 (42 U.S.C. 1395ff), as amended by section 538(a), is amended by adding at the end the following new subsection:

''(i) MEDIATION PROCESS FOR LOCAL COVERAGE DETERMINATIONS.—

''(1) ESTABLISHMENT OF PROCESS.—The Secretary shall establish a mediation process under this subsection through the use of a physician trained in mediation and employed by the Centers for Medicare & Medicaid Services.

''(2) RESPONSIBILITY OF MEDIATOR.—Under the process established in paragraph (1), such a mediator shall mediate in disputes between groups representing providers of services, suppliers (as defined in section 1861(d)), and the medical director for a medicare administrative contractor whenever the regional administrator (as defined by the Secretary) involved determines that there was a systematic pattern and a large volume of complaints from such groups regarding decisions of such director or there is a complaint from the co-chair of the advisory committee for that contractor to such regional administrator regarding such dispute.''.

(b) INCLUSION IN MAC CONTRACTS.—Section 1874A(b)(3)(A)(i), as added by section 511(a)(1), is amended by adding at the end the following: ''Such requirements shall include specific performance duties expected of a medical director of a medicare administrative contractor, including requirements relating to professional relations and the availability of such director to conduct medical determination activities within the jurisdiction of such a contractor.''.

Subtitle E—Miscellaneous Provisions

SEC. 541. POLICY DEVELOPMENT REGARDING EVALUATION AND MANAGEMENT (E & M) DOCUMENTATION GUIDELINES.

(a) IN GENERAL.—The Secretary may not implement any new or modified documentation guidelines (which for purposes of this section includes clinical examples) for evaluation and management physician services under the title XVIII of the Social Security Act on or after the date of the enactment of this Act unless the Secretary—

(1) has developed the guidelines in collaboration with practicing physicians (including both generalists and specialists) and provided for an assessment of the proposed guidelines by the physician community;

(2) has established a plan that contains specific goals, including a schedule, for improving the use of such guidelines;

(3) has conducted appropriate and representative pilot projects under subsection (b) to test such guidelines;

(4) finds, based on reports submitted under subsection (b)(5) with respect to pilot projects conducted for such or related guidelines, that the objectives described in subsection (c) will be met in the implementation of such guidelines; and

(5) has established, and is implementing, a program to educate physicians on the use of such guidelines and that includes appropriate outreach.

The Secretary shall make changes to the manner in which existing evaluation and management documentation guidelines are implemented to reduce paperwork burdens on physicians.

(b) PILOT PROJECTS TO TEST MODIFIED OR NEW EVALUATION AND MANAGEMENT DOCUMENTATION GUIDELINES.—

(1) IN GENERAL.—With respect to proposed new or modified documentation guidelines referred to in subsection (a), the Secretary shall conduct under this subsection appropriate and representative pilot projects to test the proposed guidelines.

(2) LENGTH AND CONSULTATION.—Each pilot project under this subsection shall—

(A) be voluntary;

(B) be of sufficient length as determined by the Secretary (but in no case to exceed 1 year) to allow for preparatory physician and medicare contractor education, analysis, and use and assessment of potential evaluation and management guidelines; and

(C) be conducted, in development and throughout the planning and operational stages of the project, in consultation with practicing physicians (including both generalists and specialists).

(3) RANGE OF PILOT PROJECTS.—Of the pilot projects conducted under this subsection with respect to proposed new or modified documentation guidelines—

(A) at least one shall focus on a peer review method by physicians (not employed by a medicare contractor) which evaluates medical record information for claims submitted by physicians identified as statistical outliers relative to codes used for billing purposes for such services;

(B) at least one shall focus on an alternative method to detailed guidelines based on physician documentation of face to face encounter time with a patient;

(C) at least one shall be conducted for services furnished in a rural area and at least one for services furnished outside such an area; and

(D) at least one shall be conducted in a setting where physicians bill under physicians' services in teaching settings and at least one shall be conducted in a setting other than a teaching setting.

(4) STUDY OF IMPACT.—Each pilot project shall examine the effect of the proposed guidelines on—

(A) different types of physician practices, including those with fewer than 10 full-time-equivalent employees (including physicians); and

(B) the costs of physician compliance, including education, implementation, auditing, and monitoring.

(5) REPORT ON PILOT PROJECTS.—Not later than 6 months after the date of completion of pilot projects carried out under this subsection with respect to a proposed guideline described in paragraph (1), the Secretary shall submit to Congress a report on the pilot projects. Each such report shall include a finding by the Secretary of whether the objectives described in subsection (c) will be met in the implementation of such proposed guideline.

(c) OBJECTIVES FOR EVALUATION AND MANAGEMENT GUIDELINES.—The objectives for modified evaluation and management documentation guidelines developed by the Secretary shall be to—

(1) identify clinically relevant documentation needed to code accurately and assess coding levels accurately;

(2) decrease the level of non-clinically pertinent and burdensome documentation time and content in the physician's medical record;

(3) increase accuracy by reviewers; and

(4) educate both physicians and reviewers.

(d) STUDY OF SIMPLER, ALTERNATIVE SYSTEMS OF DOCUMENTATION FOR PHYSICIAN CLAIMS.—

(1) STUDY.—The Secretary shall carry out a study of the matters described in paragraph (2).

(2) MATTERS DESCRIBED.—The matters referred to in paragraph (1) are—

(A) the development of a simpler, alternative system of requirements for documentation accompanying claims for evaluation and management physician services for which payment is made under title XVIII of the Social Security Act; and

(B) consideration of systems other than current coding and documentation requirements for payment for such physician services.

(3) CONSULTATION WITH PRACTICING PHYSICIANS.—In designing and carrying out the study under paragraph (1), the Secretary shall consult with practicing physicians, including physicians who are part of group practices and including both generalists and specialists.

(4) APPLICATION OF HIPAA UNIFORM CODING REQUIREMENTS.—In developing an alternative system under paragraph (2), the Secretary shall consider requirements of administrative simplification under part C of title XI of the Social Security Act.

(5) REPORT TO CONGRESS.—(A) Not later than October 1, 2005, the Secretary shall submit to Congress a report on the results of the study conducted under paragraph (1).

(B) The Medicare Payment Advisory Commission shall conduct an analysis of the results of the study included in the report under subparagraph (A) and shall submit a report on such analysis to Congress.

(e) STUDY ON APPROPRIATE CODING OF CERTAIN EXTENDED OFFICE VISITS.—The Secretary shall conduct a study of the appropriateness of coding in cases of extended office visits in which there is no diagnosis made. Not later than October 1, 2005, the Secretary shall submit a report to Congress on such study and shall include recommendations on how to code appropriately for such visits in a manner that takes into account the amount of time the physician spent with the patient.

(f) DEFINITIONS.—In this section—

(1) the term ''rural area'' has the meaning given that term in section 1886(d)(2)(D) of the Social Security Act (42 U.S.C. 1395ww(d)(2)(D)); and

(2) the term ''teaching settings'' are those settings described in section 415.150 of title 42, Code of Federal Regulations.

SEC. 542. IMPROVEMENT IN OVERSIGHT OF TECHNOLOGY AND COVERAGE.

(a) COUNCIL FOR TECHNOLOGY AND INNOVATION.—Section 1868 (42 U.S.C. 1395ee), as amended by section 521(a), is amended by adding at the end the following new subsection:

''(c) COUNCIL FOR TECHNOLOGY AND INNOVATION.—

''(1) ESTABLISHMENT.—The Secretary shall establish a Council for Technology and Innovation within the Centers for Medicare & Medicaid Services (in this section referred to as 'CMS').

''(2) COMPOSITION.—The Council shall be composed of senior CMS staff and clinicians and shall be chaired by the Executive Coordinator for Technology and Innovation (appointed or designated under paragraph (4)).

''(3) DUTIES.—The Council shall coordinate the activities of coverage, coding, and payment processes under this title with respect to new technologies and procedures, including new drug therapies, and shall coordinate the exchange of information on new technologies between CMS and other entities that make similar decisions.

''(4) EXECUTIVE COORDINATOR FOR TECHNOLOGY AND INNOVATION.—The Secretary shall appoint (or designate) a noncareer appointee (as defined in section 3132(a)(7) of title 5, United States Code) who shall serve as the Executive Coordinator for Technology and Innovation. Such executive coordinator shall report to the Administrator of CMS, shall chair the Council, shall oversee the execution of its duties, and shall serve as a single point of contact for outside groups and entities regarding the coverage, coding, and payment processes under this title.''.

(b) METHODS FOR DETERMINING PAYMENT BASIS FOR NEW LAB TESTS.—Section 1833(h) (42 U.S.C. 1395l(h)) is amended by adding at the end the following:

''(8)(A) The Secretary shall establish by regulation procedures for determining the basis for, and amount of, payment under this subsection for any clinical diagnostic laboratory test with respect to which a new or substantially revised HCPCS code is assigned on or after January 1, 2005 (in this paragraph referred to as 'new tests').

''(B) Determinations under subparagraph (A) shall be made only after the Secretary—

''(i) makes available to the public (through an Internet website and other appropriate mechanisms) a list that includes any such test for which establishment of a payment amount under this subsection is being considered for a year;

''(ii) on the same day such list is made available, causes to have published in the Federal Register notice of a meeting to receive comments and recommendations (and data on which recommendations are based) from the public on the appropriate basis under this subsection for establishing payment amounts for the tests on such list;

''(iii) not less than 30 days after publication of such notice convenes a meeting, that includes representatives of officials of the Centers for Medicare & Medicaid Services involved in determining payment amounts, to receive such comments and recommendations (and data on which the recommendations are based);

''(iv) taking into account the comments and recommendations (and accompanying data) received at such meeting, develops and makes available to the public (through an Internet website and other appropriate mechanisms) a list of proposed determinations with respect to the appropriate basis for establishing a payment amount under this subsection for each such code, together with an explanation of the reasons for each such determination, the data on which the determinations are based, and a request for public written comments on the proposed determination; and

''(v) taking into account the comments received during the public comment period, develops and makes available to the public (through an Internet website and other appropriate mechanisms) a list of final determinations of the payment amounts for such tests under this subsection, together with the rationale for each such determination, the data on which the determinations are based, and responses to comments and suggestions received from the public.

''(C) Under the procedures established pursuant to subparagraph (A), the Secretary shall—

''(i) set forth the criteria for making determinations under subparagraph (A); and

''(ii) make available to the public the data (other than proprietary data) considered in making such determinations.

''(D) The Secretary may convene such further public meetings to receive public comments on payment amounts for new tests under this subsection as the Secretary deems appropriate.

''(E) For purposes of this paragraph:

''(i) The term 'HCPCS' refers to the Health Care Procedure Coding System.

''(ii) A code shall be considered to be 'substantially revised' if there is a substantive change to the definition of the test or procedure to which the code applies (such as a new analyte or a new methodology for measuring an existing analyte-specific test).''.

(c) GAO STUDY ON IMPROVEMENTS IN EXTERNAL DATA COLLECTION FOR USE IN THE MEDICARE INPATIENT PAYMENT SYSTEM.—

(1) STUDY.—The Comptroller General of the United States shall conduct a study that analyzes which external data can be collected in a shorter timeframe by the Centers for Medicare & Medicaid Services for use in computing payments for inpatient hospital services. The study may include an evaluation of the feasibility and appropriateness of using quarterly samples or special surveys or any other methods. The study shall include an analysis of whether other executive agencies, such as the Bureau of Labor Statistics in the Department of Commerce, are best suited to collect this information.

(2) REPORT.—By not later than October 1, 2004, the Comptroller General shall submit a report to Congress on the study under paragraph (1).

SEC. 543. TREATMENT OF HOSPITALS FOR CERTAIN SERVICES UNDER MEDICARE SECONDARY PAYOR (MSP) PROVISIONS.

(a) IN GENERAL.—The Secretary shall not require a hospital (including a critical access hospital) to ask questions (or obtain information) relating to the application of section 1862(b) of the Social Security Act (relating to medicare secondary payor provisions) in the case of reference laboratory services described in subsection (b), if the Secretary does not impose such requirement in the case of such services furnished by an independent laboratory.

(b) REFERENCE LABORATORY SERVICES DESCRIBED.—Reference laboratory services described in this subsection are clinical laboratory diagnostic tests (or the interpretation of such tests, or both) furnished without a face-to-face encounter between the individual entitled to benefits under part A or enrolled under part B, or both, and the hospital involved and in which the hospital submits a claim only for such test or interpretation.

SEC. 544. EMTALA IMPROVEMENTS.

(a) PAYMENT FOR EMTALA-MANDATED SCREENING AND STABILIZATION SERVICES.—

(1) IN GENERAL.—Section 1862 (42 U.S.C. 1395y) is amended by inserting after subsection (c) the following new subsection:

''(d) For purposes of subsection (a)(1)(A), in the case of any item or service that is required to be provided pursuant to section 1867 to an individual who is entitled to benefits under this title, determinations as to whether the item or service is reasonable and necessary shall be made on the basis of the information available to the treating physician or practitioner (including the patient's presenting symptoms or complaint) at the time the item or service was ordered or furnished by the physician or practitioner (and not on the patient's principal diagnosis). When making such determinations with respect to such an item or service, the Secretary shall not consider the frequency with which the item or service was provided to the patient before or after the time of the admission or visit.''.

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall apply to items and services furnished on or after January 1, 2004.

(b) NOTIFICATION OF PROVIDERS WHEN EMTALA INVESTIGATION CLOSED.—Section 1867(d) (42 U.S.C. 42 U.S.C. 1395dd(d)) is amended by adding at the end the following new paragraph:

''(4) NOTICE UPON CLOSING AN INVESTIGATION.—The Secretary shall establish a procedure to notify hospitals and physicians when an investigation under this section is closed.''.

(c) PRIOR REVIEW BY PEER REVIEW ORGANIZATIONS IN EMTALA CASES INVOLVING TERMINATION OF PARTICIPATION.—

(1) IN GENERAL.—Section 1867(d)(3) (42 U.S.C. 1395dd(d)(3)) is amended—

(A) in the first sentence, by inserting ''or in terminating a hospital's participation under this title'' after ''in imposing sanctions under paragraph (1)''; and

(B) by adding at the end the following new sentences: ''Except in the case in which a delay would jeopardize the health or safety of individuals, the Secretary shall also request such a review before making a compliance determination as part of the process of terminating a hospital's participation under this title for violations related to the appropriateness of a medical screening examination, stabilizing treatment, or an appropriate transfer as required by this section, and shall provide a period of 5 days for such review. The Secretary shall provide a copy of the organization's report to the hospital or physician consistent with confidentiality requirements imposed on the organization under such part B.''.

(2) EFFECTIVE DATE.—The amendments made by paragraph (1) shall apply to terminations of participation initiated on or after the date of the enactment of this Act.

SEC. 545. EMERGENCY MEDICAL TREATMENT AND LABOR ACT (EMTALA) TECHNICAL ADVISORY GROUP.

(a) ESTABLISHMENT.—The Secretary shall establish a Technical Advisory Group (in this section referred to as the ''Advisory Group'') to review issues related to the Emergency Medical Treatment and Labor Act (EMTALA) and its implementation. In this section, the term ''EMTALA'' refers to the provisions of section 1867 of the Social Security Act (42 U.S.C. 1395dd).

(b) MEMBERSHIP.—The Advisory Group shall be composed of 19 members, including the Administrator of the Centers for Medicare & Medicaid Services and the Inspector General of the Department of Health and Human Services and of which—

(1) 4 shall be representatives of hospitals, including at least one public hospital, that have experience with the application of EMTALA and at least 2 of which have not been cited for EMTALA violations;

(2) 7 shall be practicing physicians drawn from the fields of emergency medicine, cardiology or cardiothoracic surgery, orthopedic surgery, neurosurgery, pediatrics or a pediatric subspecialty, obstetrics-gynecology, and psychiatry, with not more than one physician from any particular field;

(3) 2 shall represent patients;

(4) 2 shall be staff involved in EMTALA investigations from different regional offices of the Centers for Medicare & Medicaid Services; and

(5) 1 shall be from a State survey office involved in EMTALA investigations and 1 shall be from a peer review organization, both of whom shall be from areas other than the regions represented under paragraph (4).

In selecting members described in paragraphs (1) through (3), the Secretary shall consider qualified individuals nominated by organizations representing providers and patients.

(c) GENERAL RESPONSIBILITIES.—The Advisory Group—

(1) shall review EMTALA regulations;

(2) may provide advice and recommendations to the Secretary with respect to those regulations and their application to hospitals and physicians;

(3) shall solicit comments and recommendations from hospitals, physicians, and the public regarding the implementation of such regulations; and

(4) may disseminate information on the application of such regulations to hospitals, physicians, and the public.

(d) ADMINISTRATIVE MATTERS.—

(1) CHAIRPERSON.—The members of the Advisory Group shall elect a member to serve as chairperson of the Advisory Group for the life of the Advisory Group.

(2) MEETINGS.—The Advisory Group shall first meet at the direction of the Secretary. The Advisory Group shall then meet twice per year and at such other times as the Advisory Group may provide.

(e) TERMINATION.—The Advisory Group shall terminate 30 months after the date of its first meeting.

(f) WAIVER OF ADMINISTRATIVE LIMITATION.—The Secretary shall establish the Advisory Group notwithstanding any limitation that may apply to the number of advisory committees that may be established (within the Department of Health and Human Services or otherwise).

SEC. 546. AUTHORIZING USE OF ARRANGEMENTS TO PROVIDE CORE HOSPICE SERVICES IN CERTAIN CIRCUMSTANCES.

(a) IN GENERAL.—Section 1861(dd)(5) (42 U.S.C. 1395x(dd)(5)) is amended by adding at the end the following:

''(D) In extraordinary, exigent, or other non-routine circumstances, such as unanticipated periods of high patient loads, staffing shortages due to illness or other events, or temporary travel of a patient outside a hospice program's service area, a hospice program may enter into arrangements with another hospice program for the provision by that other program of services described in paragraph (2)(A)(ii)(I). The provisions of paragraph (2)(A)(ii)(II) shall apply with respect to the services provided under such arrangements.

''(E) A hospice program may provide services described in paragraph (1)(A) other than directly by the program if the services are highly specialized services of a registered professional nurse and are provided non-routinely and so infrequently so that the provision of such services directly would be impracticable and prohibitively expensive.''.

(b) CONFORMING PAYMENT PROVISION.—Section 1814(i) (42 U.S.C. 1395f(i)), as amended by section 212(b), is amended by adding at the end the following new paragraph:

''(5) In the case of hospice care provided by a hospice program under arrangements under section 1861(dd)(5)(D) made by another hospice program, the hospice program that made the arrangements shall bill and be paid for the hospice care.''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to hospice care provided on or after the date of the enactment of this Act.

SEC. 547. APPLICATION OF OSHA BLOODBORNE PATHOGENS STANDARD TO CERTAIN HOSPITALS.

(a) IN GENERAL.—Section 1866 (42 U.S.C. 1395cc), as amended by section 206, is amended—

(1) in subsection (a)(1)—

(A) in subparagraph (T), by striking ''and'' at the end;

(B) in subparagraph (U), by striking the period at the end and inserting '', and''; and

(C) by inserting after subparagraph (U) the following new subparagraph:

''(V) in the case of hospitals that are not otherwise subject to the Occupational Safety and Health Act of 1970 (or a State occupational safety and health plan that is approved under 18(b) of such Act), to comply with the Bloodborne Pathogens standard under section 1910.1030 of title 29 of the Code of Federal Regulations (or as subsequently redesignated).''; and

(2) by adding at the end of subsection (b) the following new paragraph:

''(4)(A) A hospital that fails to comply with the requirement of subsection (a)(1)(V) (relating to the Bloodborne Pathogens standard) is subject to a civil money penalty in an amount described in subparagraph (B), but is not subject to termination of an agreement under this section.

''(B) The amount referred to in subparagraph (A) is an amount that is similar to the amount of civil penalties that may be imposed under section 17 of the Occupational Safety and Health Act of 1970 for a violation of the Bloodborne Pathogens standard referred to in subsection (a)(1)(U) by a hospital that is subject to the provisions of such Act.

''(C) A civil money penalty under this paragraph shall be imposed and collected in the same manner as civil money penalties under subsection (a) of section 1128A are imposed and collected under that section.''.

(b) EFFECTIVE DATE.—The amendments made by this subsection (a) shall apply to hospitals as of July 1, 2004.

SEC. 548. BIPA-RELATED TECHNICAL AMENDMENTS AND CORRECTIONS.

(a) TECHNICAL AMENDMENTS RELATING TO ADVISORY COMMITTEE UNDER BIPA SECTION 522.—(1) Subsection (i) of section 1114 (42 U.S.C. 1314)—

(A) is transferred to section 1862 and added at the end of such section; and

(B) is redesignated as subsection (j).

(2) Section 1862 (42 U.S.C. 1395y) is amended—

(A) in the last sentence of subsection (a), by striking ''established under section 1114(f)''; and

(B) in subsection (j), as so transferred and redesignated—

(i) by striking ''under subsection (f)''; and

(ii) by striking ''section 1862(a)(1)'' and inserting ''subsection (a)(1)''.

(b) TERMINOLOGY CORRECTIONS.—(1) Section 1869(c)(3)(I)(ii) (42 U.S.C. 1395ff(c)(3)(I)(ii)) is amended—

(A) in subclause (III), by striking ''policy'' and inserting ''determination''; and

(B) in subclause (IV), by striking ''medical review policies'' and inserting ''coverage determinations''.

(2) Section 1852(a)(2)(C) (42 U.S.C. 1395w–22(a)(2)(C)) is amended by striking ''policy''

and ''POLICY'' and inserting ''determination'' each place it appears and ''DETERMINATION'', respectively.

(c) REFERENCE CORRECTIONS.—Section 1869(f)(4) (42 U.S.C. 1395ff(f)(4)) is amended—

(1) in subparagraph (A)(iv), by striking ''subclause (I), (II), or (III)'' and inserting ''clause (i), (ii), or (iii)'';

(2) in subparagraph (B), by striking ''clause (i)(IV)'' and ''clause (i)(III)'' and inserting ''subparagraph (A)(iv)'' and ''subparagraph (A)(iii)'', respectively; and

(3) in subparagraph (C), by striking ''clause (i)'', ''subclause (IV)'' and ''subparagraph (A)'' and inserting ''subparagraph (A)'', ''clause (iv)'' and ''paragraph (1)(A)'', respectively each place it appears.

(d) OTHER CORRECTIONS.—Effective as if included in the enactment of section 221(c) of BIPA, section 1154(e) (42 U.S.C. 1320c–3(e)) is amended by striking paragraph (5).

(e) EFFECTIVE DATE.—Except as otherwise provided, the amendments made by this section shall be effective as if included in the enactment of BIPA.

SEC. 549. CONFORMING AUTHORITY TO WAIVE A PROGRAM EXCLUSION.

The first sentence of section 1128(c)(3)(B) (42 U.S.C. 1320a–7(c)(3)(B)) is amended to read as follows: ''Subject to subparagraph (G), in the case of an exclusion under subsection (a), the minimum period of exclusion shall be not less than five years, except that, upon the request of the administrator of a Federal health care program (as defined in section 1128B(f)) who determines that the exclusion would impose a hardship on individuals entitled to benefits under part A of title XVIII or enrolled under part B of such title, or both, the Secretary may, after consulting with the Inspector General of the Department of Health and Human Services, waive the exclusion under subsection (a)(1), (a)(3), or (a)(4) with respect to that program in the case of an individual or entity that is the sole community physician or sole source of essential specialized services in a community.''.

SEC. 550. TREATMENT OF CERTAIN DENTAL CLAIMS.

(a) IN GENERAL.—Section 1862 (42 U.S.C. 1395y) is amended by adding at the end, after the subsection transferred and redesignated by section 548(a), the following new subsection:

''(k)(1) Subject to paragraph (2), a group health plan (as defined in subsection (a)(1)(A)(v)) providing supplemental or secondary coverage to individuals also entitled to services under this title shall not require a medicare claims determination under this title for dental benefits specifically excluded under subsection (a)(12) as a condition of making a claims determination for such benefits under the group health plan.

''(2) A group health plan may require a claims determination under this title in cases involving or appearing to involve inpatient dental hospital services or dental services expressly covered under this title pursuant to actions taken by the Secretary.''.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect on the date that is 60 days after the date of the enactment of this Act.

SEC. 551. FURNISHING HOSPITALS WITH INFORMATION TO COMPUTE DSH FORMULA.

Beginning not later than 1 year after the date of the enactment of this Act, the Secretary shall arrange to furnish to subsection (d) hospitals (as defined in section 1886(d)(1)(B) of the Social Security Act, 42 U.S.C. 1395ww(d)(1)(B)) the data necessary for such hospitals to compute the number of patient days used in computing the disproportionate patient percentage under such section for that hospital for the current cost reporting year. Such data shall also be furnished to other hospitals which would qualify for additional payments under part A of title XVIII of the Social Security Act on the basis of such data.

SEC. 552. REVISIONS TO REASSIGNMENT PROVISIONS.

(a) IN GENERAL.—Section 1842(b)(6)(A) (42 U.S.C. 1395u(b)(6)(A)) is amended by striking ''or (ii) (where the service was provided in a hospital, critical access hospital, clinic, or other facility) to the facility in which the service was provided if there is a contractual arrangement between such physician or other person and such facility under which such facility submits the bill for such service,'' and inserting ''or (ii) where the service was provided under a contractual arrangement between such physician or other person and an entity, to the entity if, under the contractual arrangement, the entity submits the bill for the service and the contractual arrangement meets such program integrity and other safeguards as the Secretary may determine to be appropriate,''.

(b) CONFORMING AMENDMENT.—The second sentence of section 1842(b)(6) (42 U.S.C. 1395u(b)(6)) is amended by striking ''except to an employer or facility as described in clause (A)'' and inserting ''except to an employer or entity as described in subparagraph (A)''.

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

SEC. 553. OTHER PROVISIONS.

(a) GAO REPORTS ON THE PHYSICIAN COMPENSATION.—

(1) SUSTAINABLE GROWTH RATE AND UPDATES.—Not later than 6 months after the date of the enactment of this Act, the Comptroller General of the United States shall submit to Congress a report on the appropriateness of the updates in the conversion factor under subsection (d)(3) of section 1848 of the Social Security Act (42 U.S.C. 1395w–4), including the appropriateness of the sustainable growth rate formula under subsection (f) of such section for 2002 and succeeding years. Such report shall examine the stability and predictability of such updates and rate and alternatives for the use of such rate in the updates.

(2) PHYSICIAN COMPENSATION GENERALLY.—Not later than 12 months after the date of the enactment of this Act, the Comptroller General shall submit to Congress a report on all aspects of physician compensation for services furnished under title XVIII of the Social Security Act, and how those aspects interact and the effect on appropriate compensation for physician services. Such report shall review alternatives for the physician fee schedule under section 1848 of such title (42 U.S.C. 1395w–4).

(b) ANNUAL PUBLICATION OF LIST OF NATIONAL COVERAGE DETERMINATIONS.—The Secretary shall provide, in an appropriate annual publication available to the public, a list of national coverage determinations made under title XVIII of the Social Security Act in the previous year and information on how to get more information with respect to such determinations.

(c) GAO REPORT ON FLEXIBILITY IN APPLYING HOME HEALTH CONDITIONS OF PARTICIPATION TO PATIENTS WHO ARE NOT MEDICARE BENEFICIARIES.—Not later than 6 months after the date of the enactment of this Act, the Comptroller General of the United States shall submit to Congress a report on the implications if there were flexibility in the application of the medicare conditions of participation for home health agencies with respect to groups or types of patients who are not medicare beneficiaries. The report shall include an analysis of the potential impact of such flexible application on clinical operations and the recipients of such services and an analysis of methods for monitoring the quality of care provided to such recipients.

(d) OIG REPORT ON NOTICES RELATING TO USE OF HOSPITAL LIFETIME RESERVE DAYS.—Not later than 1 year after the date of the enactment of this Act, the Inspector General of the Department of Health and Human Services shall submit a report to Congress on—

(1) the extent to which hospitals provide notice to medicare beneficiaries in accordance with applicable requirements before they use the 60 lifetime reserve days described in section 1812(a)(1) of the Social Security Act (42 U.S.C. 1395d(a)(1)); and

(2) the appropriateness and feasibility of hospitals providing a notice to such beneficiaries before they completely exhaust such lifetime reserve days.

TITLE VI—MEDICAID AND MISCELLANEOUS PROVISIONS

Subtitle A—Medicaid Provisions

SEC. 601. MEDICAID DISPROPORTIONATE SHARE HOSPITAL (DSH) PAYMENTS.

(a) TEMPORARY INCREASE.—Section 1923(f)(3) (42 U.S.C. 1396r–4(f)(3)) is amended—

(1) in subparagraph (A), by striking ''subparagraph (B)'' and inserting ''subparagraphs (B) and (C)''; and

(2) by adding at the end the following new subparagraphs:

''(C) SPECIAL, TEMPORARY INCREASE IN ALLOTMENTS ON A ONE-TIME, NON-CUMULATIVE BASIS.—The DSH allotment for any State (other than a State with a DSH allotment determined under paragraph (5))—

''(i) for fiscal year 2004 is equal to 116 percent of the DSH allotment for the State for fiscal year 2003 under this paragraph, notwithstanding subparagraph (B); and

''(ii) for each succeeding fiscal year is equal to the DSH allotment for the State for fiscal year 2004 or, in the case of fiscal years beginning with the fiscal year specified in subparagraph (D) for that State, the DSH allotment for the State for the previous fiscal year increased by the percentage change in the consumer price index for all urban consumers (all items; U.S. city average), for the previous fiscal year.

''(D) FISCAL YEAR SPECIFIED.—For purposes of subparagraph (C)(ii), the fiscal year specified in this subparagraph for a State is the first fiscal year for which the Secretary estimates that the DSH allotment for that State will equal (or no longer exceed) the DSH allotment for that State under the law as in effect before the date of the enactment of this subparagraph.''.

(b) INCREASE IN FLOOR FOR TREATMENT AS A LOW DSH STATE.—Section 1923(f)(5) (42 U.S.C. 1396r–4(f)(5)) is amended to read as follows:

''(5) SPECIAL RULE FOR LOW DSH STATES.—In the case of a State in which the total expenditures under the State plan (including Federal and State shares) for disproportionate share hospital adjustments under this section for fiscal year 2000, as reported to the Administrator of the Centers for Medicare & Medicaid Services as of August 31, 2003, is greater than 0 but less than 3 percent of the State's total amount of expenditures under the State plan for medical assistance during the fiscal year, the DSH allotment for the State with respect to—

''(A) fiscal year 2004 shall be the DSH allotment for the State for fiscal year 2003 increased by 16 percent;

''(B) each succeeding fiscal year before fiscal year 2009 shall be the DSH allotment for the State for the previous fiscal year increased by 16 percent; and

''(C) fiscal year 2009 and any subsequent fiscal year, shall be the DSH allotment for

the State for the previous year subject to an increase for inflation as provided in paragraph (3)(A).''.

(c) ALLOTMENT ADJUSTMENT.—Section 1923(f) (42 U.S.C. 1396r–4(f)) is amended—

(1) in paragraph (3)(A), by striking ''The DSH'' and inserting ''Except as provided in paragraph (6), the DSH'';

(2) by redesignating paragraph (6) as paragraph (7); and

(3) by inserting after paragraph (5) the following:

''(6) ALLOTMENT ADJUSTMENT.—Only with respect to fiscal year 2004 or 2005, if a statewide waiver under section 1115 is revoked or terminated before the end of either such fiscal year and there is no DSH allotment for the State, the Secretary shall—

''(A) permit the State whose waiver was revoked or terminated to submit an amendment to its State plan that would describe the methodology to be used by the State (after the effective date of such revocation or termination) to identify and make payments to disproportionate share hospitals, including children's hospitals and institutions for mental diseases or other mental health facilities (other than State-owned institutions or facilities), on the basis of the proportion of patients served by such hospitals that are low-income patients with special needs; and

''(B) provide for purposes of this subsection for computation of an appropriate DSH allotment for the State for fiscal year 2004 or 2005 (or both) that would not exceed the amount allowed under paragraph (3)(B)(ii) and that does not result in greater expenditures under this title than would have been made if such waiver had not been revoked or terminated.

In determining the amount of an appropriate DSH allotment under subparagraph (B) for a State, the Secretary shall take into account the level of DSH expenditures for the State for the fiscal year preceding the fiscal year in which the waiver commenced.''.

(d) INCREASED REPORTING AND OTHER REQUIREMENTS TO ENSURE THE APPROPRIATE USE OF MEDICAID DSH PAYMENT ADJUSTMENTS.—Section 1923 (42 U.S.C. 1396r–4) is amended by adding at the end the following new subsection:

''(j) ANNUAL REPORTS AND OTHER REQUIREMENTS REGARDING PAYMENT ADJUSTMENTS.—With respect to fiscal year 2004 and each fiscal year thereafter, the Secretary shall require a State, as a condition of receiving a payment under section 1903(a)(1) with respect to a payment adjustment made under this section, to do the following:

''(1) REPORT.—The State shall submit an annual report that includes the following:

''(A) An identification of each disproportionate share hospital that received a payment adjustment under this section for the preceding fiscal year and the amount of the payment adjustment made to such hospital for the preceding fiscal year.

''(B) Such other information as the Secretary determines necessary to ensure the appropriateness of the payment adjustments made under this section for the preceding fiscal year.

''(2) INDEPENDENT CERTIFIED AUDIT.—The State shall annually submit to the Secretary an independent certified audit that verifies each of the following:

''(A) The extent to which hospitals in the State have reduced their uncompensated care costs to reflect the total amount of claimed expenditures made under this section.

''(B) Payments under this section to hospitals that comply with the requirements of subsection (g).

''(C) Only the uncompensated care costs of providing inpatient hospital and outpatient hospital services to individuals described in paragraph (1)(A) of such subsection are included in the calculation of the hospital-specific limits under such subsection.

''(D) The State included all payments under this title, including supplemental payments, in the calculation of such hospital-specific limits.

''(E) The State has separately documented and retained a record of all of its costs under this title, claimed expenditures under this title, uninsured costs in determining payment adjustments under this section, and any payments made on behalf of the uninsured from payment adjustments under this section.''.

(e) CLARIFICATION REGARDING NON-REGULATION OF TRANSFERS.—

(1) IN GENERAL.—Nothing in section 1903(w) of the Social Security Act (42 U.S.C. 1396b(w)) shall be construed by the Secretary as prohibiting a State's use of funds as the non-Federal share of expenditures under title XIX of such Act where such funds are transferred from or certified by a publicly-owned regional medical center located in another State and described in paragraph (2), so long as the Secretary determines that such use of funds is proper and in the interest of the program under title XIX.

(2) CENTER DESCRIBED.—A center described in this paragraph is a publicly-owned regional medical center that—

(A) provides level 1 trauma and burn care services;

(B) provides level 3 neonatal care services;

(C) is obligated to serve all patients, regardless of State of origin;

(D) is located within a Standard Metropolitan Statistical Area (SMSA) that includes at least 3 States, including the States described in paragraph (1);

(E) serves as a tertiary care provider for patients residing within a 125 mile radius; and

(F) meets the criteria for a disproportionate share hospital under section 1923 of such Act in at least one State other than the one in which the center is located.

(3) EFFECTIVE PERIOD.—This subsection shall apply through December 31, 2005.

SEC. 602. CLARIFICATION OF INCLUSION OF INPATIENT DRUG PRICES CHARGED TO CERTAIN PUBLIC HOSPITALS IN THE BEST PRICE EXEMPTIONS FOR THE MEDICAID DRUG REBATE PROGRAM.

(a) IN GENERAL.—Section 1927(c)(1)(C)(i)(I) (42 U.S.C. 1396r–8(c)(1)(C)(i)(I)) is amended by inserting before the semicolon the following: ''(including inpatient prices charged to hospitals described in section 340B(a)(4)(L) of the Public Health Service Act)''.

(b) ANTI-DIVERSION PROTECTION.—Section 1927(c)(1)(C) (42 U.S.C. 1396r–8(c)(1)(C)) is amended by adding at the end the following:

''(iii) APPLICATION OF AUDITING AND RECORDKEEPING REQUIREMENTS.—With respect to a covered entity described in section 340B(a)(4)(L) of the Public Health Service Act, any drug purchased for inpatient use shall be subject to the auditing and recordkeeping requirements described in section 340B(a)(5)(C) of the Public Health Service Act.''.

SEC. 603. EXTENSION OF MORATORIUM.

(a) IN GENERAL.—Section 6408(a)(3) of the Omnibus Budget Reconciliation Act of 1989, as amended by section 13642 of the Omnibus Budget Reconciliation Act of 1993 and section 4758 of the Balanced Budget Act of 1997, is amended—

(1) by striking ''until December 31, 2002'', and

(2) by striking ''Kent Community Hospital Complex in Michigan or.''

(b) EFFECTIVE DATES.—

(1) PERMANENT EXTENSION.—The amendment made by subsection (a)(1) shall take effect as if included in the amendment made by section 4758 of the Balanced Budget Act of 1997.

(2) MODIFICATION.—The amendment made by subsection (a)(2) shall take effect on the date of enactment of this Act.

Subtitle B—Miscellaneous Provisions

SEC. 611. FEDERAL REIMBURSEMENT OF EMERGENCY HEALTH SERVICES FURNISHED TO UNDOCUMENTED ALIENS.

(a) TOTAL AMOUNT AVAILABLE FOR ALLOTMENT.—

(1) IN GENERAL.—Out of any funds in the Treasury not otherwise appropriated, there are appropriated to the Secretary $250,000,000 for each of fiscal years 2005 through 2008 for the purpose of making allotments under this section for payments to eligible providers in States described in paragraph (1) or (2) of subsection (b).

(2) AVAILABILITY.—Funds appropriated under paragraph (1) shall remain available until expended.

(b) STATE ALLOTMENTS.—

(1) BASED ON PERCENTAGE OF UNDOCUMENTED ALIENS.—

(A) IN GENERAL.—Out of the amount appropriated under subsection (a) for a fiscal year, the Secretary shall use $167,000,000 of such amount to make allotments for such fiscal year in accordance with subparagraph (B).

(B) FORMULA.—The amount of the allotment for payments to eligible providers in each State for a fiscal year shall be equal to the product of—

(i) the total amount available for allotments under this paragraph for the fiscal year; and

(ii) the percentage of undocumented aliens residing in the State as compared to the total number of such aliens residing in all States, as determined by the Statistics Division of the Immigration and Naturalization Service, as of January 2003, based on the 2000 decennial census.

(2) BASED ON NUMBER OF UNDOCUMENTED ALIEN APPREHENSION STATES.—

(A) IN GENERAL.—Out of the amount appropriated under subsection (a) for a fiscal year, the Secretary shall use $83,000,000 of such amount to make allotments, in addition to amounts allotted under paragraph (1), for such fiscal year for each of the 6 States with the highest number of undocumented alien apprehensions for such fiscal year.

(B) DETERMINATION OF ALLOTMENTS.—The amount of the allotment for each State described in subparagraph (A) for a fiscal year shall be equal to the product of—

(i) the total amount available for allotments under this paragraph for the fiscal year; and

(ii) the percentage of undocumented alien apprehensions in the State in that fiscal year as compared to the total of such apprehensions for all such States for the preceding fiscal year.

(C) DATA.—For purposes of this paragraph, the highest number of undocumented alien apprehensions for a fiscal year shall be based on the apprehension rates for the 4-consecutive-quarter period ending before the beginning of the fiscal year for which information is available for undocumented aliens in such States, as reported by the Department of Homeland Security.

(c) USE OF FUNDS.—

(1) AUTHORITY TO MAKE PAYMENTS.—From the allotments made for a State under subsection (b) for a fiscal year, the Secretary shall pay the amount (subject to the total amount available from such allotments) determined under paragraph (2) directly to eligible providers located in the State for the provision of eligible services to aliens described in paragraph (5) to the extent that

the eligible provider was not otherwise reimbursed (through insurance or otherwise) for such services during that fiscal year.

(2) DETERMINATION OF PAYMENT AMOUNTS.—

(A) IN GENERAL.—Subject to subparagraph (B), the payment amount determined under this paragraph shall be an amount determined by the Secretary that is equal to the lesser of—

(i) the amount that the provider demonstrates was incurred for the provision of such services; or

(ii) amounts determined under a methodology established by the Secretary for purposes of this subsection.

(B) PRO-RATA REDUCTION.—If the amount of funds allotted to a State under subsection (b) for a fiscal year is insufficient to ensure that each eligible provider in that State receives the amount of payment calculated under subparagraph (A), the Secretary shall reduce that amount of payment with respect to each eligible provider to ensure that the entire amount allotted to the State for that fiscal year is paid to such eligible providers.

(3) METHODOLOGY.—In establishing a methodology under paragraph (2)(A)(ii), the Secretary—

(A) may establish different methodologies for types of eligible providers;

(B) may base payments for hospital services on estimated hospital charges, adjusted to estimated cost, through the application of hospital-specific cost-to-charge ratios;

(C) shall provide for the election by a hospital to receive either payments to the hospital for—

(i) hospital and physician services; or

(ii) hospital services and for a portion of the on-call payments made by the hospital to physicians; and

(D) shall make quarterly payments under this section to eligible providers.

If a hospital makes the election under subparagraph (C)(i), the hospital shall pass on payments for services of a physician to the physician and may not charge any administrative or other fee with respect to such payments.

(4) LIMITATION ON USE OF FUNDS.—Payments made to eligible providers in a State from allotments made under subsection (b) for a fiscal year may only be used for costs incurred in providing eligible services to aliens described in paragraph (5).

(5) ALIENS DESCRIBED.—For purposes of paragraphs (1) and (2), aliens described in this paragraph are any of the following:

(A) Undocumented aliens.

(B) Aliens who have been paroled into the United States at a United States port of entry for the purpose of receiving eligible services.

(B) Mexican citizens permitted to enter the United States for not more than 72 hours under the authority of a biometric machine readable border crossing identification card (also referred to as a ''laser visa'') issued in accordance with the requirements of regulations prescribed under section 101(a)(6) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(6)).

(d) APPLICATIONS; ADVANCE PAYMENTS.—

(1) DEADLINE FOR ESTABLISHMENT OF APPLICATION PROCESS.—

(A) IN GENERAL.—Not later than September 1, 2004, the Secretary shall establish a process under which eligible providers located in a State may request payments under subsection (c).

(B) INCLUSION OF MEASURES TO COMBAT FRAUD AND ABUSE.—The Secretary shall include in the process established under subparagraph (A) measures to ensure that inappropriate, excessive, or fraudulent payments are not made from the allotments determined under subsection (b), including certification by the eligible provider of the veracity of the payment request.

(2) ADVANCE PAYMENT; RETROSPECTIVE ADJUSTMENT.—The process established under paragraph (1) may provide for making payments under this section for each quarter of a fiscal year on the basis of advance estimates of expenditures submitted by applicants for such payments and such other investigation as the Secretary may find necessary, and for making reductions or increases in the payments as necessary to adjust for any overpayment or underpayment for prior quarters of such fiscal year.

(e) DEFINITIONS.—In this section:

(1) ELIGIBLE PROVIDER.—The term ''eligible provider'' means a hospital, physician, or provider of ambulance services (including an Indian Health Service facility whether operated by the Indian Health Service or by an Indian tribe or tribal organization).

(2) ELIGIBLE SERVICES.—The term ''eligible services'' means health care services required by the application of section 1867 of the Social Security Act (42 U.S.C. 1395dd), and related hospital inpatient and outpatient services and ambulance services (as defined by the Secretary).

(3) HOSPITAL.—The term ''hospital'' has the meaning given such term in section 1861(e) of the Social Security Act (42 U.S.C. 1395x(e)), except that such term shall include a critical access hospital (as defined in section 1861(mm)(1) of such Act (42 U.S.C. 1395x(mm)(1)).

(4) PHYSICIAN.—The term ''physician'' has the meaning given that term in section 1861(r) of the Social Security Act (42 U.S.C. 1395x(r)).

(5) INDIAN TRIBE; TRIBAL ORGANIZATION.—The terms ''Indian tribe'' and ''tribal organization'' have the meanings given such terms in section 4 of the Indian Health Care Improvement Act (25 U.S.C. 1603).

(6) STATE.—The term ''State'' means the 50 States and the District of Columbia.

SEC. 612. COMMISSION ON SYSTEMIC INTEROPERABILITY.

(a) ESTABLISHMENT.—The Secretary shall establish a commission to be known as the ''Commission on Systemic Interoperability'' (in this section referred to as the ''Commission'').

(b) DUTIES.—

(1) IN GENERAL.—The Commission shall develop a comprehensive strategy for the adoption and implementation of health care information technology standards, that includes a timeline and prioritization for such adoption and implementation.

(2) CONSIDERATIONS.—In developing the comprehensive health care information technology strategy under paragraph (1), the Commission shall consider—

(A) the costs and benefits of the standards, both financial impact and quality improvement;

(B) the current demand on industry resources to implement this Act and other electronic standards, including HIPAA standards; and

(C) the most cost-effective and efficient means for industry to implement the standards.

(3) NONINTERFERENCE.—In carrying out this section, the Commission shall not interfere with any standards development of adoption processes underway in the private or public sector and shall not replicate activities related to such standards or the national health information infrastructure underway within the Department of Health and Human Services.

(4) REPORT.—Not later than October 31, 2005, the Commission shall submit to the Secretary and to Congress a report describing the strategy developed under paragraph (1), including an analysis of the matters considered under paragraph (2).

(c) MEMBERSHIP.—

(1) NUMBER AND APPOINTMENT.—The Commission shall be composed of 11 members appointed as follows:

(A) The President shall appoint 3 members, one of whom the President shall designate as Chairperson.

(B) The Majority Leader of the Senate shall appoint 2 members.

(C) The Minority Leader of the Senate shall appoint 2 members.

(D) The Speaker of the House of Representatives shall appoint 2 members.

(E) The Minority Leader of the House of Representatives shall appoint 2 members.

(2) QUALIFICATIONS.—The membership of the Commission shall include individuals with national recognition for their expertise in health finance and economics, health plans and integrated delivery systems, reimbursement of health facilities, practicing physicians, practicing pharmacists, and other providers of health services, health care technology and information systems, and other related fields, who provide a mix of different professionals, broad geographic representation, and a balance between urban and rural representatives.

(d) TERMS.—Each member shall be appointed for the life of the Commission.

(e) COMPENSATION.—

(1) RATES OF PAY.—Members shall each be paid at a rate not to exceed the daily equivalent of the rate of basic pay for level IV of the Executive Schedule for each day (including travel time) during which they are engaged in the actual performance of duties vested in the Commission.

(2) PROHIBITION OF COMPENSATION OF FEDERAL EMPLOYEES.—Members of the Commission who are full-time officers or employees of the United States or Members of Congress may not receive additional pay, allowances, or benefits by reason of their service on the Commission.

(3) TRAVEL EXPENSES.—Each member shall receive travel expenses, including per diem in lieu of subsistence, in accordance with applicable provisions under subchapter I of chapter 57 of title 5, United States Code.

(f) QUORUM.—A majority of the members of the Commission shall constitute a quorum but a lesser number may hold hearings.

(g) DIRECTOR AND STAFF OF COMMISSION; EXPERTS AND CONSULTANTS.—

(1) DIRECTOR.—The Commission shall have a Director who shall be appointed by the Chairperson. The Director shall be paid at a rate not to exceed the rate of basic pay for level IV of the Executive Schedule.

(2) STAFF.—With the approval of the Commission, the Director may appoint and fix the pay of such additional personnel as the Director considers appropriate.

(3) APPLICABILITY OF CERTAIN CIVIL SERVICE LAWS.—The Director and staff of the Commission may be appointed without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and may be paid without regard to the provisions of chapter 51 and subchapter III of chapter 53 of that title relating to classification and General Schedule pay rates, except that an individual so appointed may not receive pay in excess of level IV of the Executive Schedule.

(4) EXPERTS AND CONSULTANTS.—With the approval of the Commission, the Director may procure temporary and intermittent services under section 3109(b) of title 5, United States Code.

(5) STAFF OF FEDERAL AGENCIES.—Upon request of the Chairperson, the head of any Federal department or agency may detail, on a reimbursable basis, any of the personnel of

that department or agency to the Commission to assist it in carrying out its duties under this Act.

(h) POWERS OF COMMISSION.—

(1) HEARINGS AND SESSIONS.—The Commission may, for the purpose of carrying out this Act, hold hearings, sit and act at times and places, take testimony, and receive evidence as the Commission considers appropriate.

(2) POWERS OF MEMBERS AND AGENTS.—Any member or agent of the Commission may, if authorized by the Commission, take any action which the Commission is authorized to take by this section.

(3) OBTAINING OFFICIAL DATA.—The Commission may secure directly from any department or agency of the United States information necessary to enable it to carry out this Act. Upon request of the Chairperson of the Commission, the head of that department or agency shall furnish that information to the Commission.

(4) GIFTS, BEQUESTS, AND DEVISES.—The Commission may accept, use, and dispose of gifts, bequests, or devises of services or property, both real and personal, for the purpose of aiding or facilitating the work of the Commission. Gifts, bequests, or devises of money and proceeds from sales of other property received as gifts, bequests, or devises shall be deposited in the Treasury and shall be available for disbursement upon order of the Commission. For purposes of Federal income, estate, and gift taxes, property accepted under this subsection shall be considered as a gift, bequest, or devise to the United States.

(5) MAILS.—The Commission may use the United States mails in the same manner and under the same conditions as other departments and agencies of the United States.

(6) ADMINISTRATIVE SUPPORT SERVICES.—Upon the request of the Commission, the Administrator of General Services shall provide to the Commission, on a reimbursable basis, the administrative support services necessary for the Commission to carry out its responsibilities under this Act.

(7) CONTRACT AUTHORITY.—The Commission may enter into contracts or make other arrangements, as may be necessary for the conduct of the work of the Commission (without regard to section 3709 of the Revised Statutes (41 U.S.C. 5)).

(i) TERMINATION.—The Commission shall terminate on 30 days after submitting its report pursuant to subsection (b)(3).

(j) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated such sums as may be necessary to carry out this section.

SEC. 613. RESEARCH ON OUTCOMES OF HEALTH CARE ITEMS AND SERVICES.

(a) RESEARCH, DEMONSTRATIONS, AND EVALUATIONS.—

(1) IMPROVEMENT OF EFFECTIVENESS AND EFFICIENCY.—

(A) IN GENERAL.—To improve the quality, effectiveness, and efficiency of health care delivered pursuant to the programs established under titles XVIII, XIX, and XXI of the Social Security Act, the Secretary acting through the Director of the Agency for Healthcare Research and Quality (in this section referred to as the ''Director''), shall conduct and support research to meet the priorities and requests for scientific evidence and information identified by such programs with respect to—

(i) the outcomes, comparative clinical effectiveness, and appropriateness of health care items and services (including prescription drugs); and

(ii) strategies for improving the efficiency and effectiveness of such programs, including the ways in which such items and services are organized, managed, and delivered under such programs.

(B) SPECIFICATION.—To respond to priorities and information requests in subparagraph (A), the Secretary may conduct or support, by grant, contract, or interagency agreement, research, demonstrations, evaluations, technology assessments, or other activities, including the provision of technical assistance, scientific expertise, or methodological assistance.

(2) PRIORITIES.—

(A) IN GENERAL.—The Secretary shall establish a process to develop priorities that will guide the research, demonstrations, and evaluation activities undertaken pursuant to this section.

(B) INITIAL LIST.—Not later than 6 months after the date of the enactment of this Act, the Secretary shall establish an initial list of priorities for research related to health care items and services (including prescription drugs).

(C) PROCESS.—In carrying out subparagraph (A), the Secretary—

(i) shall ensure that there is broad and ongoing consultation with relevant stakeholders in identifying the highest priorities for research, demonstrations, and evaluations to support and improve the programs established under titles XVIII, XIX, and XXI of the Social Security Act;

(ii) may include health care items and services which impose a high cost on such programs, as well as those which may be underutilized or overutilized and which may significantly improve the prevention, treatment, or cure of diseases and conditions (including chronic conditions) which impose high direct or indirect costs on patients or society; and

(iii) shall ensure that the research and activities undertaken pursuant to this section are responsive to the specified priorities and are conducted in a timely manner.

(3) EVALUATION AND SYNTHESIS OF SCIENTIFIC EVIDENCE.—

(A) IN GENERAL.—The Secretary shall—

(i) evaluate and synthesize available scientific evidence related to health care items and services (including prescription drugs) identified as priorities in accordance with paragraph (2) with respect to the comparative clinical effectiveness, outcomes, appropriateness, and provision of such items and services (including prescription drugs);

(ii) identify issues for which existing scientific evidence is insufficient with respect to such health care items and services (including prescription drugs);

(iii) disseminate to prescription drug plans and MA–PD plans under part D of title XVIII of the Social Security Act, other health plans, and the public the findings made under clauses (i) and (ii); and

(iv) work in voluntary collaboration with public and private sector entities to facilitate the development of new scientific knowledge regarding health care items and services (including prescription drugs).

(B) INITIAL RESEARCH.—The Secretary shall complete the evaluation and synthesis of the initial research required by the priority list developed under paragraph (2)(B) not later than 18 months after the development of such list.

(C) DISSEMINATION.—

(i) IN GENERAL.—To enhance patient safety and the quality of health care, the Secretary shall make available and disseminate in appropriate formats to prescription drugs plans under part D, and MA–PD plans under part C, of title XVIII of the Social Security Act, other health plans, and the public the evaluations and syntheses prepared pursuant to subparagraph (A) and the findings of research conducted pursuant to paragraph (1). In carrying out this clause the Secretary, in order to facilitate the availability of such evaluations and syntheses or findings at every decision point in the health care system, shall—

(I) present such evaluations and syntheses or findings in a form that is easily understood by the individuals receiving health care items and services (including prescription drugs) under such plans and periodically assess that the requirements of this subclause have been met; and

(II) provide such evaluations and syntheses or findings and other relevant information through easily accessible and searchable electronic mechanisms, and in hard copy formats as appropriate.

(ii) RULE OF CONSTRUCTION.—Nothing in this section shall be construed as—

(I) affecting the authority of the Secretary or the Commissioner of Food and Drugs under the Federal Food, Drug, and Cosmetic Act or the Public Health Service Act; or

(II) conferring any authority referred to in subclause (I) to the Director.

(D) ACCOUNTABILITY.—In carrying out this paragraph, the Secretary shall implement activities in a manner that—

(i) makes publicly available all scientific evidence relied upon and the methodologies employed, provided such evidence and method are not protected from public disclosure by section 1905 of title 18, United States Code, or other applicable law so that the results of the research, analyses, or syntheses can be evaluated or replicated; and

(ii) ensures that any information needs and unresolved issues identified in subparagraph (A)(ii) are taken into account in priority-setting for future research conducted by the Secretary.

(4) CONFIDENTIALITY.—

(A) IN GENERAL.—In making use of administrative, clinical, and program data and information developed or collected with respect to the programs established under titles XVIII, XIX, and XXI of the Social Security Act, for purposes of carrying out the requirements of this section or the activities authorized under title IX of the Public Health Service Act (42 U.S.C. 299 et seq.), such data and information shall be protected in accordance with the confidentiality requirements of title IX of the Public Health Service Act.

(B) RULE OF CONSTRUCTION.—Nothing in this section shall be construed to require or permit the disclosure of data provided to the Secretary that is otherwise protected from disclosure under the Federal Food, Drug, and Cosmetic Act, section 1905 of title 18, United States Code, or other applicable law.

(5) EVALUATIONS.—The Secretary shall conduct and support evaluations of the activities carried out under this section to determine the extent to which such activities have had an effect on outcomes and utilization of health care items and services.

(6) IMPROVING INFORMATION AVAILABLE TO HEALTH CARE PROVIDERS, PATIENTS, AND POLICYMAKERS.—Not later than 18 months after the date of enactment of this Act, the Secretary shall identify options that could be undertaken in voluntary collaboration with private and public entities (as appropriate) for the—

(A) provision of more timely information through the programs established under titles XVIII, XIX, and XXI of the Social Security Act, regarding the outcomes and quality of patient care, including clinical and patient-reported outcomes, especially with respect to interventions and conditions for which clinical trials would not be feasible or raise ethical concerns that are difficult to address;

(B) acceleration of the adoption of innovation and quality improvement under such programs; and

(C) development of management tools for the programs established under titles XIX

and XXI of the Social Security Act, and with respect to the programs established under such titles, assess the feasibility of using administrative or claims data, to—

(i) improve oversight by State officials;

(ii) support Federal and State initiatives to improve the quality, safety, and efficiency of services provided under such programs; and

(iii) provide a basis for estimating the fiscal and coverage impact of Federal or State program and policy changes.

(b) RECOMMENDATIONS.—

(1) DISCLAIMER.—In carrying out this section, the Director shall—

(A) not mandate national standards of clinical practice or quality health care standards; and

(B) include in any recommendations resulting from projects funded and published by the Director, a corresponding reference to the prohibition described in subparagraph (A).

(2) REQUIREMENT FOR IMPLEMENTATION.—Research, evaluation, and communication activities performed pursuant to this section shall reflect the principle that clinicians and patients should have the best available evidence upon which to make choices in health care items and services, in providers, and in health care delivery systems, recognizing that patient subpopulations and patient and physician preferences may vary.

(3) RULE OF CONSTRUCTION.—Nothing in this section shall be construed to provide the Director with authority to mandate a national standard or require a specific approach to quality measurement and reporting.

(c) RESEARCH WITH RESPECT TO DISSEMINATION.—The Secretary, acting through the Director, may conduct or support research with respect to improving methods of disseminating information in accordance with subsection (a)(3)(C).

(d) LIMITATION ON CMS.—The Administrator of the Centers for Medicare & Medicaid Services may not use data obtained in accordance with this section to withhold coverage of a prescription drug.

(e) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this section, $50,000,000 for fiscal year 2004, and such sums as may be necessary for each fiscal year thereafter.

SEC. 614. HEALTH CARE THAT WORKS FOR ALL AMERICANS: CITIZENS HEALTH CARE WORKING GROUP.

(a) FINDINGS.—Congress finds the following:

(1) In order to improve the health care system, the American public must engage in an informed national public debate to make choices about the services they want covered, what health care coverage they want, and how they are willing to pay for coverage.

(2) More than a trillion dollars annually is spent on the health care system, yet—

(A) 41,000,000 Americans are uninsured;

(B) insured individuals do not always have access to essential, effective services to improve and maintain their health; and

(C) employers, who cover over 170,000,000 Americans, find providing coverage increasingly difficult because of rising costs and double digit premium increases.

(3) Despite increases in medical care spending that are greater than the rate of inflation, population growth, and Gross Domestic Product growth, there has not been a commensurate improvement in our health status as a nation.

(4) Health care costs for even just 1 member of a family can be catastrophic, resulting in medical bills potentially harming the economic stability of the entire family.

(5) Common life occurrences can jeopardize the ability of a family to retain private coverage or jeopardize access to public coverage.

(6) Innovations in health care access, coverage, and quality of care, including the use of technology, have often come from States, local communities, and private sector organizations, but more creative policies could tap this potential.

(7) Despite our Nation's wealth, the health care system does not provide coverage to all Americans who want it.

(b) PURPOSES.—The purposes of this section are—

(1) to provide for a nationwide public debate about improving the health care system to provide every American with the ability to obtain quality, affordable health care coverage; and

(2) to provide for a vote by Congress on the recommendations that result from the debate.

(c) ESTABLISHMENT.—The Secretary, acting through the Agency for Healthcare Research and Quality, shall establish an entity to be known as the Citizens' Health Care Working Group (referred to in this section as the ''Working Group'').

(d) MEMBERSHIP.—

(1) NUMBER AND APPOINTMENT.—The Working Group shall be composed of 15 members. One member shall be the Secretary. The Comptroller General of the United States shall appoint 14 members.

(2) QUALIFICATIONS.—

(A) IN GENERAL.—The membership of the Working Group shall include—

(i) consumers of health services that represent those individuals who have not had insurance within 2 years of appointment, that have had chronic illnesses, including mental illness, are disabled, and those who receive insurance coverage through medicare and medicaid; and

(ii) individuals with expertise in financing and paying for benefits and access to care, business and labor perspectives, and providers of health care.

The membership shall reflect a broad geographic representation and a balance between urban and rural representatives.

(B) PROHIBITED APPOINTMENTS.—Members of the Working Group shall not include Members of Congress or other elected government officials (Federal, State, or local). Individuals appointed to the Working Group shall not be paid employees or representatives of associations or advocacy organizations involved in the health care system.

(e) PERIOD OF APPOINTMENT.—Members of the Working Group shall be appointed for a life of the Working Group. Any vacancies shall not affect the power and duties of the Working Group but shall be filled in the same manner as the original appointment.

(f) DESIGNATION OF THE CHAIRPERSON.—Not later than 15 days after the date on which all members of the Working Group have been appointed under subsection (d)(1), the Comptroller General shall designate the chairperson of the Working Group.

(g) SUBCOMMITTEES.—The Working Group may establish subcommittees if doing so increases the efficiency of the Working Group in completing its tasks.

(h) DUTIES.—

(1) HEARINGS.—Not later than 90 days after the date of the designation of the chairperson under subsection (f), the Working Group shall hold hearings to examine—

(A) the capacity of the public and private health care systems to expand coverage options;

(B) the cost of health care and the effectiveness of care provided at all stages of disease;

(C) innovative State strategies used to expand health care coverage and lower health care costs;

(D) local community solutions to accessing health care coverage;

(E) efforts to enroll individuals currently eligible for public or private health care coverage;

(F) the role of evidence-based medical practices that can be documented as restoring, maintaining, or improving a patient's health, and the use of technology in supporting providers in improving quality of care and lowering costs; and

(G) strategies to assist purchasers of health care, including consumers, to become more aware of the impact of costs, and to lower the costs of health care.

(2) ADDITIONAL HEARINGS.—The Working Group may hold additional hearings on subjects other than those listed in paragraph (1) so long as such hearings are determined to be necessary by the Working Group in carrying out the purposes of this section. Such additional hearings do not have to be completed within the time period specified in paragraph (1) but shall not delay the other activities of the Working Group under this section.

(3) THE HEALTH REPORT TO THE AMERICAN PEOPLE.—Not later than 90 days after the hearings described in paragraphs (1) and (2) are completed, the Working Group shall prepare and make available to health care consumers through the Internet and other appropriate public channels, a report to be entitled, ''The Health Report to the American People''. Such report shall be understandable to the general public and include—

(A) a summary of—

(i) health care and related services that may be used by individuals throughout their life span;

(ii) the cost of health care services and their medical effectiveness in providing better quality of care for different age groups;

(iii) the source of coverage and payment, including reimbursement, for health care services;

(iv) the reasons people are uninsured or underinsured and the cost to taxpayers, purchasers of health services, and communities when Americans are uninsured or underinsured;

(v) the impact on health care outcomes and costs when individuals are treated in all stages of disease;

(vi) health care cost containment strategies; and

(vii) information on health care needs that need to be addressed;

(B) examples of community strategies to provide health care coverage or access;

(C) information on geographic-specific issues relating to health care;

(D) information concerning the cost of care in different settings, including institutional-based care and home and community-based care;

(E) a summary of ways to finance health care coverage; and

(F) the role of technology in providing future health care including ways to support the information needs of patients and providers.

(4) COMMUNITY MEETINGS.—

(A) IN GENERAL.—Not later than 1 year after the date on which all the members of the Working Group have been appointed under subsection (d)(1) and appropriations are first made available to carry out this section, the Working Group shall initiate health care community meetings throughout the United States (in this paragraph referred to as ''community meetings''). Such community meetings may be geographically or regionally based and shall be completed within 180 days after the initiation of the first meeting.

(B) NUMBER OF MEETINGS.—The Working Group shall hold a sufficient number of community meetings in order to receive information that reflects—

(i) the geographic differences throughout the United States;

(ii) diverse populations; and

(iii) a balance among urban and rural populations.

(C) MEETING REQUIREMENTS.—

(i) FACILITATOR.—A State health officer may be the facilitator at the community meetings.

(ii) ATTENDANCE.—At least 1 member of the Working Group shall attend and serve as chair of each community meeting. Other members may participate through interactive technology.

(iii) TOPICS.—The community meetings shall, at a minimum, address the following questions:

(I) What health care benefits and services should be provided?

(II) How does the American public want health care delivered?

(III) How should health care coverage be financed?

(IV) What trade-offs are the American public willing to make in either benefits or financing to ensure access to affordable, high quality health care coverage and services?

(iv) INTERACTIVE TECHNOLOGY.—The Working Group may encourage public participation in community meetings through interactive technology and other means as determined appropriate by the Working Group.

(D) INTERIM REQUIREMENTS.—Not later than 180 days after the date of completion of the community meetings, the Working Group shall prepare and make available to the public through the Internet and other appropriate public channels, an interim set of recommendations on health care coverage and ways to improve and strengthen the health care system based on the information and preferences expressed at the community meetings. There shall be a 90-day public comment period on such recommendations.

(i) RECOMMENDATIONS.—Not later than 120 days after the expiration of the public comment period described in subsection (h)(4)(D), the Working Group shall submit to Congress and the President a final set of recommendations.

(j) ADMINISTRATION.—

(1) EXECUTIVE DIRECTOR.—There shall be an Executive Director of the Working Group who shall be appointed by the chairperson of the Working Group in consultation with the members of the Working Group.

(2) COMPENSATION.—While serving on the business of the Working Group (including travel time), a member of the Working Group shall be entitled to compensation at the per diem equivalent of the rate provided for level IV of the Executive Schedule under section 5315 of title 5, United States Code, and while so serving away from home and the member's regular place of business, a member may be allowed travel expenses, as authorized by the chairperson of the Working Group. For purposes of pay and employment benefits, rights, and privileges, all personnel of the Working Group shall be treated as if they were employees of the Senate.

(3) INFORMATION FROM FEDERAL AGENCIES.—The Working Group may secure directly from any Federal department or agency such information as the Working Group considers necessary to carry out this section. Upon request of the Working Group, the head of such department or agency shall furnish such information.

(4) POSTAL SERVICES.—The Working Group may use the United States mails in the same manner and under the same conditions as other departments and agencies of the Federal Government.

(k) DETAIL.—Not more than 10 Federal Government employees employed by the Department of Labor and 10 Federal Government employees employed by the Department of Health and Human Services may be detailed to the Working Group under this section without further reimbursement. Any detail of an employee shall be without interruption or loss of civil service status or privilege.

(l) TEMPORARY AND INTERMITTENT SERVICES.—The chairperson of the Working Group may procure temporary and intermittent services under section 3109(b) of title 5, United States Code, at rates for individuals which do not exceed the daily equivalent of the annual rate of basic pay prescribed for level V of the Executive Schedule under section 5316 of such title.

(m) ANNUAL REPORT.—Not later than 1 year after the date of enactment of this Act, and annually thereafter during the existence of the Working Group, the Working Group shall report to Congress and make public a detailed description of the expenditures of the Working Group used to carry out its duties under this section.

(n) SUNSET OF WORKING GROUP.—The Working Group shall terminate on the date that is 2 years after the date on which all the members of the Working Group have been appointed under subsection (d)(1) and appropriations are first made available to carry out this section.

(o) ADMINISTRATION REVIEW AND COMMENTS.—Not later than 45 days after receiving the final recommendations of the Working Group under subsection (i), the President shall submit a report to Congress which shall contain—

(1) additional views and comments on such recommendations; and

(2) recommendations for such legislation and administrative actions as the President considers appropriate.

(p) REQUIRED CONGRESSIONAL ACTION.—Not later than 45 days after receiving the report submitted by the President under subsection (o), each committee of jurisdiction of Congress, the Committee on Finance of the Senate, the Committee on Health, Education, Labor, and Pensions of the Senate, the Committee on Ways and Means of the House of Representatives, the Committee on Energy and Commerce of the House of Representatives, Committee on Education and the Workforce of the House of Representatives, shall hold at least 1 hearing on such report and on the final recommendations of the Working Group submitted under subsection (i).

(q) AUTHORIZATION OF APPROPRIATIONS.—

(1) IN GENERAL.—There are authorized to be appropriated to carry out this section, other than subsection (h)(3), $3,000,000 for each of fiscal years 2005 and 2006.

(2) HEALTH REPORT TO THE AMERICAN PEOPLE.—There are authorized to be appropriated for the preparation and dissemination of the Health Report to the American People described in subsection (h)(3), such sums as may be necessary for the fiscal year in which the report is required to be submitted.

SEC. 615. FUNDING START-UP ADMINISTRATIVE COSTS FOR MEDICARE REFORM.

(a) IN GENERAL.—There are appropriated to carry out this Act (including the amendments made by this Act), to be transferred from the Federal Hospital Insurance Trust Fund and the Federal Supplementary Medical Insurance Trust Fund—

(1) not to exceed $1,000,000,000 for the Centers for Medicare & Medicaid Services; and

(2) not to exceed $500,000,000 for the Social Security Administration.

(b) AVAILABILITY.—Amounts provided under subsection (a) shall remain available until September 30, 2005.

(c) APPLICATION.—From amounts provided under subsection (a)(2), the Social Security Administration may reimburse the Internal Revenue Service for expenses in carrying out this Act (and the amendments made by this Act).

(d) TRANSFER.—The President may transfer amounts provided under subsection (a) between the Centers for Medicare & Medicaid Services and the Social Security Administration. Notice of such transfers shall be transmitted within 15 days to the authorizing committees of the House of Representatives and of the Senate.

SEC. 616. HEALTH CARE INFRASTRUCTURE IMPROVEMENT PROGRAM.

Title XVIII is amended by adding at the end the following new section:

''HEALTH CARE INFRASTRUCTURE IMPROVEMENT PROGRAM

''SEC. 1897. (a) ESTABLISHMENT.—The Secretary shall establish a loan program that provides loans to qualifying hospitals for payment of the capital costs of projects described in subsection (d).

''(b) APPLICATION.—No loan may be provided under this section to a qualifying hospital except pursuant to an application that is submitted and approved in a time, manner, and form specified by the Secretary. A loan under this section shall be on such terms and conditions and meet such requirements as the Secretary determines appropriate.

''(c) SELECTION CRITERIA.—

''(1) IN GENERAL.—The Secretary shall establish criteria for selecting among qualifying hospitals that apply for a loan under this section. Such criteria shall consider the extent to which the project for which loan is sought is nationally or regionally significant, in terms of expanding or improving the health care infrastructure of the United States or the region or in terms of the medical benefit that the project will have.

''(2) QUALIFYING HOSPITAL DEFINED.—For purposes of this section, the term 'qualifying hospital' means a hospital that—

''(A) is engaged in research in the causes, prevention, and treatment of cancer; and

''(B) is designated as a cancer center for the National Cancer Institute or is designated by the State as the official cancer institute of the State.

''(d) PROJECTS.—A project described in this subsection is a project of a qualifying hospital that is designed to improve the health care infrastructure of the hospital, including construction, renovation, or other capital improvements.

''(e) STATE AND LOCAL PERMITS.—The provision of a loan under this section with respect to a project shall not—

''(1) relieve any recipient of the loan of any obligation to obtain any required State or local permit or approval with respect to the project;

''(2) limit the right of any unit of State or local government to approve or regulate any rate of return on private equity invested in the project; or

''(3) otherwise supersede any State or local law (including any regulation) applicable to the construction or operation of the project.

''(f) FORGIVENESS OF INDEBTEDNESS.—The Secretary may forgive a loan provided to a qualifying hospital under this section under terms and conditions that are analogous to the loan forgiveness provision for student loans under part D of title IV of the Higher Education Act of 1965 (20 U.S.C. 1087a et seq.), except that the Secretary shall condition such forgiveness on the establishment by the hospital of—

''(A) an outreach program for cancer prevention, early diagnosis, and treatment that provides services to a substantial majority of the residents of a State or region, including residents of rural areas;

''(B) an outreach program for cancer prevention, early diagnosis, and treatment that

provides services to multiple Indian tribes; and

''(C)(i) unique research resources (such as population databases); or

''(ii) an affiliation with an entity that has unique research resources.

''(g) FUNDING.—

''(1) IN GENERAL.—There are appropriated, out of amounts in the Treasury not otherwise appropriated, to carry out this section, $200,000,000, to remain available during the period beginning on July 1, 2004, and ending on September 30, 2008.

''(2) ADMINISTRATIVE COSTS.—From funds made available under paragraph (1), the Secretary may use, for the administration of this section, not more than $2,000,000 for each of fiscal years 2004 through 2008.

''(3) AVAILABILITY.—Amounts appropriated under this section shall be available for obligation on July 1, 2004.

''(h) REPORT TO CONGRESS.—Not later than 4 years after the date of the enactment of this section, the Secretary shall submit to Congress a report on the projects for which loans are provided under this section and a recommendation as to whether the Congress should authorize the Secretary to continue loans under this section beyond fiscal year 2008.''.

By Mrs. CLINTON:

S. 1927. A bill to establish an award program to encourage the development of effective bomb-scanning technology; to the Committee on Commerce, Science, and Transportation.

Mrs. CLINTON. Mr. President, ever since the events of September 11, 2001 awakened this Nation to the very real dangers of the world we live in, we have been struggling to defend ourselves against terrorism. Our aviation system remains a primary target for terrorists, and we must be every vigilant in the fight to keep that system safe. The economic viability, not to mention safety and security, of our country is at stake in that fight.

Nowhere is this more obvious than in New York. Not only did we bear the brunt of the worst terrorist attack in our Nation's history, but we also depend on our airports to fuel our state economy. John F. Kennedy Airport in Queens is the Nation's premier international gateway and contributes approximately $30 billion to the regional economy while employing 35,000 people. LaGuardia Airport, also in Queens, handles over 20 million passengers a year despite having only two 7000-foot runways on 680 acres. Our airports in Albany, Syracuse, Rochester, and Buffalo have seen strong growth in recent years with the arrival of low-cost carriers.

Unfortunately, our economic and physical security remains at risk because we still have not developed a way to effectively scan each piece of passenger luggage for explosives. We have recognized that in the current world environment, we must scan each bag, but technology has not kept up with our needs. The current technology used in most airports in this country is known to have a false-positive rate of approximately 20 percent. This means that machines incorrectly identify 20 percent of all bags going through them as containing explosives, thus slowing down the process considerably as well as costing time and money. Even more dangerous is the false-negative rate of these machines. This number, the percentage of bags going undetected through these machines with bombs inside of them during test runs, should be close to zero. The actual false-negative rate is not publicized for obvious reasons, but it is known to be well above zero.

I am proposing a bill today that seeks to create a major incentive for firms to invent a bomb-scanning technology that actually works. It will award $20 million to any firm that can successfully produce a machine that has a false-positive rate less than 10 percent, a false negative rate less than 2 percent, and is feasible for deployment en masse at our Nation's airports. Although we are currently spending money on researching this technology, that funding is clearly not getting us there fast enough. This new award will help to spur the private sector to develop new technology that will make a major difference in the safety of our aviation system.

By Mr. SARBANES (for himself, Mr. SCHUMER, Ms. STABENOW, Mr. CORZINE, Mr. DURBIN, Mr. KERRY, Ms. MIKULSKI, Mrs. CLINTON, Mr. LEVIN, Mr. LEAHY, Mr. AKAKA, Mr. KENNEDY, Mr. LAUTENBERG, Mr. DAYTON, and Mr. DODD):

S. 1928. A bill to amend the Truth in Lending Act to protect consumers against predatory practices in connection with high cost mortgage transactions, to strengthen the civil remedies available to consumers under existing law, and for other purposes; to the Committee on Banking, Housing, and Urban Affairs.

Mr. SARBANES. Mr. President, in July of 2001, and continuing through January of the following year, the Committee on Banking, Housing, and Urban Affairs held a series of hearings to shine a bright light on the deceptive and destructive practices of predatory mortgage lenders. At those hearings, the Committee heard from housing experts, community groups, legal advocates, industry representatives and victims of predatory lending in an effort to determine how best to address this terrible problem. Today, I am introducing legislation, the ''Predatory Lending Consumer Protection Act of 2003,'' along with a number of my colleagues, that would begin to address the problems that came to light in those hearings.

Homeownership is the American Dream. Indeed, the Committee has already passed legislation this year that would authorize a new $200 million downpayment assistance program to ensure that more people can achieve this goal.

We have taken this step because homeownership is the best opportunity for most Americans to put down roots and start creating equity for themselves and their families. Homeownership has been the path to building wealth for generations of Americans, wealth that can be tapped to send children to college, pay for a secure retirement, or simply work as a reserve against unexpected emergencies. It has been the key to ensuring stable communities, good schools, and safe streets. Common sense tells us, and the evidence confirms, that homeowners are more engaged citizens and more active in their communities.

Little wonder, then, that so many Americans, young and old, aspire to achieve this dream.

Unhappily, predatory lenders cynically play on these hopes and dreams to cheat people out of their wealth. These lenders target lower income, elderly, and, often, uneducated homeowners for their abusive practices. Study after study has shown that predatory lenders also target minorities, driving a wedge between these families and the hope of a productive life in the economic and financial mainstream of America.

We owe it to these hardworking families to provide protections against these unscrupulous players.

Let me share with you one of the stories we heard at our hearings. Mary Ann Podelco, a widowed waitress from West Virginia, used $19,000 from her husband's life insurance to pay off the balance on her mortgage, thus owning her home free and clear. Before her husband's death, she had never had a checking account or a credit card. She then took out a $11,921 loan for repairs. At the time, her monthly income from Social Security was $458, and her loan payments were more than half this amount. Ms. Podelco, who has a sixth grade education, testified that after her first refinancing, ''I began getting calls from people trying to refinance my mortgage all hours of the day and night.'' Within 2 years, having been advised to refinance seven times—each time seeing high points and fees being financed into her new loan—she owed $64,000, and lost her home to foreclosure.

Ms. Podelco's story is all too typical. Unfortunately, most of the sharp practices used by unscrupulous lenders and brokers, while unethical and clearly abusive, are not illegal. This bill is designed to address that problem by tightening the interest rate and fee triggers that define high cost loans; the bill improves protections for borrowers receiving such loans by prohibiting the financing of exorbitant fees, ''packing'' in of unnecessary and costly products, such as single premium credit insurance, and limiting prepayment penalties. Finally, it protects these consumers' rights to seek redress by prohibiting mandatory arbitration, as the Federal Trade Commission (FTC) proposed unanimously in 2000.We often hear about the importance of improved enforcement as a way to combat this

problem. As the FTC pointed out, mandatory arbitration prevents homeowners from exercising any of their rights to enforce existing law.

We cannot extol the virtues of homeownership, as we so often do, without seeking at the same time to preserve this benefit for so many elderly, minority, and unsophisticated Americans who are the targets of unscrupulous lenders and brokers. This legislation will help achieve this important goal. This bill has been endorsed by the Leadership Conference on Civil Rights, the U.S. Conference of Mayors, the National Council of La Raza, the National Consumer Law Center, ACORN, National Consumer Reinvestment Coalition, Consumer Federation of America, the NAACP, the Self-Help Credit Union, the National Association of Local Housing Finance Agencies, the National Community Development Association, the National Association of Consumer Advocates, and the National League of Cities, among others.

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. 1928

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 ''Predatory Lending Consumer Protection Act of 2003''.

SEC. 2. TRUTH IN LENDING ACT DEFINITIONS.

(a) HIGH COST MORTGAGES.—

(1) IN GENERAL.—The portion of section 103(aa) of the Truth in Lending Act (15 U.S.C. 1602(aa)) that precedes paragraph (2) is amended to read as follows:

''(aa) MORTGAGE REFERRED TO IN THIS SUBSECTION.—

''(1) DEFINITION.—

''(A) IN GENERAL.—A mortgage referred to in this subsection means a consumer credit transaction—

''(i) that is secured by the principal dwelling of the consumer, other than a reverse mortgage transaction; and

''(ii) the terms of which provide that—

''(I) the transaction is secured by a first mortgage on the principal dwelling of the consumer, and the annual percentage rate on the credit, at the consummation of the transaction, will exceed by more than 6 percentage points the yield on Treasury securities having comparable periods of maturity on the 15th day of the month immediately preceding the month in which the application for the extension of credit is received by the creditor;

''(II) the transaction is secured by a junior or subordinate mortgage on the principal dwelling of the consumer, and the annual percentage rate on the credit, at the consummation of the transaction, will exceed by more than 8 percentage points the yield on Treasury securities having comparable periods of maturity on the 15th day of the month immediately preceding the month in which the application for the extension of credit is received by the creditor; or

''(III) the total points and fees payable on the transaction will exceed the greater of 5 percent of the total loan amount, or $1,000, excluding not more than 2 bona fide discount points.

''(B) INTRODUCTORY RATES NOT TAKEN INTO ACCOUNT.—For purposes of subparagraph (A)(ii), the annual percentage rate of interest shall be determined—

''(i) in the case of a fixed-rate loan in which the annual percentage rate will not vary during the term of the loan, as the rate in effect on the date of consummation of the transaction;

''(ii) in the case of a loan in which the rate of interest varies according to an index, or is less than the rate of interest which will apply after the end of an initial or introductory period, by adding the index rate in effect on the date of consummation of the transaction to the maximum margin permitted at any time during the loan agreement; and

''(iii) in the case of any other loan in which the rate may vary at any time during the term of the loan for any reason, by including in the finance charge component of the annual percentage rate—

''(I) the interest charged on the loan at the maximum rate that may be charged during the term of the loan; and

''(II) any other applicable charges that would otherwise be included in accordance with section 106.''.

(2) TECHNICAL AND CONFORMING AMENDMENT.—Section 103(aa)(2) of the Truth in Lending Act (15 U.S.C. 1602(aa)(2)) is amended—

(A) by striking subparagraph (B); and

(B) by redesignating subparagraph (C) as subparagraph (B).

(b) POINTS AND FEES.—Section 103(aa)(4) of the Truth in Lending Act (15 U.S.C. 1602(aa)(4)) is amended—

(1) by striking subparagraph (B) and inserting the following:

''(B) all compensation paid directly or indirectly by a consumer or a creditor to a mortgage broker;'';

(2) by redesignating subparagraph (D) as subparagraph (G); and

(3) by striking subparagraph (C) and inserting the following:

''(C) each of the charges listed in section 106(e) (except an escrow for future payment of taxes and insurance);

''(D) the cost of all premiums financed by the lender, directly or indirectly, for any credit life, credit disability, credit unemployment or credit property insurance, or any other life or health insurance, or any payments financed by the lender, directly or indirectly, for any debt cancellation or suspension agreement or contract, except that, for purposes of this subparagraph, insurance premiums or debt cancellation or suspension fees calculated and paid on a monthly basis shall not be considered financed by the lender;

''(E) the maximum prepayment penalties that may be charged or collected under the terms of the loan documents;

''(F) all prepayment fees or penalties that are charged to the borrower if the loan refinances a previous loan made by the same creditor or an affiliate of that creditor; and''.

(c) HIGH COST MORTGAGE LENDER.—Section 103(f) of the Truth in Lending Act (15 U.S.C. 1602(f)) is amended by striking the last sentence and inserting ''Any person who originates 2 or more mortgages referred to in subsection (aa) in any 12-month period, any person who originates 1 or more such mortgages through a mortgage broker or acted as a mortgage broker between originators and consumers on more than 5 mortgages referred to in subsection (aa) within the preceding 12-month period, and any creditor-affiliated party shall be considered to be a creditor for purposes of this title.''.

(d) BONA FIDE DISCOUNT POINTS AND BENCHMARK RATE DEFINED.—Section 103 of the Truth in Lending Act (15 U.S.C. 1602) is amended by adding at the end the following:

''(cc) OTHER INTEREST RATE RELATED TERMS.—

''(1) BENCHMARK RATE.—The term 'benchmark rate' means an interest rate that the borrower may reduce by paying bona fide discount points, not to exceed the weekly average yield of United States Treasury securities having a maturity of 5 years, on the 15th day of the month immediately preceding the month in which the loan is made, plus 5 percentage points.

''(2) BONA FIDE DISCOUNT POINTS.—The term 'bona fide discount points' means loan discount points which are—

''(A) knowingly paid by the borrower;

''(B) paid for the express purpose of lowering the benchmark rate;

''(C) in fact reducing the interest rate or time-price differential applicable to the loan from an interest rate which does not exceed the benchmark rate; and

''(D) recouped within the first 4 years of the scheduled loan payments.

''(3) RECOUPMENT.—For purposes of paragraph (2)(D), loan discount points shall be considered to be recouped within the first 4 years of the scheduled loan payments if the reduction in the interest rate that is achieved by the payment of the loan discount points reduces the interest charged on the scheduled payments, such that the dollar amount of savings in payments made by the borrower over the first 4 years is equal to or exceeds the dollar amount of loan discount points paid by the borrower.''.

SEC. 3. AMENDMENTS TO EXISTING REQUIREMENTS FOR HIGH COST CONSUMER MORTGAGES.

(a) ADDITIONAL DISCLOSURES.—Section 129(a)(1) of the Truth in Lending Act (15 U.S.C. 1639(a)(1)) is amended by adding at the end the following:

''(C) 'The interest rate on this loan is much higher than most people pay. This means the chance that you will lose your home is much higher if you do not make all payments under the loan.'.

''(D) 'You may be able to get a loan with a much lower interest rate. Before you sign any papers, you have the right to go see a housing or consumer credit counseling agency, as well as to consult other lenders to find ways to get a cheaper loan.'.

''(E) 'If you are taking out this loan to repay other loans, look to see how many months it will take to pay for this loan and what the total amount is that you will have to pay before this loan is repaid. Even though the total amount you will have to pay each month for this loan may be less than the total amount you are paying each month for those other loans, you may have to pay on this loan for many more months than those other loans which will cost you more money in the end.' ''.

(b) PREPAYMENT PENALTY PROVISIONS.—Section 129(c) of the Truth in Lending Act (15 U.S.C. 1639(c)) is amended to read as follows:

''(c) PREPAYMENT PENALTY PROVISIONS.—

''(1) NO PREPAYMENT PENALTIES AFTER END OF 24-MONTH PERIOD.—A mortgage referred to in section 103(aa) may not contain terms under which a consumer must pay any prepayment penalty for any payment made after the end of the 24-month period beginning on the date the mortgage is consummated.

''(2) NO PREPAYMENT PENALTIES IF MORE THAN 3 PERCENT OF POINTS AND FEES WERE FINANCED.—Subject to subsection (l)(1), a mortgage referred to in section 103(aa) may not contain terms under which a consumer must pay any prepayment penalty for any payment made at or before the end of the 24-month period referred to in paragraph (1) if

the creditor financed points or fees in connection with the consumer credit transaction in an amount equal to or greater than 3 percent of the total amount of credit extended in the transaction.

''(3) LIMITED PREPAYMENT PENALTY FOR EARLY REPAYMENT UNDER CERTAIN CIRCUMSTANCES.—Subject to paragraph (2), the terms of a mortgage referred to in section 103(aa) may contain terms under which a consumer must pay a prepayment penalty for any payment made at or before the end of the 24-month period referred to in paragraph (1) to the extent that the sum of the total amount of points or fees financed by the creditor, if any, in connection with the consumer credit transaction and the total amount payable as a prepayment penalty does not exceed the amount which is equal to 3 percent of the total amount of credit extended in the transaction.

''(4) CONSTRUCTION.—For purposes of this subsection, any method of computing a refund of unearned scheduled interest is a prepayment penalty if it is less favorable to the consumer than the actuarial method (as that term is defined in section 933(d) of the Housing and Community Development Act of 1992).

''(5) PREPAYMENT PENALTY DEFINED.—The term 'prepayment penalty' means any monetary penalty imposed on a consumer for paying all or part of the principal with respect to a consumer credit transaction before the date on which the principal is due.''.

(c) ALL BALLOON PAYMENTS PROHIBITED.—Section 129(e) of the Truth in Lending Act (15 U.S.C. 1639(e)) is amended by striking ''having a term of less than 5 years''.

(d) ASSESSMENT OF ABILITY TO REPAY.—Section 129(h) of the Truth in Lending Act (15 U.S.C. 1639(h)) is amended—

(1) by striking ''CONSUMER.—A creditor'' and inserting ''CONSUMER.—

''(1) PROHIBITION ON PATTERNS AND PRACTICES.—A creditor''; and

(2) by adding at the end the following:

''(2) CASE-BY-CASE ASSESSMENTS OF CONSUMER ABILITY TO PAY REQUIRED.—

''(A) IN GENERAL.—In addition to the prohibition in paragraph (1) on engaging in certain patterns and practices, a creditor may not extend any credit in connection with any mortgage referred to in section 103(aa) unless the creditor has determined, at the time such credit is extended, that 1 or more of the resident obligors, when considered individually and collectively, will be able to make the scheduled payments under the terms of the transaction based on a consideration of the current and expected income, current obligations, employment status, and other financial resources of any such obligor, without taking into account any equity of any such obligor in the dwelling which is the security for the credit.

''(B) REGULATIONS.—The Board shall prescribe, by regulation, the appropriate format for determining the ability of a consumer to make payments and the criteria to be considered in making that determination.

''(C) RESIDENT OBLIGOR.—For purposes of this paragraph, the term 'resident obligor' means an obligor for whom the dwelling securing the extension of credit is, or upon the consummation of the transaction will be, the principal residence.

''(3) VERIFICATION.—The requirements of paragraphs (1) and (2) shall not be deemed to have been met unless any information relied upon by the creditor for purposes of any such paragraph has been verified by the creditor independently of information provided by any resident obligor.''.

(e) REQUIREMENTS RELATING TO HOME IMPROVEMENT CONTRACTS.—Section 129(i) of the Truth in Lending Act (15 U.S.C. 1639(i)) is amended—

(1) by striking ''IMPROVEMENT CONTRACTS.—A creditor'' and inserting ''IMPROVEMENT CONTRACTS.—

''(1) IN GENERAL.—A creditor''; and

(2) by adding at the end the following:

''(2) AFFIRMATIVE CLAIMS AND DEFENSES.—Notwithstanding any other provision of law, any assignee or holder, in any capacity, of a mortgage referred to in section 103(aa) which was made, arranged, or assigned by a person financing home improvements to the dwelling of a consumer shall be subject to all affirmative claims and defenses which the consumer may have against the seller, home improvement contractor, broker, or creditor with respect to such mortgage or home improvements.''.

(f) CLARIFICATION OF RESCISSION RIGHTS.—Section 129(j) of the Truth in Lending Act (15 U.S.C. 1639(j)) is amended to read as follows:

''(j) CONSEQUENCE OF FAILURE TO COMPLY.—

''(1) IN GENERAL.—The consummation of a consumer credit transaction resulting in a mortgage referred to in section 103(aa) shall be treated as a failure to deliver the material disclosures required under this title for the purpose of section 125, if—

''(A) the mortgage contains a provision prohibited by this section or does not contain a provision required by this section; or

''(B) a creditor or other person fails to comply with the provisions of this section, whether by an act or omission, with regard to such mortgage at any time.

''(2) RULE OF APPLICATION.—In any application of section 125 to a mortgage described in section 103(aa) under circumstances described in paragraph (1), paragraphs (2) and (4) of section 125(e) shall not apply or be taken into account.''.

SEC. 4. ADDITIONAL REQUIREMENTS FOR HIGH COST CONSUMER MORTGAGES.

(a) SINGLE PREMIUM CREDIT INSURANCE.—Section 129 of the Truth in Lending Act (15 U.S.C. 1639) is amended—

(1) by redesignating subsections (k) and (l) as subsections (s) and (t), respectively; and

(2) by inserting after subsection (j), the following:

''(k) SINGLE PREMIUM CREDIT INSURANCE.—

''(1) IN GENERAL.—The terms of a mortgage referred to in section 103(aa) may not require, and no creditor or other person may require or allow in connection with any such mortgage, whether paid directly by the consumer or financed by the consumer through such mortgage—

''(A) the advance collection of a premium, on a single premium basis, for any credit life, credit disability, credit unemployment, or credit property insurance, and any analogous product; or

''(B) the advance collection of a fee for any debt cancellation or suspension agreement or contract.

''(2) RULE OF CONSTRUCTION.—Paragraph (1) shall not be construed as affecting the right of a creditor to collect premium payments on insurance or debt cancellation or suspension fees referred to in paragraph (1) that are calculated and paid on a regular monthly basis, if the insurance transaction is conducted separately from the mortgage transaction, the insurance may be canceled by the consumer at any time, and the insurance policy is automatically canceled upon repayment or other termination of the mortgage referred to in paragraph (1).''.

(b) RESTRICTION ON FINANCING POINTS AND FEES.—Section 129 of the Truth in Lending Act (15 U.S.C. 1639) is amended by inserting after subsection (k) (as added by subsection (a) of this section) the following:

''(l) RESTRICTION ON FINANCING POINTS AND FEES.—

''(1) LIMIT ON AMOUNT OF POINTS AND FEES THAT MAY BE FINANCED.—Subject to paragraphs (2) and (3) of subsection (c), no creditor may, in connection with the formation or consummation of a mortgage referred to in section 103(aa), finance, directly or indirectly, any portion of the points, fees, or other charges payable to the creditor or any third party in an amount in excess of the greater of 3 percent of the total loan amount or $600.

''(2) PROHIBITION ON FINANCING CERTAIN POINTS, FEES, OR CHARGES.—No creditor may, in connection with the formation or consummation of a mortgage referred to in section 103(aa), finance, directly or indirectly, any of the following fees or other charges payable to the creditor or any third party:

''(A) Any prepayment fee or penalty required to be paid by the consumer in connection with a loan or other extension of credit which is being refinanced by such mortgage if the creditor, with respect to such mortgage, or any affiliate of the creditor, is the creditor with respect to the loan or other extension of credit being refinanced.

''(B) Any points, fees, or other charges required to be paid by the consumer in connection with such mortgage if—

''(i) the mortgage is being entered into in order to refinance an existing mortgage of the consumer that is referred to in section 103(aa); and

''(ii) if the creditor, with respect to such new mortgage, or any affiliate of the creditor, is the creditor with respect to the existing mortgage which is being refinanced.''.

(c) CREDITOR CALL PROVISION.—Section 129 of the Truth in Lending Act (15 U.S.C. 1639) is amended by inserting after subsection (l) (as added by subsection (b) of this section) the following:

''(m) CREDITOR CALL PROVISION.—

''(1) IN GENERAL.—A mortgage referred to in section 103(aa) may not include terms under which the indebtedness may be accelerated by the creditor, in the sole discretion of the creditor.

''(2) EXCEPTION.—Paragraph (1) shall not apply when repayment of the loan has been accelerated as a result of a bona fide default.''.

(d) PROHIBITION ON ACTIONS ENCOURAGING DEFAULT.—Section 129 of the Truth in Lending Act (15 U.S.C. 1639) is amended by inserting after subsection (m) (as added by subsection (c) of this section) the following:

''(n) PROHIBITION ON ACTIONS ENCOURAGING DEFAULT.—No creditor may make any statement, take any action, or fail to take any action before or in connection with the formation or consummation of any mortgage referred to in section 103(aa) to refinance all or any portion of an existing loan or other extension of credit, if the statement, action, or failure to act has the effect of encouraging or recommending the consumer to default on the existing loan or other extension of credit at any time before, or in connection with, the closing or any scheduled closing on such mortgage.''.

(e) MODIFICATION OR DEFERRAL FEES.—Section 129 of the Truth in Lending Act (15 U.S.C. 1639) is amended by inserting after subsection (n) (as added by subsection (d) of this section) the following:

''(o) MODIFICATION OR DEFERRAL FEES.—

''(1) IN GENERAL.—Except as provided in paragraph (2), a creditor may not charge any consumer with respect to a mortgage referred to in section 103(aa) any fee or other charge—

''(A) to modify, renew, extend, or amend such mortgage, or any provision of the terms of the mortgage; or

''(B) to defer any payment otherwise due under the terms of the mortgage.

''(2) EXCEPTION FOR MODIFICATIONS FOR THE BENEFIT OF THE CONSUMER.—Paragraph (1) shall not apply with respect to any fee imposed in connection with any action described in subparagraph (A) or (B) if—

''(A) the action provides a material benefit to the consumer; and

''(B) the amount of the fee or charge does not exceed—

''(i) an amount equal to 0.5 percent of the total loan amount; or

''(ii) in any case in which the total loan amount of the mortgage does not exceed $60,000, an amount in excess of $300.''.

(f) CONSUMER COUNSELING REQUIREMENTS.—Section 129 of the Truth in Lending Act (15 U.S.C. 1639) is amended by inserting after subsection (o) (as added by subsection (e) of this section) the following:

''(p) CONSUMER COUNSELING REQUIREMENT.—

''(1) IN GENERAL.—A creditor may not extend any credit in the form of a mortgage referred to in section 103(aa) to any consumer, unless the creditor has provided to the consumer, at such time before the consummation of the mortgage and in such manner as the Board shall provide by regulation—

''(A) all warnings and disclosures regarding the risks of the mortgage to the consumer;

''(B) a separate written statement recommending that the consumer take advantage of available home ownership or credit counseling services before agreeing to the terms of any mortgage referred to in section 103(aa); and

''(C) a written statement containing the names, addresses, and telephone numbers of counseling agencies or programs reasonably available to the consumer that have been certified or approved by the Secretary of Housing and Urban Development, a State housing finance authority (as defined in section 1301 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989), or the agency referred to in subsection (a) or (c) of section 108 with jurisdiction over the creditor as qualified to provide counseling on—

''(i) the advisability of a high cost loan transaction; and

''(ii) the appropriateness of a high cost loan for the consumer.

''(2) COMPLETE AND UPDATED LISTS REQUIRED.—Any failure to provide as complete or updated a list under paragraph (1)(C) as is reasonably possible shall constitute a violation of this section.''.

(g) ARBITRATION.—Section 129 of the Truth in Lending Act (15 U.S.C. 1639) is amended by inserting after subsection (p) (as added by subsection (f) of this section) the following:

''(q) ARBITRATION.—

''(1) IN GENERAL.—A mortgage referred to in section 103(aa) may not include terms which require arbitration or any other nonjudicial procedure as the method for resolving any controversy or settling any claims arising out of the transaction.

''(2) POST-CONTROVERSY AGREEMENTS.—Subject to paragraph (3), paragraph (1) shall not be construed as limiting the right of the consumer and the creditor to agree to arbitration or any other nonjudicial procedure as the method for resolving any controversy at any time after a dispute or claim under the transaction arises.

''(3) NO WAIVER OF STATUTORY CAUSE OF ACTION.—No provision of any mortgage referred to in section 103(aa) or any agreement between the consumer and the creditor shall be applied or interpreted so as to bar a consumer from bringing an action in an appropriate district court of the United States, or any other court of competent jurisdiction, pursuant to section 130 or any other provision of law, for damages or other relief in connection with any alleged violation of this section, any other provision of this title, or any other Federal law.''.

(h) PROHIBITION ON EVASIONS.—Section 129 of the Truth in Lending Act (15 U.S.C. 1639) is amended by inserting after subsection (q) (as added by subsection (g) of this section) the following:

''(r) PROHIBITIONS ON EVASIONS, STRUCTURING OF TRANSACTIONS, AND RECIPROCAL ARRANGEMENTS.—

''(1) IN GENERAL.—A creditor may not take any action—

''(A) for the purpose or with the intent to circumvent or evade any requirement of this title, including entering into a reciprocal arrangement with any other creditor or affiliate of another creditor or dividing a transaction into separate parts, for the purpose of evading or circumventing any such requirement; or

''(B) with regard to any other loan or extension of credit for the purpose or with the intent to evade the requirements of this title, including structuring or restructuring a consumer credit transaction as another form of loan, such as a business loan.

''(2) OTHER ACTIONS.—In addition to the actions prohibited under paragraph (1), a creditor may not take any action which the Board determines, by regulation, constitutes a bad faith effort to evade or circumvent any requirement of this section with regard to a consumer credit transaction.

''(3) REGULATIONS.—The Board shall prescribe such regulations as the Board determines to be appropriate to prevent circumvention or evasion of the requirements of this section or to facilitate compliance with the requirements of this section.''.

SEC. 5. AMENDMENTS RELATING TO RIGHT OF RESCISSION.

(a) TIMING OF WAIVER BY CONSUMER.—Section 125(a) of the Truth in Lending Act (15 U.S.C. 1635(a)) is amended—

(1) by striking ''(a) Except as otherwise provided'' and inserting ''(a) RIGHT ESTABLISHED.—

''(1) IN GENERAL.—Except as otherwise provided''; and

(2) by adding at the end the following:

''(2) TIMING OF ELECTION OF WAIVER BY CONSUMER.—No election by a consumer to waive the right established under paragraph (1) to rescind a transaction shall be effective if—

''(A) the waiver was required by the creditor as a condition for the transaction;

''(B) the creditor advised or encouraged the consumer to waive such right of the consumer; or

''(C) the creditor had any discussion with the consumer about a waiver of such right during the period beginning when the consumer provides written acknowledgement of the receipt of the disclosures and the delivery of forms and information required to be provided to the consumer under paragraph (1) and ending at such time as the Board determines, by regulation, to be appropriate.''.

(b) NONCOMPLIANCE WITH REQUIREMENTS AS RECOUPMENT IN FORECLOSURE PROCEEDING.—Section 130(e) of the Truth in Lending Act (15 U.S.C. 1640(e)) is amended by inserting after the second sentence the following: ''This subsection also does not bar a person from asserting a rescission under section 125, in an action to collect the debt as a defense to a judicial or nonjudicial foreclosure after the expiration of the time periods for affirmative actions set forth in this section and section 125.''.

SEC. 6. AMENDMENTS TO CIVIL LIABILITY PROVISIONS.

(a) INCREASE IN AMOUNT OF CIVIL MONEY PENALTIES FOR CERTAIN VIOLATIONS.—Section 130(a) of the Truth in Lending Act (15 U.S.C. 1640(a)) is amended—

(1) in paragraph (2)(A)(iii), by striking ''$2,000'' and inserting ''$10,000''; and

(2) in paragraph (2)(B), by striking ''lesser of $500,000 or 1 percentum of the net worth of the creditor'' and inserting ''the greater of—

''(i) the amount determined by multiplying the maximum amount of liability under subparagraph (A) for such failure to comply in an individual action by the number of members in the certified class; or

''(ii) the amount equal to 2 percent of the net worth of the creditor.''.

(b) STATUTE OF LIMITATIONS EXTENDED FOR SECTION 129 VIOLATIONS.—Section 130(e) of the Truth in Lending Act (15 U.S.C. 1640(e)) (as amended by section 5(b) of this Act) is amended—

(1) in the first sentence, by striking ''Any action'' and inserting ''Except as provided in the subsequent sentence, any action''; and

(2) by inserting after the first sentence the following: ''Any action under this section with respect to any violation of section 129 may be brought in any United States district court, or in any other court of competent jurisdiction, before the end of the 3-year period beginning on the date of the occurrence of the violation.''.

SEC. 7. AMENDMENT TO FAIR CREDIT REPORTING ACT.

Section 623 of the Fair Credit Reporting Act (15 U.S.C. 1681s–2) is amended by adding at the end the following:

''(e) DUTY OF CREDITORS WITH RESPECT TO HIGH COST MORTGAGES.—

''(1) IN GENERAL.—Each creditor who enters into a consumer credit transaction which is a mortgage referred to in section 103(aa), and each successor to such creditor with respect to such transaction, shall report the complete payment history, favorable and unfavorable, of the obligor with respect to such transaction to a consumer reporting agency that compiles and maintains files on consumers on a nationwide basis at least quarterly, or more frequently as required by regulation or in guidelines established by participants in the secondary mortgage market, while such transaction is in effect.

''(2) DEFINITIONS.—For purposes of paragraph (1), the term 'credit' and 'creditor' have the same meanings as in section 103 of the Truth in Lending Act (15 U.S.C. 1602).''.

SEC. 8. REGULATIONS.

The Board of Governors of the Federal Reserve System shall publish regulations implementing this Act and the amendments made by this Act in final form before the end of the 6-month period beginning on the date of enactment of this Act.

By Mr. BROWNBACK (for himself, Mr. ENSIGN, Mr. ENZI, Mr. HAGEL, Mr. INHOFE, Mr. NICKLES, Mr. SANTORUM, and Mr. SESSIONS):

S. 1930. A bill to provide that the approved application under the Federal Food, Drug and Cosmetic Act for the drug commonly known as RU–486 is deemed to have been withdrawn, to provide for the review by the Comptroller General of the United States of the process by which the Food and Drug Administration approved such drug, and for other purposes; to the Committee on Health, Education, Labor, and Pensions.

Mr. BROWNBACK. Mr. President, I rise today to introduce a very important piece of legislation, the RU–486 Suspension and Review Act of 2003. The abortion drug RU–486 increases in infamy as its lethal nature continues to reveal itself. As my colleagues may remember, in September, RU–486 claimed two more lives, one of whom was an 18-year-old woman. Holly Patterson, a resident of the San Francisco suburb of Livermore, died from an infection caused by fragments of her baby left in

her uterus after she was administered RU–486 at a Planned Parenthood facility. This tragedy underscores the dangerous nature of this drug.

The available data from the U.S. trials of RU–486 raises serious questions in my mind as to whether or not this drug truly is ''safe'' for the women who use it. Women who participated in the U.S. trials of this drug were carefully screened, and only those who were in the most physically ideal condition were accepted. Even so, among these physically ideal participants, troubling results emerged. Two-percent of the women participating hemorrhaged; one-percent had to be hospitalized; several others required surgery to stop the bleeding—some of whom needed blood transfusions; and one woman in Iowa, after losing between one-half to two-thirds of her total blood volume, would have died if she had not undergone emergency surgery. If these side-effects occurred in the most physically ideal candidates, what about those who are not in the physically ideal category? Is this drug ''safe'' for women? I believe medical results suggest it is not.

The bill I am introducing today will require the suspension of the Food and Drug Administration's approval of RU–486. Following this suspension, the General Accounting Office is directed to review the process the FDA used to approve RU–486 and to determine whether the FDA followed its own guidelines. If it is determined that the FDA violated its guidelines, RU–486 will be suspended indefinitely. Monty and Helen Patterson, the parents of Holly Patterson, have expressed their firm support for this legislation and have requested that it be known as ''Holly's Law'' in honor of their daughter whose life was prematurely ended. I ask that their open letter on this subject be printed in the RECORD.

The Food and Drug Administration should not have authorized this dangerous drug. RU–486 is perilous both to the baby and to the woman who uses it. I urgently call on my colleagues in this Chamber to support ''Holly's Law'' to prevent more unnecessary deaths.

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

LIVERMORE, CA,
November 20, 2003.

DEAR SIR OR MADAM: The Alameda County Coroner's report has validated what we already believed to be true. Holly has died from an RU–486 chemical induced abortion. There are no quick fixes for a pregnancy or magical pills that will make it go away. Our family, friends and community are all deeply saddened and forever marred by Holly's tragic and preventable death.

Holly lived as an adult by law for only 19 days, yet she became pregnant when she was just 17 years old. We now know that she learned about her pregnancy in the second week of August and was so distraught over her unplanned pregnancy that she sought help for depression from her family doctor on September 10, 2003—the very day that she began the drug induced abortion process.

Holly was a strong, healthy, intelligent and ambitious teenager who fell victim of a process that wholly failed her, beginning with the 24-year-old man who had unprotected sex with her, impregnated her, and then proceeded to facilitate the secrecy that surrounded her pregnancy and abortion. Under this conspiracy of silence, Holly suffered and depended on the safety of the FDA approved pill administered by Planned Parenthood and emergency room treatment by Valley Care Medical Center where she received pain killers for severe cramping and was sent home. On Saturday and Sunday, Holly cried and complained of severe cramping and constipation, and even allowed us to comfort her but could not tell us what she was really going through. On September 17, 2003, she succumbed to septic shock and died while many members of our family waited anxiously, yet expectantly in the Critical Care Unit for her to recover until we were forced behind the curtain when it was clear that she was dying.

And in those last moments of her life feeling utter disbelief and desperation we formed a circle just beyond the curtain and prayed aloud, cried and screamed, ''We love you, Holly'' hoping beyond hope that those words would ring out and save her life. And the other members of our family who drove and flew from all over the country to be by her side did not make it in time to say, ''I love you'' just one last time. Holly was not alone, unloved, unprotected or unsupported; she had a large family who willingly supported her throughout her short life and tragic death.

In the weeks since we buried Holly's body we are now able to recall and share the memories of our daughter's brilliant blue eyes, engaging smile, laughter, unwavering determination and sheer gentle beauty that invoked our natural instinct to protect and love her, but we will never be able to forget those last moments of her life when she was too weak to talk and could barely squeeze our hands in acknowledgement of our words of encouragement. ''We love you, Holly'', ''Just hang in there, the whole family is coming,'' ''You fight this Holly, you can do it.''

Because Holly has died this way, we have educated ourselves about the grave dangers of this drug, become conscious of the current lack of parental notification/consent laws in California and now recognize the critical need for accurate, impartial sources of information and resources for parents, teenagers and young women who want to learn about the real dangers and risks of unplanned pregnancy and abortion and the dire need for a national movement to encourage prevention and open dialogue in the home about unplanned pregnancy and abortion.

We will actively support ''Holly's Law'' in Congress by Reps. DeMint, Bartlett and Senator Brownback to suspend and review the abortion drug RU–486, the Tell-A-Parent (TAP) bill, which requires parental notification laws in California and a campaign to encourage prevention and open dialogue about unplanned pregnancy and abortion in the home.

As parents, we cannot allow our beautiful Holly's horrible death to be in vain. RU–486 has caused serious injury and has been implicated in the deaths of other young women. Now it has killed our daughter. We have learned that the initial trials were rushed and the drug was lumped in and approved with drugs designed for life threatening illnesses such as cancer and AIDS. Pregnancy is a natural process that a woman's body is designed to support and has never been classified as a life threatening illness. We need help to develop a website and provide a place for teenagers and women to report their stories and testimonials of their experience on the serious and adverse affects using RU–486.

The FDA has failed to carry out its mission of ensuring RU–486 is a safe and effective abortion drug regimen. According to the FDA, it is ''responsible for protecting the public health by assuring the safety, efficacy, and security of human and veterinary drugs, biological products, medical devices, our nation's food supply, cosmetics, and products that emit radiation.'' Holly has already paid the ultimate price. The RU–486 abortion drug should not be either a Pro Life or Pro Choice issue. The most primary concern here must be the health and welfare of our children and young women. Hopefully, all parents can learn from Holly's horrible death and our loss.

According to Danco Laboratories, the abortion drug's distributor, the RU–486 regimen fails to work 7–8 percent of the time. Over a year ago the FDA received 400 reports of adverse reactions to the drug including several deaths.

Holly is yet another victim who was subject to an unacceptable risk to a drug that has a significant failure rate. And we demand that FDA Commissioner Mark McClellan and Health and Human services Secretary, Tommy Thompson take RU–486 off the market immediately pending an extensive investigation by the Comptroller General of the United States before more parents suffer and women die.

We respectfully request the name of the bill that is to be presented to the House of Representatives, an Act as the ''[RU–486 Approval and Review Act of 2003]'' to be known as ''Holly's Law.'' With actively support a bill that halts the use of the drug that took Holly's young life.

We demand an investigation by the FDA and the California State Health Department as to why abortion clinics like Planned Parenthood are not following FDA approved regulations to administer the drug. We question the purity of the drugs they administer, especially when they are made in foreign countries, such as China.

In addition to the dangers of this drug and its administration, we believe that health care providers such as Valley Medical Center don't appear to be fully prepared to evaluate and treat patients with RU–486 complications in emergency situations. Holly was in the hospital twice and died within 20 minutes before her follow up appointment with Planned Parenthood.

FDA Commissioner Mark McClellan and Health and Human Services Secretary, Tommy Thompson should now have enough evidence to pull this drug from the market. How many more teenagers and young women will have to pay the price with their health or with their life, before the FDA decides to act?

Currently in California, teenage girls under the age of 18 can't get their ears pierced or go on a school trip, but they can have a medical or surgical abortion without parental knowledge or consent. This prevents parents from being able to talk to their children about a pregnancy that would allow them to keep a baby or to be able to follow the abortion process.

The first line of defense for a child is a parent. Kids wouldn't be walking into clinics under a veil of secrey if parents were notified first hand where they could talk to their children about abortion risks. We have now learned that Holly first sought a pregnancy test in the months leading up to her pregnancy while she was still 17 years old. We know now that a parental notification law would have brought Holly's activity to our attention and her needless death could have been prevented if we had been aware and intervened.

We actively support the Tell-A-Parent (TAP) ballot initative sponsored by Life on

The Ballot www.LifeontheBallot.org. With enough petitions, this initiative will be on the 2004 ballot and requires parental notification 48 hours prior to an abortion in California. As parents, we are concerned about the health and welfare of all daughters; we are ''Pro Holly'' and look to our California Senators Barbara Boxer and Dianne Feinstein to support this initiative for the safety and protection of all young women in California.

Finally, we have suffered greatly with the realization that it's not enough to avoid the issue or talk to our children about why we don't want them to be involved in an unplanned pregnancy or abortion, but as parents, we must also talk about the tragic realities of unwanted pregnancy and abortion and reassure both, our daughters and sons that while we don't want this to happen, we will support them. We must focus on prevention and they must be told that they are not alone in this or any other unfortunate circumstances, regardless of the outcome.

We feel strongly that this country needs a national campaign to promote open and frank discussions in the home about unplanned pregnancy and the options that are available to our daughters who find themselves in this unfortunate predicament. We are eager to support such a campaign designed to bring about awareness, encourage parental involvement, and provide accurate information to minors, women, and parents about abstinence, birth control, unplanned pregnancy, abortion, parenting, and adoption options.

While parents would prefer that their daughters abstain from sex and many do, we must deal with the reality that many don't. In addition to unplanned pregnancy, girls can contract HIV and other STIs. As parents we need to prevent unplanned pregnancy instead of relying upon abortion clinics and agencies to educate our children and provide them with inaccurate information. No parent wants to see his or her teenage or college age daughter in the unfortunate situation that Holly was faced with.

We have lost our daughter, Holly, but we can still help to prevent this terrible tragedy from happening in other families. Holly's drive and determination to accomplish her goals gives us strength to pursue these critical issues in her name. Holly's memory and light will live on in our hearts, family, friends and our work. We will actively support the bill to suspend and review ''Holly's Law'' in Congress by Reps. DeMint and Bartlett and Senator Brownback to suspend and review the abortion drug RU–486, the Tell-A-Parent (TAP) bill, which requires parental notification laws in California and a campaign to encourage prevention and open dialogue about unplanned pregnancy and abortion in the home. Please contact us with any questions or requests for support of these very important issues.

Sincerely,

MONTY AND HELEN PATTERSON.

SUBMITTED RESOLUTIONS

SENATE RESOLUTION 271—URGING THE PRESIDENT AND THE UNITED STATES DIPLOMATIC CORPS TO DISSUADE MEMBER STATES OF THE UNITED NATIONS FROM SUPPORTING RESOLUTIONS THAT UNFAIRLY CASTIGATE ISRAEL AND TO PROMOTE WITHIN THE UNITED NATIONS GENERAL ASSEMBLY MORE BALANCED AND CONSTRUCTIVE APPROACHES TO RESOLVING CONFLICT IN THE MIDDLE EAST

Mr. COLEMAN (for himself, Mr. CORZINE, Mr. VOINOVICH, and Mr. LAUTENBERG) submitted the following resolution; which was referred to the Committee on Foreign Relations:

S. RES. 271

Whereas the United Nations General Assembly and United Nations Security Council have over a period of many years engaged in a pattern of introducing and enacting measures and resolutions unfairly castigating and condemning the state of Israel;

Whereas despite the myriad of challenges facing the world community, the United Nations General Assembly has devoted a disproportionate amount of time and resources to castigating Israel;

Whereas during the fifty-seventh session of the United Nations General Assembly, the General Assembly adopted a total of 69 resolutions by roll call vote, 22 of which related to Israel;

Whereas many member states of the United Nations General Assembly continue to engage in a discriminatory campaign against Israel, including enacting on October 21, 2003 a resolution that condemns Israeli security measures without proportional condemnation of terrorist attacks launched against Israel;

Whereas the discriminatory voting patterns in the United Nations have historically been driven by voting blocs and ideological divides originating from Cold War rivalries that are obsolete in the post-Cold War period; and

Whereas in the post-Cold War geopolitical environment, the United States has a special responsibility to promote fair and equitable treatment of all nations in the context of international institutions, including the United Nations: Now, therefore, be it

Resolved, That the Senate urges the President and all members of the United States diplomatic corps—

(1) to dissuade member states of the United Nations from voting in support of General Assembly resolutions that unfairly castigate Israel; and

(2) to promote within the United Nations General Assembly more balanced and constructive approaches to resolving conflict in the Middle East.

Mr. COLEMAN. Mr. President, today I am proud to submit, along with my good friend and colleague Senator CORZINE, a bipartisan resolution dealing with the unfair treatment of Israel at the United Nations.

For too long, Israel has been singled out for castigation by the United Nations General Assembly. Israeli defensive actions are condemned, while terrorism against Israeli civilians goes largely unnoticed. There are whole bodies designed to do nothing but produce anti-Israel materials. There is a Division of Palestinian Rights which sits at the same level in the U.N. organization as a single division for the Americas and Europe, a single division for Asia and the Pacific, and two Africa divisions. Of all the resolutions adopted by rollcall vote at the last session of the UN General Assembly, one-third singled out Israel.

Let me be clear on this point: I do think it is appropriate to help the Palestinian people, and I do share President Bush's vision of two states living side by side in peace.

But for the United Nations to spend so much of its time on this one crisis, with an unbalanced approach, ultimately undermines its ability to contribute constructively to the peace process. To accord the Palestinian people—however serious their problems are the same level of attention as entire continents is inappropriate in a world where there are so many other oppressed groups and nations. Why is there no Division of Tibetan Rights? Why no Division of Chechen Rights?

If you look at the General Assembly voting records, there are too many one-sided resolutions dealing with Israel that pass with only a handful of negative votes—cast by the U.S., Israel, Micronesia, the Marshall Islands, Nauru and Palau. Last Friday, I was pleased to note Australia joined us as well.

The good news is that we are starting to see some progress. A joint U.S.-European-Israeli effort to consolidate seven resolutions on UNRWA into one resolution recently was a good start. The resolution was passed out of the committee by a vote of 109 to 0, albeit with 54 abstentions. True, several superfluous resolutions on UNRWA were also approved by the committee. But this year, it was five resolutions instead of seven.

When the U.S., Europe, and Israel can work together on a resolution dealing with Palestinian refugees—and one that is passed without any negative votes—we get a glimpse of the U.N.'s potential for bringing parties together.

I would be remiss if I did not commend the work of U.S. diplomats, and applaud their increased attention to this issue. This resolution gives them a tool to use with their diplomatic counterparts—a strong statement from the U.S. Senate that we are paying attention to these votes, and that we support a more balanced approach toward the Middle East at the United Nations.

It should be a goal we can all agree upon. By reducing the number of anti-Israel resolutions passed by the General Assembly, the United Nations can live up to the promise of its charter: ''to practice tolerance and live together in peace with one another as good neighbors.''

Mr. CORZINE. Mr. President, today, along with Senators COLEMAN, LAUTENBERG and VOINOVICH, I am submitting a resolution to address a serious and persistent problem: the unfair and inequitable treatment of Israel in the United

Nations. The resolution urges the President and all members of the United States diplomatic corps to dissuade member states of the United Nations from voting in support of General Assembly resolutions that unfairly castigate Israel, and to promote within the United Nations General Assembly more balanced and constructive approaches to resolving conflict in the Middle East.

On October 21, 2003, the United Nations General Assembly ratified a resolution condemning Israeli security measures. The resolution did not call on the Palestinian Authority to dismantle terrorist organizations, nor did it name those organizations. Yet it passed by a vote of 144–4, with 12 abstentions. Other than the United States, only Micronesia, the Marshall Islands, and Israel itself voted against the resolution.

This resolution was only the latest in a long line of General Assembly resolutions castigating Israel with little regard to the security threats that Israel faces. For decades, the Assembly has devoted a disproportionate amount of time and resources to resolutions related to Israel—conducting, for example, 22 rollcall votes on UN General Assembly resolutions that related to Israel out of the 69 for all of the 57th Session of the Assembly. Besides distracting the United Nations from the countless other critical issues the world faces, these resolutions undermine efforts to achieve peace in the Middle East by casting blame almost entirely on one party. They are also unfair in that they subject Israel to discriminatory treatment not accorded to any other member state of the UN.

It is long past time for the General Assembly to stop ratifying these biased, unproductive resolutions. Voting patterns that discriminate against Israel appeared during the Cold War, when conflict in the Middle East was fueled by the rivalry between the West and the Soviet bloc. The Cold War has ended. So, too, should the polarization it engendered. We have also seen new alliances and relationships emerge in the global war on terrorism, and have witnessed the world come together in condemning terrorist violence. I refer to UN Security Council Resolution 1373, passed on September 28, 2001, which reaffirmed that any act of international terrorism constitutes a threat to international peace and security and called on states to work together to prevent and suppress terrorist acts.

Resolution 1373 reminded us of what the United Nations was meant to be—a forum for the world to come together to identify common threats and find common ways to address them. It offered the hope of a world united in its resolve to fight terrorism, with the United States leading that fight—in Afghanistan and in other parts of the world where international terrorists operate.

It is therefore with great disappointment that we witness business as usual at the General Assembly. The spirit of unity that prevailed for a time after September 11 has not led to a common approach to the conflict in the Middle East, and the United States has thus far been unable to enlist its friends and allies in its effort to ensure that Israel is treated fairly.

Since the inception of the United Nations, the United States has played a unique and critical role in ensuring that the U.N. lives up to the promise of its Charter—to maintain peace and security. As the sole remaining superpower, we have an opportunity to shape a global consensus on terrorism and security, one that requires new, more productive approaches to the conflict in the Middle East. This requires that we recognize the harm that comes from repeated, biased condemnations of a valuable ally in the United Nations General Assembly. It also requires sustained efforts, in the United Nations and within our bilateral and multilateral relationships, to change the voting patterns of friends, allies, and other member states.

We must bring our own values and our own vision of peace and security to the United Nations. Voting against resolutions that unfairly castigate Israel is not enough, particularly when we find ourselves in a tiny minority. We must seek to ally the world with us on this critical matter. The resolution we are introducing today thus urges the President and all members of the United States diplomatic corps to dissuade member states of the United Nations from voting in support of General Assembly resolutions that unfairly castigate Israel, and to promote within the Nations General assembly more balanced and constructive approaches to resolving conflict in the Middle East.

The United Nations can be—must be—a forum for defending our values. Through committed leadership, we can begin to change how other countries approach the General Assembly and how they vote on issues related to the Middle East. By doing so, we will be taking an important step toward peace.

SENATE RESOLUTION 272—DESIGNATING THE WEEK BEGINNING NOVEMBER 16, 2003, AS AMERICAN EDUCATION WEEK

Ms. SNOWE (for herself, Mrs. MURRAY, Mr. WARNER, Mr. BREAUX, Mr. CRAPO, Mr. CONRAD, Mr. DASCHLE, Mr. EDWARDS, Mr. KENNEDY, Mr. JOHNSON, and Mr. GRASSLEY) submitted the following resolution; which was considered and agreed to:

S. RES. 272

Whereas schools are the backbone of democracy in the United States, providing young people with the tools necessary to maintain the precious values of freedom, civility, and equality;

Whereas, by equipping students with both practical skills and broader intellectual abilities, schools give young people in the United States hope for, and access to, a bright and productive future;

Whereas education employees, whether they provide educational, administrative, technical, or custodial services, work tirelessly to serve the children and communities of the United States with care and professionalism;

Whereas schools are the keystones of communities in the United States, bringing together adults and children, educators and volunteers, business leaders, and elected officials in a common enterprise; and

Whereas public school educators first observed American Education Week in 1921 and are now celebrating the 82nd annual observance of American Education Week: Now, therefore, be it

Resolved, That the Senate—

(1) designates the week beginning November 16, 2003, as American Education Week; and

(2) recognizes the importance of public education and the accomplishments of the many education professionals who contribute to the achievement of students across the United States.

SENATE CONCURRENT RESOLUTION 84—RECOGNIZING THE SACRIFICES MADE BY MEMBERS OF THE REGULAR AND RESERVE COMPONENTS OF THE ARMED FORCES, EXPRESSING CONCERN ABOUT THEIR SAFETY AND SECURITY, AND URGING THE SECRETARY OF DEFENSE TO TAKE IMMEDIATE STEPS TO ENSURE THAT THE RESERVE COMPONENTS ARE PROVIDED WITH THE SAME EQUIPMENT AS REGULAR COMPONENTS

Mr. DASCHLE (for Mr. KERRY) submitted the following concurrent resolution; which was referred to the Committee on Armed Services:

S. CON. RES. 84

Whereas, on September 11, 2001, the National Guard and Reserve responded to the horrific terrorist attacks on the United States with professionalism and courage, rescued the injured, saved lives in New York City, provided protection to the Pentagon, and flew combat air patrols over Washington, D.C., and other major cities;

Whereas, on September 14, 2001, in Executive Order 13223, President Bush proclaimed a national emergency, and exercised his authority under section 12302 of title 10, United States Code, to allow him to call up as many as 1,000,000 National Guard and Reserve members to active duty for up to two years;

Whereas more than 300,000 National Guard and Reserve members have been called to active duty under this Executive Order, serving on the front lines by fighting terrorists in Africa and Asia and keeping the peace in Afghanistan, the Balkans, and Iraq;

Whereas the National Guard and Reserve are taking on unprecedented challenges;

Whereas 64 percent of National Guard and Reserve members have been called up for active duty during at least one of the seven major mobilizations since 1990;

Whereas 7,800 National Guard and Reserve members have been mobilized more than once to serve in the Global War on Terrorism, and members serve between 60 and 120 days per year;

Whereas 42,000 of the approximately 160,000 United States troops currently in Iraq are members of the National Guard and Reserve;

Whereas the National Guard and Reserve are being deployed to Iraq without critical protective equipment, such as body armor,

carbines, laser sights, night vision goggles, desert boots, Camel Back water carriers, aviation holsters, aviation protective masks, radios, and desert camouflage uniforms;

Whereas many National Guard and Reserve units are using older and outdated equipment;

Whereas, due to equipment shortages throughout the National Guard and Reserve, units are being stripped of equipment in favor of units being deployed, leaving other units without equipment with which to train;

Whereas at least one National Guard and Reserve unit asked hospitals in the United States to donate medical supplies to cover its shortages; and

Whereas a poll taken in Iraq by *Stars & Stripes* reveals that 48 percent of National Guard and Reserve troops consider their morale ''low'' or ''very low'', compared with only 15 percent reporting ''high'' or ''very high'' morale: Now, therefore, be it

Resolved by the Senate (the House of Representatives concurring), That Congress—

(1) recognizes the sacrifices made by the members in the regular and reserve components of the Armed Forces;

(2) expresses concern about their safety and security; and

(3) urges the Secretary of Defense to take immediate steps to ensure that the National Guard and Reserves are provided with the same equipment as the regular components.

(At the request of Mr. DASCHLE, the following statement was ordered to be printed in the RECORD.)

• Mr. KERRY. Mr. President, the relationship between the active and reserve components in the United States military is known as the ''total-force'' concept. Active duty units cannot fight wars without the support and participation of units from the National Guard and Reserve. It is this aspect of the all volunteer military that distinguishes the American armed forces from the praetorian armies of old and links the broader public, intimately, to the costs and sacrifices of war.

The men and women of the American military continue to preform magnificently. They are executing difficult missions in distant lands around the globe. There are more than 130,000 troops in Iraq, 30,000 in Kuwait, 37,000 in Korea, and 10,000 in Afghanistan. At this moment, more than 164,000 national guardsmen and reservists are on active duty, and the Pentagon has recently announced two more rounds of activation, increasing that number by another 58,000 troops. With more than 60 percent of the Army's active combat strength deployed or preparing to deploy, the men and women of the National Guard and Reserves are essential to our efforts in the war on terrorism and the stabilization of Iraq and Afghanistan.

These deployed ''weekend warriors'' are much more than part-time soldiers; they are full-time war-fighters serving alongside active duty units, performing the same missions, facing the same dangers, paying the same bloody price.

Despite this fact, the equipment of the National Guard and Reserves has been substandard when compared to the equipment available to members of the active units for far too long. This peace-time nuisance is a mortal danger in war. It is inexcusable that any U.S. units, whether active or reserve, would deploy to a combat zone without the latest equipment and technology.

But we have heard concerns about National Guard and Reserve units lacking the latest gear or technology: helicopters lacking basic defense systems; Humvees without the additional armor needed to protect their occupants; and inadequate supplies of personal body armor. It is a dereliction of duty to send anyone into harm's way without basic protective gear.

The Concurrent Resolution submit today, expresses our concern for the welfare and security of all the men and women of the United states military, whether they serve in the active duty military, the National Guard, or the reserves. If this is to truly be a ''total-force,'' then we must also commit ourselves to equipping it as such. The courageous, young men and women of our armed forces deserve no less.•

SENATE CONCURRENT RESOLUTION 85—EXPRESSING THE SENSE OF CONGRESS THAT THE CONTINUED PARTICIPATION OF THE RUSSIAN FEDERATION IN THE GROUP OF 8 NATIONS SHOULD BE CONDITIONED ON THE RUSSIAN GOVERNMENT VOLUNTARILY ACCEPTING AND ADHERING TO THE NORMS AND STANDARDS OF DEMOCRACY

Mr. MCCAIN (for himself and Mr. LIEBERMAN) submitted the following concurrent resolution; which was referred to the Committee on Foreign Relations:

S. CON. RES. 85

Whereas the countries that comprise the Group of 7 nations are pluralistic societies with democratic political institutions and practices, committed to the observance of universally recognized standards of human rights, respect for individual liberties, and democratic principles;

Whereas in 1991 and subsequent years, the leaders of the Group of 7 nations, heads of the governments of the major free market economies of the world who meet annually in a summit meeting, invited then-Russian President Boris Yeltsin to a post-summit dialogue;

Whereas in 1998, the leaders of the Group of 7 nations formally invited President Boris Yeltsin of Russia to participate in an annual gathering that subsequently was known as the Group of 8 nations, although the Group of 7 nations have continued to hold informal summit meetings and ministerial meetings that do not include the Russian Federation;

Whereas the invitation to President Yeltsin to participate in the annual summits was in recognition of his commitment to democratization and economic liberalization, despite the fact that the Russian economy remained weak and the commitment of the Russian Government to democratic principles was uncertain;

Whereas under the leadership of President Vladimir Putin, the Russian Government has attempted to control the activities of independent media enterprises, nongovernmental organizations, religious organizations, and other pluralistic elements of Russian society in an attempt to mute criticism of the government;

Whereas the suppression by the Russian Government of independent media enterprises has resulted in widespread government control and influence over the media in Russia, stifling freedom of expression and individual liberties that are essential to any functioning democracy;

Whereas the arrest and prosecution of prominent Russian business leaders who had supported the political opposition to President Putin are examples of selective application of the rule of law for political purposes;

Whereas the courts of Great Britain, Spain, and Greece have consistently ruled against extradition warrants issued by the Russian Government after finding that the cases presented by the Prosecutor General of the Russian Federation have been inherently political in nature;

Whereas Russian military forces continue to commit brutal atrocities against the civilian population in Chechnya;

Whereas the rise to influence within the Russian Government of unelected security officials from the KGB of the former Soviet Union is increasingly undermining the commitment of the Russian Government to democratic principles, accountability, and transparency;

Whereas a wide range of observers at think tanks and nongovernmental organizations have expressed deep concern that the Russian Federation is moving away from the political and legal underpinnings of a market economy; and

Whereas the continued participation of the Russian Federation in the Group of 8 nations, including the opportunity for the Russian Government to host the Group of 8 nations in 2006 as planned, is a privilege that is premised on the Russian Government voluntarily accepting and adhering to the norms and standards of democracy: Now, therefore, be it

Resolved by the Senate (the House of Representatives concurring), That it is the sense of Congress that—

(1) the selective prosecution of political opponents and the suppression of free media by the Russian Federation, and the continued commission of widespread atrocities in the conduct of the brutal war in Chechnya, do not reflect the minimum standards of democratic governance and rule of law that characterize every other member state in the Group of 8 nations;

(2) the continued participation of the Russian Federation in the Group of 8 nations, including the opportunity for the Russian Government to host the Group of 8 nations summit in 2006 as planned, should be conditioned on the Russian Government accepting and adhering to the norms and standards of free, democratic societies as generally practiced by every other member nation of the Group of 8 nations, including—

(A) the rule of law, including protection from selective prosecution and protection from arbitrary state-directed violence;

(B) a court system free of political influence and manipulation;

(C) a free and independent media;

(D) a political system open to participation by all citizens and which protects freedom of expression and association; and

(E) the protection of universally recognized human rights; and

(3) the President of the United States and the Secretary of State should work with the other members of the Group of 7 nations to take all necessary steps to suspend the participation of the Russian Federation in the Group of 8 nations until the President, after consultation with the other members of the Group of 7 nations, determines and reports to Congress that the Russian Government is committed to respecting and upholding the

democratic principles described in paragraph (2).

AMENDMENTS SUBMITTED & PROPOSED

SA 2209. Mr. FRIST (for Mr. DODD) proposed an amendment to the bill S. 1680, to reauthorize the Defense Production Act of 1950, and for other purposes.

SA 2210. Mr. FRIST (for Mr. INHOFE (for himself, Mr. JEFFORDS, Mr. VOINOVICH, and Mrs. CLINTON)) proposed an amendment to the bill S. 1279, to amend the Robert T. Stafford Disaster Relief and Emergency Assistance Act to authorize the President to carry out a program for the protection of the health and safety of residents, workers, volunteers, and others in a disaster area.

SA 2211. Mr. FRIST (for Mr. MCCAIN (for himself and Mr. HOLLINGS)) proposed an amendment to the bill S. 579, to reauthorize the National Transportation Safety Board, and for other purposes.

TEXT OF AMENDMENTS

SA 2209. Mr. FRIST (for Mr. DODD) proposed an amendment to the bill S. 1680, to reauthorize the Defense Production Act of 1950, and for other purposes; as follows:

On page 6, strike line 1 and all that follows through page 7, line 2, and insert the following:

SEC. 7. REPORT ON IMPACT OF OFFSETS ON DOMESTIC CONTRACTORS AND LOWER TIER SUBCONTRACTORS.

(a) EXAMINATION OF IMPACT REQUIRED.—

(1) IN GENERAL.—As part of the annual report required under section 309(a) of the Defense Production Act of 1950 (50 U.S.C. App. 2099(a)), the Secretary of Commerce (in this section referred to as the ''Secretary'') shall—

(A) detail the number of foreign contracts involving domestic contractors that use offsets, industrial participation agreements, or similar arrangements during the preceding 5-year period;

(B) calculate the aggregate, median, and mean values of the contracts and the offsets, industrial participation agreements, and similar arrangements during the preceding 5-year period; and

(C) describe the impact of international or foreign sales of United States defense products and related offsets, industrial participation agreements, and similar arrangements on domestic prime contractors and, to the extent practicable, the first 3 tiers of domestic contractors and subcontractors during the preceding 5-year period in terms of domestic employment, including any job losses, on an annual basis.

(2) USE OF INTERNAL DOCUMENTS.—To the extent that the Department of Commerce is already in possession of relevant data, the Department shall use internal documents or existing departmental records to carry out paragraph (1).

(3) INFORMATION FROM NON-FEDERAL ENTITIES.—

(A) EXISTING INFORMATION.—In carrying out paragraph (1), the Secretary shall only require a non-Federal entity to provide information that is available through the existing data collection and reporting systems of that non-Federal entity.

(B) FORMAT.—The Secretary may require a non-Federal entity to provide information to the Secretary in the same form that is already provided to a foreign government in fulfilling an offset arrangement, industrial participation agreement, or similar arrangement.

(b) REPORT.—

(1) IN GENERAL.—Before the end of the 8-month period beginning on the date of enactment of this Act, the Secretary shall submit to Congress a report containing the findings and conclusions of the Secretary with regard to the examination made pursuant to subsection (a).

(2) COPIES OF REPORT.—The Secretary shall also transmit copies of the report prepared under paragraph (1) to the United States Trade Representative and the interagency team established pursuant to section 123(c) of the Defense Production Act Amendments of 1992 (50 U.S.C. App. 2099 note).

(c) RESPONSIBILITIES REGARDING CONSULTATION WITH FOREIGN NATIONS.—Section 123(c) of the Defense Production Act Amendments of 1992 (50 U.S.C. App. 2099 note) is amended to read as follows:

''(c) NEGOTIATIONS.—

''(1) INTERAGENCY TEAM.—

''(A) IN GENERAL.—It is the policy of Congress that the President shall designate a chairman of an interagency team comprised of the Secretary of Commerce, Secretary of Defense, United States Trade Representative, Secretary of Labor, and Secretary of State to consult with foreign nations on limiting the adverse effects of offsets in defense procurement without damaging the economy or the defense industrial base of the United States or United States defense production or defense preparedness.

''(B) MEETINGS.—The President shall direct the interagency team to meet on a quarterly basis.

''(C) REPORTS.—The President shall direct the interagency team to submit to Congress an annual report, to be included as part of the report required under section 309(a) of the Defense Production Act of 1950 (50 U.S.C. App. 2099(a)), that describes the results of the consultations of the interagency team under subparagraph (A) and the meetings of the interagency team under subparagraph (B).

''(2) RECOMMENDATIONS FOR MODIFICATIONS.—The interagency team shall submit to the President any recommendations for modifications of any existing or proposed memorandum of understanding between officials acting on behalf of the United States and 1 or more foreign countries (or any instrumentality of a foreign country) relating to—

''(A) research, development, or production of defense equipment; or

''(B) the reciprocal procurement of defense items.''.

SA 2210. Mr. FRIST (for Mr. INHOFE (for himself, Mr. JEFFORDS, Mr. VOINOVICH, and Mrs. CLINTON)) proposed an amendment to the bill S. 1279, to amend the Robert T. Stafford Disaster Relief and Emergency Assistance Act to authorize the President to carry out a program for the protection of the health and safety of residents, workers, volunteers, and others in a disaster area; as follows:

On page 19, line 16, insert '', including a local health department,'' after ''institution''.

On page 21, between lines 18 and 19, insert the following:

''(7) PRIVACY.—The President shall carry out each program under paragraph (1) in accordance with regulations relating to privacy promulgated under section 264(c) of the Health Insurance Portability and Accountability Act of 1996 (42 U.S.C. 1320d–2 note; Public Law 104–191).

At the end, add the following:

SEC. 4. PREDISASTER HAZARD MITIGATION.

Section 203(m) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5133(m)) is amended by striking ''December 31, 2003'' and inserting ''September 30, 2006''.

SA 2211. Mr. FRIST (for Mr. MCCAIN (for himself and Mr. HOLLINGS)) proposed an amendments to the bill S. 579, to reauthorize the National Transportation Safety Board, and for other purposes; as follows:

On page 2, line 15, strike ''$3,000,000.'' and insert ''$4,000,000.''.

On page 3, line 6, strike ''paragraph'' and insert ''subsection''.

On page 3, line 16, strike the closing quotation marks and the second period.

On page 3, line 17, strike ''(c)'' and insert '' '(d)''.

On page 3, line 21, insert closing quotation marks and a period after the period.

On page 5, strike lines 7 through 21, and insert the following:

SEC. 4. RELIEF FROM CONTRACTING REQUIREMENTS FOR INVESTIGATIONS SERVICES.

(a) IN GENERAL.—From the date of enactment of this Act through September 30, 2006, the National Transportation Safety Board may enter into agreements or contracts under the authority of section 1113 (b)(1)(B) of title 49, United States Code for investigations conducted under section 1131 of that title without regard to any other provision of law requiring competition if necessary to expedite the investigation.

(b) REPORT ON USAGE.—On February 1, 2006, the National Transportation Safety Board shall transmit a report to the House of Representatives Committee on Transportation and Infrastructure, the House of Representatives Committee on Government Reform, the Senate Committee on Commerce, Science, and Transportation, and the Senate Committee on Government Affairs that—

(1) describes each contract for $25,000 or more executed by the Board to which the authority provided by subsection (a) was applied; and

(2) sets forth the rationale for dispensing with competition requirements with respect to such contract.

On page 5, after line 21, add the following:

SEC. 5. ACCIDENT AND SAFETY DATA CLASSIFICATION AND PUBLICATION.

Section 1119 of title 49, United States Code, is amended by adding at the end the following:

''(c) APPEALS.—

''(1) NOTIFICATION OF RIGHTS.—In any case in which an employee of the Board determines that an occurrence associated with the operation of an aircraft constitutes an accident, the employee shall notify the owner or operator of that aircraft of the right to appeal that determination to the Board.

''(2) PROCEDURE.—The Board shall establish and publish the procedures for appeals under this subsection.

''(3) LIMITATION ON APPLICABILITY.—This subsection shall not apply in the case of an accident that results in a loss of life.''.

SEC. 6. SECRETARY OF TRANSPORTATION'S RESPONSES TO SAFETY RECOMMENDATIONS.

Section 1135(d) of title 49, United States Code, is amended to read as follows:

''(d) REPORTING REQUIREMENTS.—

''(1) ANNUAL SECRETARIAL REGULATORY STATUS REPORTS.—On February 1 of each year, the Secretary shall submit a report to Congress and the Board containing the regulatory status of each recommendation made by the Board to the Secretary (or to an Administration within the Department of

Transportation) that is on the Board's 'most wanted list'. The Secretary shall continue to report on the regulatory status of each such recommendation in the report due on February 1 of subsequent years until final regulatory action is taken on that recommendation or the Secretary (or an Administration within the Department) determines and states in such a report that no action should be taken.

''(2) FAILURE TO REPORT.—If on March 1 of each year the Board has not received the Secretary's report required by this subsection, the Board shall notify the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate of the Secretary's failure to submit the required report.

''(3) TERMINATION.—This subsection shall cease to be in effect after the report required to be filed on February 1, 2008, is filed.''.

SEC. 7. TECHNICAL AMENDMENTS.

Section 1131(a)(2) of title 49, United States Code, is amended by moving subparagraphs (B) and (C) 4 ems to the left.

SEC. 8. DOT INSPECTOR GENERAL INVESTIGATIVE AUTHORITY.

(a) IN GENERAL.—Section 228 of the Motor Carrier Safety Improvement Act of 1999 (113 Stat. 1773) is transferred to, and added at the end of, subchapter III of chapter 3 of title 49, United States Code, as section 354 of that title.

(b) CONFORMING AMENDMENTS.—

(1) The caption of the section is amended to read as follows:

''§ 354. Investigative authority of Inspector General''.

(2) The chapter analysis for chapter 3 of title 49, United States Code, is amended by adding at the end the following:

''354. Investigative authority of Inspector General''.

SEC. 9. REPORTS ON CERTAIN OPEN SAFETY RECOMMENDATIONS.

(a) INITIAL REPORT.—Within 1 year after the date of enactment of this Act, the Secretary of Transportation shall submit a report to Congress and the National Transportation Safety Board containing the regulatory status of each open safety recommendation made by the Board to the Secretary concerning—

(1) 15-passenger van safety;

(2) railroad grade crossing safety; and

(3) medical certifications for a commercial driver's license.

(b) BIENNIAL UPDATES.—The Secretary shall continue to report on the regulatory status of each such recommendation (and any subsequent recommendation made by the Board to the Secretary concerning a matter described in paragraph (1), (2), or (3) of subsection (a)) at 2–year intervals until—

(1) final regulatory action has been taken on the recommendation;

(2) the Secretary determines, and states in the report, that no action should be taken on that recommendation; or

(3) the report, if any, required to be submitted in 2008 is submitted.

(c) FAILURE TO REPORT.—If the Board has not received a report required to be submitted under subsection (a) or (b) within 30 days after the date on which that report is required to be submitted, the Board shall notify the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate.

AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON ENERGY AND NATURAL RESOURCES

Mr. CRAIG. Mr. President, I ask unanimous consent that the Committee on Energy and Natural Resources be authorized to meet during the session of the Senate on Friday, November 21 at 9:30 a.m.

The purpose of the oversight hearings is to receive testimony on the implementation of the Energy Employees Occupational Illness Compensation Program.

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

COMMITTEE ON FINANCE

Mr. CRAIG. Mr. President, I ask unanimous consent that the Committee on Finance be authorized to meet in open Executive Session during the session on Friday, November 21, 2003; to consider nomination of Arnold I. Havens, to be General Counsel for the Department of the Treasury.

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

COMMITTEE ON FOREIGN RELATIONS

Mr. CRAIG. Mr. President, I ask unanimous consent that the Committee on Foreign Relations be authorized to meet during the session of the Senate on Friday, November 21, 2003 at 9 a.m. to hold a hearing on Nominations.

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

COMMITTEE ON GOVERNMENTAL AFFAIRS

Mr. CRAIG. Mr. President, I ask unanimous consent that the Committee on Governmental Affairs be authorized to meet on Friday, November 21, 2003 at a time and location to be determined to hold a business meeting to consider the nominations of James M. Loy to be Deputy Secretary of Homeland Security, Department of Homeland Security; and Scott J. Bloch to be Special Counsel, Office of Special Counsel.

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

COMMITTEE ON HEALTH, EDUCATION, LABOR, AND PENSIONS

Mr. CRAIG. Mr. President, I ask unanimous consent that the Committee on Health, Education, Labor, and Pensions be authorized to meet for a hearing on The Nomination of Steven J. Law, of the District of Columbia, to be Deputy Secretary of Labor during the session of the Senate on Friday, November 21, 2003 at 10 a.m. in SD–430.

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

COMMITTEE ON VETERANS' AFFAIRS

Mr. CRAIG. Mr. President, I ask unanimous consent that the Committee on Veterans' Affairs be authorized to meet during the session of the Senate on November 21, 2003, for a markup on the nominations of Gordon H. Mansfield to be Deputy Secretary of Veterans Affairs, Cynthia R. Church to be Assistant Secretary of Veterans Affairs for Public and Intergovernmental Affairs, Robert N. McFarland to be Assistant Secretary of Veterans Affairs for Information and Technology, Lawrence B. Hagel to be Judge, U.S. Court of Appeals for Veterans Claims, and Alan G. Lance, Sr. to be Judge, U.S. Court of Appeals for Veterans Claims.

The meeting will take place in the Senate Reception Room in the Capitol after the first rollcall vote of the day.

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

PRIVILEGE OF THE FLOOR

Mr. GRAHAM. Mr. President, I ask unanimous consent that Mr. Chad Littleton, a Congressional Fellow in my office, be granted the privilege of the floor for the remainder of the Senate's consideration of this bill.

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

Ms. LANDRIEU. Mr. President, I ask unanimous consent that Neil Naraine be granted the privileges of the floor for the duration of the debate.

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

Mr. GRASSLEY. I ask unanimous consent that Christine Evans, of the Finance Committee staff, be afforded the privilege of the floor for the remainder of today's session.

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

FEDERAL RECOGNITION TO CONFEDERATED TRIBES OF GRAND RONDE COMMUNITY OF OREGON MEMORIALIZED

Mr. FRIST. Mr. President, I ask unanimous consent that the Indian Affairs Committee be discharged from further consideration of S. Res. 246 and the Senate proceed to its immediate consideration.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will report the resolution by title.

The legislative clerk read as follows:

A resolution (S. Res. 246) expressing the sense of the Senate that November 22, 1983, the date of the restoration by the Federal Government of Federal recognition to the Confederated Tribes of the Grand Ronde Community of Oregon, should be memorialized.

There being no objection, the Senate proceeded to consider the resolution.

Mr. FRIST. 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 the bill be printed in the RECORD.

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

The resolution (S. Res. 246) was agreed to.

The preamble was agreed to.

The resolution, with its preamble, reads as follows:

S. RES. 246

Whereas the Grand Ronde Restoration Act (25 U.S.C. 713 et seq.), which was signed by the President on November 22, 1983, restored

Federal recognition to the Confederated Tribes of the Grand Ronde Community of Oregon;

Whereas the Confederated Tribes of the Grand Ronde Community of Oregon historically inhabited land that extended from the summit of the Cascade Range, west along the shores of the Columbia River to the summit of the Coast Range, and south to the California border;

Whereas in addition to restoring Federal recognition, that Act and other Federal Indian statutes have provided the means for the Confederated Tribes to achieve the goals of cultural restoration, economic self-sufficiency, and the attainment of a standard of living equivalent to that enjoyed by other citizens of the United States;

Whereas by enacting the Grand Ronde Restoration Act (25 U.S.C. 713 et seq.), the Federal Government—

(1) declared that the Confederated Tribes of the Grand Ronde Community of Oregon were eligible for all Federal services and benefits provided to federally recognized tribes;

(2) established a tribal reservation; and

(3) granted the Confederated Tribes of the Grand Ronde Community of Oregon self-government for the betterment of tribal members, including the ability to set tribal rolls;

Whereas the Confederated Tribes of the Grand Ronde Community of Oregon have embraced Federal recognition and self-sufficiency statutes and are actively working to better the lives of tribal members; and

Whereas economic self-sufficiency, which was the goal of restoring Federal recognition for the Confederated Tribes of the Grand Ronde Community of Oregon, is being realized through many projects: Now, therefore, be it

Resolved, That it is the sense of the Senate that November 22, 1983, should be memorialized as the date on which the Federal Government restored Federal recognition to the Confederated Tribes of the Grand Ronde Community of Oregon.

DEFENSE PRODUCTION REAUTHORIZATION ACT OF 2003

Mr. FRIST. I ask unanimous consent that the Chair now lay before the Senate the House message to accompany S. 1680, the Defense Production Reauthorization Act.

The PRESIDING OFFICER laid before the Senate the following message from the House, as follows:

Resolved, That the bill from the Senate (S. 1680) entitled ''An Act to reauthorize the Defense Production Act of 1950, and for other purposes'', 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 ''Defense Production Act Reauthorization of 2003''.

SEC. 2. REAUTHORIZATION OF DEFENSE PRODUCTION ACT OF 1950.

(a) IN GENERAL.—The 1st sentence of section 717(a) of the Defense Production Act of 1950 (50 U.S.C. App. 2166(a)) is amended—

(1) by striking ''sections 708'' and inserting ''sections 707, 708,''; and

(2) by striking ''September 30, 2003'' and inserting ''September 30, 2008''.

(b) AUTHORIZATION OF APPROPRIATIONS.—Section 711(b) of the Defense Production Act of 1950 (50 U.S.C. App. 2161(b)) is amended by striking ''through 2003'' and inserting ''through 2008''.

SEC. 3. RESOURCE SHORTFALL FOR RADIATION-HARDENED ELECTRONICS.

(a) IN GENERAL.—Notwithstanding the limitation contained in section 303(a)(6)(C) of the Defense Production Act of 1950 (50 U.S.C. App. 2093(a)(6)(C)), the President may take actions under section 303 of the Defense Production Act of 1950 to correct the industrial resource shortfall for radiation-hardened electronics, to the extent that such Presidential actions do not cause the aggregate outstanding amount of all such actions to exceed $200,000,000.

(b) REPORT BY THE SECRETARY.—Before the end of the 6-month period beginning on the date of the enactment of this Act, the Secretary of Defense shall submit a report to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives describing—

(1) the current state of the domestic industrial base for radiation-hardened electronics;

(2) the projected requirements of the Department of Defense for radiation-hardened electronics;

(3) the intentions of the Department of Defense for the industrial base for radiation-hardened electronics; and

(4) the plans of the Department of Defense for use of providers of radiation-hardened electronics beyond the providers with which the Department had entered into contractual arrangements under the authority of the Defense Production Act of 1950, as of the date of the enactment of this Act.

SEC. 4. CLARIFICATION OF PRESIDENTIAL AUTHORITY.

Subsection (a) of section 705 of the Defense Production Act of 1950 (50 U.S.C. App. 2155(a)) is amended by inserting after the end of the 1st sentence the following new sentence: ''The authority of the President under this section includes the authority to obtain information in order to perform industry studies assessing the capabilities of the United States industrial base to support the national defense.''.

SEC. 5. CRITICAL INFRASTRUCTURE PROTECTION AND RESTORATION.

Section 702 of the Defense Production Act of 1950 (50 U.S.C. App. 2152) is amended—

(1) by redesignating paragraphs (3) through (17) as paragraphs (4) through (18), respectively;

(2) by inserting after paragraph (2) the following new paragraph:

''(3) CRITICAL INFRASTRUCTURE.—The term 'critical infrastructure' means any systems and assets, whether physical or cyber-based, so vital to the United States that the degradation or destruction of such systems and assets would have a debilitating impact on national security, including, but not limited to, national economic security and national public health or safety.''; and

(3) in paragraph (14) (as so redesignated by paragraph (1) of this section), by inserting ''and critical infrastructure protection and restoration'' before the period at the end of the last sentence.

SEC. 6. REPORT ON CONTRACTING WITH MINORITY- AND WOMEN-OWNED BUSINESSES.

(a) REPORT REQUIRED.—Before the end of the 1-year period beginning on the date of the enactment of this Act, the Secretary of Defense shall submit a report to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives on the extent to which contracts entered into during the fiscal year ending before the end of such 1-year period under the Defense Production Act of 1950 have been contracts with minority- and women-owned businesses.

(b) CONTENTS OF REPORT.—The report submitted under subsection (a) shall include the following:

(1) The types of goods and services obtained under contracts with minority- and women-owned businesses under the Defense Production Act of 1950 in the fiscal year covered in the report.

(2) The dollar amounts of such contracts.

(3) The ethnicity of the majority owners of such minority- and women-owned businesses.

(4) A description of the types of barriers in the contracting process, such as requirements for security clearances, that limit contracting opportunities for minority- and women-owned businesses, together with such recommendations for legislative or administrative action as the Secretary of Defense may determine to be appropriate for increasing opportunities for contracting with minority- and women-owned businesses and removing barriers to such increased participation.

(c) DEFINITIONS.—For purposes of this section, the terms ''women-owned business'' and ''minority-owned business'' have the meanings given such terms in section 21A(r) of the Federal Home Loan Bank Act, and the term ''minority'' has the meaning given such term in section 1204(c)(3) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989.

SEC. 7. REPORT ON IMPACT OF OFFSETS ON DOMESTIC CONTRACTORS AND HIGHER-TIER SUBCONTRACTORS.

(a) ASSESSMENT OF IMPACT REQUIRED.—In addition to the information required to be included in the annual report under section 309 of the Defense Production Act of 1950, the Secretary of Commerce shall assess the net impact, in the defense trade, of foreign sales and related foreign contracts that have been awarded through offsets, industrial participation agreements, or similar arrangements on domestic prime contractors and at least the first 3 tiers of domestic subcontractors during the 5-year period beginning on January 1, 1998.

(b) REPORT.—Before the end of the 1-year period beginning on the date of the enactment of this Act, the Secretary of Commerce shall submit a report to the Congress containing findings and the conclusions of the Secretary with regard to the assessment made pursuant to subsection (a).

(c) COPIES OF REPORT.—Copies of the report prepared pursuant to subsection (b) shall also be transmitted to the United States Trade Representative and the interagency team established pursuant to section 123(c) of the Defense Production Act Amendments of 1992.

Mr. FRIST. I ask unanimous consent that the Senate concur with the House amendment with an amendment, 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. 2209) was agreed to, as follows:

(Purpose: To modify the reporting requirements of the Secretary of Commerce and for other purposes)

On page 6, strike line 1 and all that follows through page 7, line 2, and insert the following:

SEC. 7. REPORT ON IMPACT OF OFFSETS ON DOMESTIC CONTRACTORS AND LOWER TIER SUBCONTRACTORS.

(a) EXAMINATION OF IMPACT REQUIRED.—

(1) IN GENERAL.—As part of the annual report required under section 309(a) of the Defense Production Act of 1950 (50 U.S.C. App. 2099(a)), the Secretary of Commerce (in this section referred to as the ''Secretary'') shall—

(A) detail the number of foreign contracts involving domestic contractors that use offsets, industrial participation agreements, or similar arrangements during the preceding 5-year period;

(B) calculate the aggregate, median, and mean values of the contracts and the offsets, industrial participation agreements, and similar arrangements during the preceding 5-year period; and

(C) describe the impact of international or foreign sales of United States defense products and related offsets, industrial participation agreements, and similar arrangements on domestic prime contractors and, to the extent practicable, the first 3 tiers of domestic contractors and subcontractors during the preceding 5-year period in terms of domestic employment, including any job losses, on an annual basis.

(2) USE OF INTERNAL DOCUMENTS.—To the extent that the Department of Commerce is already in possession of relevant data, the Department shall use internal documents or existing departmental records to carry out paragraph (1).

(3) INFORMATION FROM NON-FEDERAL ENTITIES.—

(A) EXISTING INFORMATION.—In carrying out paragraph (1), the Secretary shall only require a non-Federal entity to provide information that is available through the existing data collection and reporting systems of that non-Federal entity.

(B) FORMAT.—The Secretary may require a non-Federal entity to provide information to the Secretary in the same form that is already provided to a foreign government in fulfilling an offset arrangement, industrial participation agreement, or similar arrangement.

(b) REPORT.—

(1) IN GENERAL.—Before the end of the 8-month period beginning on the date of enactment of this Act, the Secretary shall submit to Congress a report containing the findings and conclusions of the Secretary with regard to the examination made pursuant to subsection (a).

(2) COPIES OF REPORT.—The Secretary shall also transmit copies of the report prepared under paragraph (1) to the United States Trade Representative and the interagency team established pursuant to section 123(c) of the Defense Production Act Amendments of 1992 (50 U.S.C. App. 2099 note).

(c) RESPONSIBILITIES REGARDING CONSULTATION WITH FOREIGN NATIONS.—Section 123(c) of the Defense Production Act Amendments of 1992 (50 U.S.C. App. 2099 note) is amended to read as follows:

''(c) NEGOTIATIONS.—

''(1) INTERAGENCY TEAM.—

''(A) IN GENERAL.—It is the policy of Congress that the President shall designate a chairman of an interagency team comprised of the Secretary of Commerce, Secretary of Defense, United States Trade Representative, Secretary of Labor, and Secretary of State to consult with foreign nations on limiting the adverse effects of offsets in defense procurement without damaging the economy or the defense industrial base of the United States or United States defense production or defense preparedness.

''(B) MEETINGS.—The President shall direct the interagency team to meet on a quarterly basis.

''(C) REPORTS.—The President shall direct the interagency team to submit to Congress an annual report, to be included as part of the report required under section 309(a) of the Defense Production Act of 1950 (50 U.S.C. App. 2099(a)), that describes the results of the consultations of the interagency team under subparagraph (A) and the meetings of the interagency team under subparagraph (B).

''(2) RECOMMENDATIONS FOR MODIFICATIONS.—The interagency team shall submit to the President any recommendations for modifications of any existing or proposed memorandum of understanding between officials acting on behalf of the United States and 1 or more foreign countries (or any instrumentality of a foreign country) relating to—

''(A) research, development, or production of defense equipment; or

''(B) the reciprocal procurement of defense items.''.

MENTAL HEALTH PARITY REAUTHORIZATION ACT OF 2003

Mr. FRIST. I ask unanimous consent that the Senate proceed to the immediate consideration of S. 1929, which was introduced earlier today.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

A bill (S. 1929) to amend the Employee Retirement Income Security Act of 1974 and the Public Health Service Act to extend the mental health benefits parity provisions, and for other purposes.

There being no objection, the Senate proceeded to consider the bill.

Mr. FRIST. I ask unanimous consent that the bill be read a third time and passed, the motion to reconsider be laid upon the table, and that any statements relating to the bill be printed in the RECORD.

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

The bill (S. 1929) was read the third time and passed, as follows:

S. 1929

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 ''Mental Health Parity Reauthorization Act of 2003''.

SEC. 2. EXTENSION OF MENTAL HEALTH PROVISIONS.

(a) ERISA.—Section 712(f) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1185a(f)) is amended by striking ''December 31, 2003'' and inserting ''December 31, 2004''.

(b) PHSA.—Section 2705(f) of the Public Health Service Act (42 U.S.C. 300gg–5(f)) is amended by striking ''December 31, 2003'' and inserting ''December 31, 2004''.

VETERANS' COMPENSATION COST-OF-LIVING ADJUSTMENT ACT OF 2003

Mr. FRIST. I ask unanimous consent that the Veterans Affairs Committee be discharged from further consideration of H.R. 1683 and 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 (H.R. 1683) to increase, effective as of December 1, 2003, the rates of disability compensation for veterans with service-connected disabilities and the rates of dependency and indemnity compensation for survivors of certain service-connected disabled veterans, and for other purposes.

There being no objection, the Senate proceeded to consider the bill.

Mr. FRIST. I ask unanimous consent that the bill be read a third time and passed, the motion to reconsider be laid upon the table, and that any statements relating to the bill be printed in the RECORD.

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

The bill (H.R. 1683) was read the third time and passed.

SERVICEMEMBERS CIVIL RELIEF ACT

Mr. FRIST. I ask unanimous consent the Senate now proceed to the immediate consideration of Calendar No. 393, S. 1136.

The PRESIDING OFFICER. The clerk will report the bill by title.

The legislative clerk read as follows:

A bill (S. 1136) to restate, clarify, and revise the Soldiers' and Sailors' Civil Relief Act of 1940.

There being no objection, the Senate proceeded to consider the bill which had been reported from the Committee on Veterans' 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. 1136

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

[SECTION 1. RESTATEMENT OF ACT.

[The Soldiers' and Sailors' Civil Relief Act of 1940 (50 U.S.C. App. 501 et seq.) is amended to read as follows:

[''SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

[''(a) SHORT TITLE.—This Act may be cited as the 'Servicemembers Civil Relief Act'.

[''(b) TABLE OF CONTENTS.—The table of contents of this Act is as follows:

[''Sec. 1. Short title; table of contents.

[''Sec. 2. Purposes.

[''TITLE I—GENERAL PROVISIONS

[''Sec. 101. Definitions.

[''Sec. 102. Jurisdiction and applicability of Act.

[''Sec. 103. Protection of persons secondarily liable.

[''Sec. 104. Extension of protections to citizens serving with allied forces.

[''Sec. 105. Notification of benefits.

[''Sec. 106. Extension of rights and protections to Reserves ordered to report for military service and to persons ordered to report for induction.

[''Sec. 107. Waiver of rights pursuant to written agreement.

[''Sec. 108. Exercise of rights under Act not to affect certain future financial transactions.

[''Sec. 109. Legal representatives.

[''TITLE II—GENERAL RELIEF

[''Sec. 201. Protection of servicemembers against default judgments.

[''Sec. 202. Stay of proceedings when servicemember defendant has notice.

[''Sec. 203. Fines and penalties under contracts.

[''Sec. 204. Stay or vacation of execution of judgments, attachments, and garnishments.

[''Sec. 205. Duration and term of stays; codefendants not in service.

[''Sec. 206. Statute of limitations.

[''Sec. 207. Maximum rate of interest on debts incurred before military service.

[''TITLE III—RENT, INSTALLMENT CONTRACTS, MORTGAGES, LIENS, ASSIGNMENT, LEASES.

[''Sec. 301. Evictions and distress.

[''Sec. 302. Protection under installment contracts for purchase or lease.
[''Sec. 303. Mortgages and trust deeds.
[''Sec. 304. Settlement of stayed cases relating to personal property.
[''Sec. 305. Termination of leases by lessees.
[''Sec. 306. Protection of life insurance policy.
[''Sec. 307. Enforcement of storage liens.
[''Sec. 308. Extension of protections to dependents.

[''TITLE IV—INSURANCE

[''Sec. 401. Definitions.
[''Sec. 402. Insurance rights and protections.
[''Sec. 403. Application for insurance protection.
[''Sec. 404. Policies entitled to protection and lapse of policies.
[''Sec. 405. Policy restrictions.
[''Sec. 406. Deduction of unpaid premiums.
[''Sec. 407. Premiums and interest guaranteed by United States.
[''Sec. 408. Regulations.
[''Sec. 409. Review of findings of fact and conclusions of law.

[''TITLE V—TAXES AND PUBLIC LANDS

[''Sec. 501. Taxes respecting personal property, money, credits, and real property.
[''Sec. 502. Rights in public lands.
[''Sec. 503. Desert-land entries.
[''Sec. 504. Mining claims.
[''Sec. 505. Mineral permits and leases.
[''Sec. 506. Perfection or defense of rights.
[''Sec. 507. Distribution of information concerning benefits of title.
[''Sec. 508. Land rights of servicemembers.
[''Sec. 509. Regulations.
[''Sec. 510. Income taxes.
[''Sec. 511. Residence for tax purposes.

[''TITLE VI—ADMINISTRATIVE REMEDIES

[''Sec. 601. Inappropriate use of Act.
[''Sec. 602. Certificates of service; persons reported missing.
[''Sec. 603. Interlocutory orders.

[''TITLE VII—FURTHER RELIEF

[''Sec. 701. Anticipatory relief.
[''Sec. 702. Power of attorney.
[''Sec. 703. Professional liability protection.
[''Sec. 704. Health insurance reinstatement.
[''Sec. 705. Guarantee of residency for military personnel.
[''Sec. 706. Business or trade obligations.
[''Sec. 707. Return to classes at no extra cost.

["SEC. 2. PURPOSES.

['' The purposes of this Act are—

['' (1) to provide for, strengthen, and expedite the national defense through protection extended by this Act to servicemembers of the United States to enable such persons to devote their entire energy to the defense needs of the Nation; and

['' (2) to provide for the temporary suspension of judicial and administrative proceedings and transactions that may adversely affect the civil rights of servicemembers during their military service.

["TITLE I—GENERAL PROVISIONS

["SEC. 101. DEFINITIONS.

['' For the purposes of this Act:

['' (1) SERVICEMEMBER.—The term 'servicemember' means a member of the uniformed services, as that term is defined in section 101(a)(5) of title 10, United States Code.

['' (2) MILITARY SERVICE.—

['' (A) With respect to a member of the Army, Navy, Air Force, Marine Corps, or Coast Guard, the term 'military service' means active duty, as that term is defined in section 101(d)(1) of title 10, United States Code.

['' (B) Active service of commissioned officers of the Public Health Service or National Oceanic and Atmospheric Administration shall be deemed to be 'military service' for the purposes of this Act.

['' (C) Service of a member of the National Guard under a call to active service authorized by the President or the Secretary of Defense for a period of more than 30 consecutive days under section 502(f) of title 32, United States Code, for purposes of responding to a national emergency declared by the President and supported by Federal funds shall be deemed to be 'military service' for the purposes of this Act.

['' (3) PERIOD OF MILITARY SERVICE.—The term 'period of military service' means the period beginning on the date on which a servicemember enters military service and ending on the date on which the servicemember is released from military service or dies while in military service.

['' (4) DEPENDENT.—The term 'dependent', with respect to a servicemember, means—

['' (A) the servicemember's spouse;

['' (B) the servicemember's child (as defined in section 101(4) of title 38, United States Code); or

['' (C) an individual for whom the servicemember provided more than one-half of the individual's support for 180 days immediately preceding an application for relief under this Act.

['' (5) COURT.—The term 'court' means a court or an administrative agency of the United States or of any State (including any political subdivision of a State), whether or not a court or administrative agency of record.

['' (6) STATE.—The term 'State' includes—

['' (A) a commonwealth, territory, or possession of the United States; and

['' (B) the District of Columbia.

['' (7) SECRETARY CONCERNED.—The term 'Secretary concerned'—

['' (A) with respect to a member of the armed forces, has the meaning given that term in section 101(a)(9) of title 10, United States Code;

['' (B) with respect to a commissioned officer of the Public Health Service, means the Secretary of Health and Human Services; and

['' (C) with respect to a commissioned officer of the National Oceanic and Atmospheric Administration, means the Secretary of Commerce.

['' (8) MOTOR VEHICLE.—The term 'motor vehicle' has the meaning given that term in section 30102(a)(6) of title 49, United States Code.

["SEC. 102. JURISDICTION AND APPLICABILITY OF ACT.

['' (a) JURISDICTION.—This Act applies to—

['' (1) the United States;

['' (2) each of the States, including the political subdivisions thereof; and

['' (3) all territory subject to the jurisdiction of the United States.

['' (b) APPLICABILITY TO PROCEEDINGS.—This Act applies to any judicial or administrative proceeding commenced in any court or agency in any jurisdiction subject to this Act. This Act does not apply to criminal proceedings.

['' (c) COURT IN WHICH APPLICATION MAY BE MADE.—When under this Act any application is required to be made to a court in which no proceeding has already been commenced with respect to the matter, such application may be made to any court which would otherwise have jurisdiction over the matter.

["SEC. 103. PROTECTION OF PERSONS SECONDARILY LIABLE.

['' (a) EXTENSION OF PROTECTION WHEN ACTIONS STAYED, POSTPONED, OR SUSPENDED.—Whenever pursuant to this Act a court stays, postpones, or suspends (1) the enforcement of an obligation or liability, (2) the prosecution of a suit or proceeding, (3) the entry or enforcement of an order, writ, judgment, or decree, or (4) the performance of any other act, the court may likewise grant such a stay, postponement, or suspension to a surety, guarantor, endorser, accommodation maker, comaker, or other person who is or may be primarily or secondarily subject to the obligation or liability the performance or enforcement of which is stayed, postponed, or suspended.

['' (b) VACATION OR SET-ASIDE OF JUDGMENTS.—When a judgment or decree is vacated or set aside, in whole or in part, pursuant to this Act, the court may also set aside or vacate, as the case may be, the judgment or decree as to a surety, guarantor, endorser, accommodation maker, comaker, or other person who is or may be primarily or secondarily liable on the contract or liability for the enforcement of the judgment or decree.

['' (c) BAIL BOND NOT TO BE ENFORCED DURING PERIOD OF MILITARY SERVICE.—A court may not enforce a bail bond during the period of military service of the principal on the bond when military service prevents the surety from obtaining the attendance of the principal. The court may discharge the surety and exonerate the bail, in accordance with principles of equity and justice, during or after the period of military service of the principal.

['' (d) WAIVER OF RIGHTS.—

['' (1) WAIVERS NOT PRECLUDED.—This Act does not prevent a waiver in writing by a surety, guarantor, endorser, accommodation maker, comaker, or other person (whether primarily or secondarily liable on an obligation or liability) of the protections provided under subsections (a) and (b). Any such waiver is effective only if it is executed as an instrument separate from the obligation or liability with respect to which it applies.

['' (2) WAIVER INVALIDATED UPON ENTRANCE TO MILITARY SERVICE.—If a waiver under paragraph (1) is executed by an individual who after the execution of the waiver enters military service, or by a dependent of an individual who after the execution of the waiver enters military service, the waiver is not valid after the beginning of the period of such military service unless the waiver was executed by such individual or dependent during the period specified in section 106.

["SEC. 104. EXTENSION OF PROTECTIONS TO CITIZENS SERVING WITH ALLIED FORCES.

['' A citizen of the United States who is serving with the forces of a nation with which the United States is allied in the prosecution of a war or military action is entitled to the relief and protections provided under this Act if that service with the allied force is similar to military service as defined in this Act. The relief and protections provided to such citizen shall terminate on the date of discharge or release from such service.

["SEC. 105. NOTIFICATION OF BENEFITS.

['' The Secretary concerned shall ensure that notice of the benefits accorded by this Act is provided to persons in military service and to persons entering military service.

["SEC. 106. EXTENSION OF RIGHTS AND PROTECTIONS TO RESERVES ORDERED TO REPORT FOR MILITARY SERVICE AND TO PERSONS ORDERED TO REPORT FOR INDUCTION.

['' (a) RESERVES ORDERED TO REPORT FOR MILITARY SERVICE.—A member of a reserve component who is ordered to report for military service is entitled to the rights and protections of this title and titles II and III during the period beginning on the date of the member's receipt of the order and ending on the date on which the member reports for

military service (or, if the order is revoked before the member so reports, or the date on which the order is revoked).

[''(b) PERSONS ORDERED TO REPORT FOR INDUCTION.—A person who has been ordered to report for induction under the Military Selective Service Act (50 U.S.C. App. 451 et seq.) is entitled to the rights and protections provided a servicemember under this title and titles II and III during the period beginning on the date of receipt of the order for induction and ending on the date on which the person reports for induction, on the date on which the order is revoked).

[''SEC. 107. WAIVER OF RIGHTS PURSUANT TO WRITTEN AGREEMENT.

[''(a) IN GENERAL.—A servicemember may waive any of the rights and protections provided by this Act. In the case of a waiver that permits an action described in subsection (b), the waiver is effective only if made pursuant to a written agreement of the parties that is executed during or after the servicemember's period of military service. The written agreement shall specify the legal instrument to which the waiver applies and, if the servicemember is not a party to that instrument, the servicemember concerned.

[''(b) ACTIONS REQUIRING WAIVERS IN WRITING.—The requirement in subsection (a) for a written waiver applies to the following:

[''(1) The modification, termination, or cancellation of—

[''(A) a contract, lease, or bailment; or

[''(B) an obligation secured by a mortgage, trust, deed, lien, or other security in the nature of a mortgage.

[''(2) The repossession, retention, foreclosure, sale, forfeiture, or taking possession of property that—

[''(A) is security for any obligation; or

[''(B) was purchased or received under a contract, lease, or bailment.

[''(c) COVERAGE OF PERIODS AFTER ORDERS RECEIVED.—For the purposes of this section—

[''(1) a person to whom section 106 applies shall be considered to be a servicemember; and

[''(2) the period with respect to such a person specified in subsection (a) or (b), as the case may be, of section 106 shall be considered to be a period of military service.

[''SEC. 108. EXERCISE OF RIGHTS UNDER ACT NOT TO AFFECT CERTAIN FUTURE FINANCIAL TRANSACTIONS.

[''Application by a servicemember for, or receipt by a servicemember of, a stay, postponement, or suspension pursuant to this Act in the payment of a tax, fine, penalty, insurance premium, or other civil obligation or liability of that servicemember shall not itself (without regard to other considerations) provide the basis for any of the following:

[''(1) A determination by a lender or other person that the servicemember is unable to pay the civil obligation or liability in accordance with its terms.

[''(2) With respect to a credit transaction between a creditor and the servicemember—

[''(A) a denial or revocation of credit by the creditor;

[''(B) a change by the creditor in the terms of an existing credit arrangement; or

[''(C) a refusal by the creditor to grant credit to the servicemember in substantially the amount or on substantially the terms requested.

[''(3) An adverse report relating to the creditworthiness of the servicemember by or to a person engaged in the practice of assembling or evaluating consumer credit information.

[''(4) A refusal by an insurer to insure the servicemember.

[''(5) An annotation in a servicemember's record by a creditor or a person engaged in the practice of assembling or evaluating consumer credit information, identifying the servicemember as a member of the National Guard or a reserve component.

[''(6) A change in the terms offered or conditions required for the issuance of insurance.

[''SEC. 109. LEGAL REPRESENTATIVES.

[''(a) REPRESENTATIVE.—A legal representative of a servicemember for purposes of this Act is either of the following:

[''(1) An attorney acting on the behalf of a servicemember.

[''(2) An individual possessing a power of attorney.

[''(b) APPLICATION.—Whenever the term 'servicemember' is used in this Act, such term shall be treated as including a reference to a legal representative of the servicemember.

[''TITLE II—GENERAL RELIEF

[''SEC. 201. PROTECTION OF SERVICEMEMBERS AGAINST DEFAULT JUDGMENTS.

[''(a) APPLICABILITY OF SECTION.—This section applies to any civil action or proceeding in which the defendant does not make an appearance.

[''(b) AFFIDAVIT REQUIREMENT.—

[''(1) PLAINTIFF TO FILE AFFIDAVIT.—In any action or proceeding covered by this section, the court, before entering judgment for the plaintiff, shall require the plaintiff to file with the court an affidavit—

[''(A) stating whether or not the defendant is in military service and showing necessary facts to support the affidavit; or

[''(B) if the plaintiff is unable to determine whether or not the defendant is in military service, stating that the plaintiff is unable to determine whether or not the defendant is in military service.

[''(2) APPOINTMENT OF ATTORNEY TO REPRESENT DEFENDANT IN MILITARY SERVICE.—If in an action covered by this section it appears that the defendant is in military service, the court may not enter a judgment until after the court appoints an attorney to represent the defendant. If an attorney appointed under this section to represent a servicemember cannot locate the servicemember, actions by the attorney in the case shall not waive any defense of the servicemember or otherwise bind the servicemember.

[''(3) DEFENDANT'S MILITARY STATUS NOT ASCERTAINED BY AFFIDAVIT.—If based upon the affidavits filed in such an action, the court is unable to determine whether the defendant is in military service, the court, before entering judgment, may require the plaintiff to file a bond in an amount approved by the court. If the defendant is later found to be in military service, the bond shall be available to indemnify the defendant against any loss or damage the defendant may suffer by reason of any judgment for the plaintiff against the defendant, should the judgment be set aside in whole or in part. The bond shall remain in effect until expiration of the time for appeal and setting aside of a judgment under applicable Federal or State law or regulation or under any applicable ordinance of a political subdivision of a State. The court may issue such orders or enter such judgments as the court determines necessary to protect the rights of the defendant under this Act.

[''(4) SATISFACTION OF REQUIREMENT FOR AFFIDAVIT.—The requirement for an affidavit under paragraph (1) may be satisfied by a statement, declaration, verification, or certificate, in writing, subscribed and certified or declared to be true under penalty of perjury.

[''(c) PENALTY FOR MAKING OR USING FALSE AFFIDAVIT.—A person who makes or uses an affidavit permitted under subsection (b) (or a statement, declaration, verification, or certificate as authorized under subsection (b)(4)) knowing it to be false, shall be fined as provided in title 18, United States Code, imprisoned for not more than one year, or both.

[''(d) STAY OF PROCEEDINGS.—In an action covered by this section in which the defendant is in military service, the court shall grant a stay of proceedings for a minimum period of 90 days under this subsection upon application of counsel, or on the court's own motion, if the court determines that—

[''(1) there may be a defense to the action and a defense cannot be presented without the presence of the defendant; or

[''(2) after due diligence, counsel has been unable to contact the defendant or otherwise determine if a meritorious defense exists.

[''(e) INAPPLICABILITY OF SECTION 202 PROCEDURES.—A stay of proceedings under subsection (d) shall not be controlled by procedures or requirements under section 202.

[''(f) SECTION 202 PROTECTION.—If a servicemember who is a defendant in an action covered by this section receives actual notice of the action, the servicemember may request a stay of proceeding under section 202.

[''(g) VACATION OR SETTING ASIDE OF DEFAULT JUDGMENTS.—

[''(1) AUTHORITY FOR COURT TO VACATE OR SET ASIDE JUDGMENT.—If a default judgment is entered in an action covered by this section against a servicemember during the servicemember's period of military service (or within 60 days after termination of or release from such military service), the court entering the judgment shall, upon application by or on behalf of the servicemember, reopen the judgment for the purpose of allowing the servicemember to defend the action if it appears that—

[''(A) the servicemember was materially affected by reason of that military service in making a defense to the action; and

[''(B) the servicemember has a meritorious or legal defense to the action or some part of it.

[''(2) TIME FOR FILING APPLICATION.—An application under this subsection must be filed not later than 90 days after the date of the termination of or release from military service.

[''(h) PROTECTION OF BONA FIDE PURCHASER.—If a court vacates, sets aside, or reverses a default judgment against a servicemember and the vacating, setting aside, or reversing is because of a provision of this Act, that action shall not impair a right or title acquired by a bona fide purchaser for value under the default judgment.

[''SEC. 202. STAY OF PROCEEDINGS WHEN SERVICEMEMBER DEFENDANT HAS NOTICE.

[''(a) APPLICABILITY OF SECTION.—This section applies to any civil action or proceeding in which the defendant at the time of filing an application under this section—

[''(1) is in military service or is within 90 days after termination of or release from military service; and

[''(2) has received notice of the action or proceeding.

[''(b) AUTOMATIC STAY.—

[''(1) AUTHORITY FOR STAY.—At any stage before final judgment in a civil action or proceeding in which a servicemember described in subsection (a) is a party, the court may on its own motion and shall, upon application by the servicemember, stay the action for a period of not less than 90 days, if the conditions in paragraph (2) are met.

[''(2) CONDITIONS FOR STAY.—An application for a stay under paragraph (1) shall include the following:

[''(A) A letter or other communication setting forth facts stating the manner in which

current military duty requirements materially affect the servicemember's ability to appear and stating a date when the servicemember will be available to appear.

[''(B) A letter or other communication from the servicemember's commanding officer stating that the servicemember's current military duty prevents appearance and that military leave is not authorized for the servicemember at the time of the letter.

[''(c) APPLICATION NOT A WAIVER OF DEFENSES.—An application for a stay by a servicemember or a servicemember's representative under this section does not constitute an appearance for jurisdictional purposes and does not constitute a waiver of any substantive or procedural defense (including a defense relating to lack of personal jurisdiction).

[''(d) ADDITIONAL STAY.—

[''(1) APPLICATION.—A servicemember who is granted a stay of a civil action or proceeding under subsection (b) may apply for an additional stay based on continuing material affect of military duty on the servicemember's ability to appear. Such an application may be made by the servicemember at the time of the initial application under subsection (b) or when it appears that the servicemember is unavailable to prosecute or defend the action. The same information required under subsection (b)(2) shall be included in an application under this subsection.

[''(2) APPOINTMENT OF COUNSEL WHEN ADDITIONAL STAY REFUSED.—If the court refuses to grant an additional stay of proceedings under paragraph (1), the court shall appoint counsel to represent the servicemember in the action or proceeding.

[''(e) COORDINATION WITH SECTION 201.—A servicemember who applies for a stay under this section and is unsuccessful may not seek the protections afforded by section 201.

[''(f) INAPPLICABILITY TO SECTION 301.—The protections of this section do not apply to section 301.

["SEC. 203. FINES AND PENALTIES UNDER CONTRACTS.

[''(a) PROHIBITION OF PENALTIES.—When an action for compliance with the terms of a contract is stayed pursuant to this Act, a penalty shall not accrue for failure to comply with the terms of the contract during the period of the stay.

[''(b) REDUCTION OR WAIVER OF FINES OR PENALTIES.—If a servicemember fails to perform an obligation arising under a contract and a penalty is incurred arising from that nonperformance, a court may reduce or waive the fine or penalty if—

[''(1) the servicemember was in military service at the time the fine or penalty was incurred; and

[''(2) the ability of the servicemember to perform the obligation was materially affected by such military service.

["SEC. 204. STAY OR VACATION OF EXECUTION OF JUDGMENTS, ATTACHMENTS, AND GARNISHMENTS.

[''(a) COURT ACTION UPON MATERIAL AFFECT DETERMINATION.—If a servicemember, in the opinion of the court, is materially affected by reason of military service in complying with a court judgment or order, the court may on its own motion and shall on application by the servicemember—

[''(1) stay the execution of such judgment or order entered against the servicemember; and

[''(2) vacate or stay an attachment or garnishment of property, money, or debts in the possession of the servicemember or a third party, whether before or after such judgment.

[''(b) APPLICABILITY.—This section applies to an action or proceeding commenced in a court against a servicemember before or during the period of the servicemember's military service or within 60 days after such service terminates.

["SEC. 205. DURATION AND TERM OF STAYS; CODEFENDANTS NOT IN SERVICE.

[''(a) PERIOD OF STAY.—A stay of an action, proceeding, attachment, or execution made pursuant to the provisions of this Act by a court may be ordered for the period of military service and 90 days thereafter, or for any part of that period. The court may set the terms and amounts for such installment payments as is considered reasonable by the court.

[''(b) CODEFENDANTS.—If the servicemember is a codefendant with others who are not in military service and who are not entitled to the relief and protections provided under this Act, the plaintiff may proceed against those other defendants with the approval of the court.

[''(c) INAPPLICABILITY OF SECTION.—This section does not apply to sections 202 and 701.

["SEC. 206. STATUTE OF LIMITATIONS.

[''(a) TOLLING OF STATUTES OF LIMITATION DURING MILITARY SERVICE.—The period of a servicemember's military service may not be included in computing any period limited by law, regulation, or order for the bringing of any action or proceeding in a court, or in any board, bureau, commission, department, or other agency of a State (or political subdivision of a State) or the United States by or against the servicemember or the servicemember's heirs, executors, administrators, or assigns.

[''(b) REDEMPTION OF REAL PROPERTY.—A period of military service may not be included in computing any period provided by law for the redemption of real property sold or forfeited to enforce an obligation, tax, or assessment.

[''(c) INAPPLICABILITY TO INTERNAL REVENUE LAWS.—This section does not apply to any period of limitation prescribed by or under the internal revenue laws of the United States.

["SEC. 207. MAXIMUM RATE OF INTEREST ON DEBTS INCURRED BEFORE MILITARY SERVICE.

[''(a) INTEREST RATE LIMITATION.—

[''(1) 6-PERCENT LIMIT.—An obligation or liability bearing interest at a rate in excess of 6 percent per year that is incurred by a servicemember, or the servicemember and the servicemember's spouse jointly, before the servicemember enters military service shall not bear interest at a rate in excess of 6 percent per year during the period of military service.

[''(2) APPLICABILITY TO STUDENT LOANS.—Notwithstanding section 428(d) of the Higher Education Act of 1965 (20 U.S.C. 1078(d)), paragraph (1) applies with respect to an obligation or liability of a servicemember, or the servicemember and the servicemember's spouse jointly, entered into under the Higher Education Act of 1965 (20 U.S.C. 1001 et seq.)

[''(3) FORGIVENESS OF INTEREST IN EXCESS OF 6 PERCENT.—Interest at a rate in excess of 6 percent per year that would otherwise be incurred but for the prohibition in paragraph (1) is forgiven.

[''(4) PREVENTION OF ACCELERATION OF PRINCIPAL.—The amount of any periodic payment due from a servicemember under the terms of the instrument that created an obligation or liability covered by this section shall be reduced by the amount of the interest forgiven under paragraph (3) that is allocable to the period for which such payment is made.

[''(b) IMPLEMENTATION OF LIMITATION.—

[''(1) WRITTEN NOTICE TO CREDITOR.—In order for an obligation or liability of a servicemember to be subject to the interest rate limitation in subsection (a), the servicemember shall provide to the creditor written notice and a copy of the military orders calling the servicemember to military service and any orders further extending military service, not later than 180 days after the date of the servicemember's termination or release from military service.

[''(2) LIMITATION EFFECTIVE AS OF DATE OF ORDER TO ACTIVE DUTY.—Upon receipt of written notice and a copy of orders calling a servicemember to military service, the creditor shall treat the debt in accordance with subsection (a), effective as of the date on which the servicemember is called to military service.

[''(c) CREDITOR PROTECTION.—A court may grant a creditor relief from the limitations of this section if, in the opinion of the court, the ability of the servicemember to pay interest upon the obligation or liability at a rate in excess of 6 percent per year is not materially affected by reason of the servicemember's military service.

[''(d) INTEREST DEFINED.—As used in this section, the term 'interest' means simple interest plus service charges, renewal charges, fees, or any other charges (except bona fide insurance) with respect to an obligation or liability.

["TITLE III—RENT, INSTALLMENT CONTRACTS, MORTGAGES, LIENS, ASSIGNMENT, LEASES

["SEC. 301. EVICTIONS AND DISTRESS.

[''(a) COURT-ORDERED EVICTION.—Except by court order, a landlord (or another person with paramount title) may not—

[''(1) evict a servicemember, or the dependents of a servicemember, during a period of military service of the servicemember, from premises—

[''(A) that are occupied or intended to be occupied primarily as a residence; and

[''(B) for which the monthly rent does not exceed the greater of—

[''(i) $1,950; or

[''(ii) the monthly basic allowance for housing to which the servicemember is entitled under section 403 of title 37, United States Code; or

[''(2) subject such premises to a distress during the period of military service.

[''(b) STAY OF EXECUTION.—

[''(1) COURT AUTHORITY.—Upon an application for eviction or distress with respect to premises covered by this section, the court may on its own motion and shall, if a request is made by or on behalf of a servicemember whose ability to pay the agreed rent is materially affected by military service—

[''(A) stay the proceedings for a period of 90 days, unless in the opinion of the court, justice and equity require a longer or shorter period of time; or

[''(B) adjust the obligation under the lease to preserve the interests of all parties.

[''(2) RELIEF TO LANDLORD.—If a stay is granted under paragraph (1), the court may grant to the landlord (or other person with paramount title) such relief as equity may require.

[''(c) PENALTIES.—

[''(1) MISDEMEANOR.—Except as provided in subsection (a), a person who knowingly takes part in an eviction or distress described in subsection (a), or who knowingly attempts to do so, shall be fined as provided in title 18, United States Code, imprisoned for not more than one year, or both.

[''(2) PRESERVATION OF OTHER REMEDIES AND RIGHTS.—The remedies and rights provided under this section are in addition to and do not preclude any remedy for wrongful conversion (or wrongful eviction) otherwise available under the law to the person claiming relief under this section, including any award for consequential and punitive damages.

[''(d) RENT ALLOTMENT FROM PAY OF SERVICEMEMBER.—To the extent required by a court order related to property which is the subject of a court action under this section, the Secretary concerned shall make an allotment from the pay of a servicemember to satisfy the terms of such order, except that any such allotment shall be subject to regulations prescribed by the Secretary concerned establishing the maximum amount of pay of servicemembers that may be allotted under this subsection.

[''(e) LIMITATION OF APPLICABILITY.—Section 202 is not applicable to this section.

["SEC. 302. PROTECTION UNDER INSTALLMENT CONTRACTS FOR PURCHASE OR LEASE.

[''(a) PROTECTION UPON BREACH OF CONTRACT.—

[''(1) PROTECTION AFTER ENTERING MILITARY SERVICE.—After a servicemember enters military service, a contract by the servicemember for—

[''(A) the purchase of real or personal property (including a motor vehicle); or

[''(B) the lease or bailment of such property,

may not be rescinded or terminated for a breach of terms of the contract occurring before or during that person's military service, nor may the property be repossessed for such breach without a court order.

[''(2) APPLICABILITY.—This section applies only to a contract for which a deposit or installment has been paid by the servicemember before the servicemember enters military service.

[''(b) PENALTIES.—

[''(1) MISDEMEANOR.—A person who knowingly resumes possession of property in violation of subsection (a), or in violation of section 108, or who knowingly attempts to do so, shall be fined as provided in title 18, United States Code, imprisoned for not more than one year, or both.

[''(2) PRESERVATION OF OTHER REMEDIES AND RIGHTS.—The remedies and rights provided under this section are in addition to and do not preclude any remedy for wrongful conversion otherwise available under law to the person claiming relief under this section, including any award for consequential and punitive damages.

[''(c) AUTHORITY OF COURT.—In a hearing based on this section, the court—

[''(1) may order repayment to the servicemember of all or part of the prior installments or deposits as a condition of terminating the contract and resuming possession of the property;

[''(2) may, on its own motion, and shall on application by a servicemember when the servicemember's ability to comply with the contract is materially affected by military service, stay the proceedings for a period of time as, in the opinion of the court, justice and equity require; or

[''(3) may make other disposition as is equitable to preserve the interests of all parties.

["SEC. 303. MORTGAGES AND TRUST DEEDS.

[''(a) MORTGAGE AS SECURITY.—This section applies only to an obligation on real or personal property owned by a servicemember that—

[''(1) originated before the period of the servicemember's military service and for which the servicemember is still obligated; and

[''(2) is secured by a mortgage, trust deed, or other security in the nature of a mortgage.

[''(b) STAY OF PROCEEDINGS AND ADJUSTMENT OF OBLIGATION.—In an action filed during, or within 90 days after, a servicemember's period of military service to enforce an obligation described in subsection (a), the court may after a hearing and on its own motion and shall upon application by a servicemember when the servicemember's ability to comply with the obligation is materially affected by military service—

[''(1) stay the proceedings for a period of time as justice and equity require, or

[''(2) adjust the obligation to preserve the interests of all parties.

[''(c) SALE OR FORECLOSURE.—A sale, foreclosure, or seizure of property for a breach of an obligation described in subsection (a) shall not be valid if made during, or within 90 days after, the period of the servicemember's military service except—

[''(1) upon a court order granted before such sale, foreclosure, or seizure with a return made and approved by the court; or

[''(2) if made pursuant to an agreement as provided in section 108.

[''(d) PENALTIES.—

[''(1) MISDEMEANOR.—A person who knowingly makes or causes to be made a sale, foreclosure, or seizure of property that is prohibited by subsection (c), or who knowingly attempts to do so, shall be fined as provided in title 18, United States Code, imprisoned for not more than one year, or both.

[''(2) PRESERVATION OF OTHER REMEDIES.—The remedies and rights provided under this section are in addition to and do not preclude any remedy for wrongful conversion otherwise available under law to the person claiming relief under this section, including consequential and punitive damages.

["SEC. 304. SETTLEMENT OF STAYED CASES RELATING TO PERSONAL PROPERTY.

[''(a) APPRAISAL OF PROPERTY.—When a stay is granted pursuant to this Act in a proceeding to foreclose a mortgage on or to repossess personal property, or to rescind or terminate a contract for the purchase of personal property, the court may appoint three disinterested parties to appraise the property.

[''(b) EQUITY PAYMENT.—Based on the appraisal, and if undue hardship to the servicemember's dependents will not result, the court may order that the amount of the servicemember's equity in the property be paid to the servicemember, or the servicemember's dependents, as a condition of foreclosing the mortgage, repossessing the property, or rescinding or terminating the contract.

["SEC. 305. TERMINATION OF LEASES BY LESSEES.

[''(a) COVERED LEASES OF REAL PROPERTY.—This section applies to the lease of premises occupied, or intended to be occupied, by a servicemember or a servicemember's dependents for a residential, professional, business, agricultural, or similar purpose if—

[''(1) the lease is executed by or on behalf of a person who thereafter and during the term of the lease enters military service; or

[''(2) the servicemember, while in military service, executes a lease and thereafter receives military orders for a permanent change of station or to deploy with a military unit for a period of not less than 90 days.

[''(b) COVERED LEASES OF VEHICLES.—This section applies to the lease of a motor vehicle used, or intended to be used, by a servicemember or a servicemember's dependents if the lease is executed by or on behalf of a person who thereafter and during the term of the lease enters military service.

[''(c) NOTICE TO LESSOR.—

[''(1) DELIVERY OF NOTICE.—A lease described in subsection (a) or (b) is terminated when written notice is delivered by the lessee to the lessor (or the lessor's grantee) or to the lessor's agent (or the agent's grantee).

[''(2) TIME FOR NOTICE.—The written notice may be delivered at any time after the lessee's entry into military service or, in the case of a lease described in subsection (a), the date of the military orders for a permanent change of station or to deploy for a period of not less than 90 days.

[''(3) NATURE OF NOTICE.—Delivery may be accomplished—

[''(A) by hand delivery;

[''(B) by private business carrier; or

[''(C) by placing the written notice in an envelope with sufficient postage and addressed to the lessor (or the lessor's grantee) or to the lessor's agent (or the agent's grantee) and depositing the written notice in the United States mails.

[''(d) EFFECTIVE DATE OF TERMINATION.—

[''(1) LEASE WITH MONTHLY RENT.—Termination of a lease providing for monthly payment of rent shall be effective 30 days after the first date on which the next rental payment is due and payable after the date on which the notice is delivered.

[''(2) OTHER LEASE.—All other leases terminate on the last day of the month following the month in which the notice is delivered.

[''(e) ARREARAGES.—Rents or lease amounts unpaid for the period preceding termination shall be paid on a prorated basis.

[''(f) AMOUNTS PAID IN ADVANCE.—Rents or lease amounts paid in advance for a period succeeding termination shall be refunded to the lessee by the lessor (or the lessor's assignee or the assignee's agent).

[''(g) RELIEF TO LESSOR.—Upon application by the lessor to a court before the termination date provided in the written notice, relief granted by this section to a servicemember may be modified as justice and equity require.

[''(h) PENALTIES.—

[''(1) MISDEMEANOR.—Any person who knowingly seizes, holds, or detains the personal effects, security deposit, or other property of a servicemember or a servicemember's dependent who lawfully terminates a lease covered by this section, or who knowingly interferes with the removal of such property from premises covered by such lease, for the purpose of subjecting or attempting to subject any of such property to a claim for rent or lease payments accruing after the date of termination of such lease, or attempts to do so, shall be fined as provided in title 18, United States Code, imprisoned for not more than one year, or both.

[''(2) PRESERVATION OF OTHER REMEDIES.—The remedy and rights provided under this section are in addition to and do not preclude any remedy for wrongful conversion otherwise available under law to the person claiming relief under this section, including any award for consequential or punitive damages.

["SEC. 306. PROTECTION OF LIFE INSURANCE POLICY.

[''(a) ASSIGNMENT OF POLICY PROTECTED.—If a life insurance policy on the life of a servicemember is assigned before military service to secure the payment of an obligation, the assignee of the policy (except the insurer in connection with a policy loan) may not exercise, during a period of military service of the servicemember or within one year thereafter, any right or option obtained under the assignment without a court order.

[''(b) EXCEPTION.—The prohibition in subsection (a) shall not apply—

[''(1) if the assignee has the written consent of the insured made during the period described in subsection (a);

[''(2) when the premiums on the policy are due and unpaid; or

[''(3) upon the death of the insured.

[''(c) ORDER REFUSED BECAUSE OF MATERIAL AFFECT.—A court which receives an application for an order required under subsection (a) may refuse to grant such order if

the court determines the ability of the servicemember to comply with the terms of the obligation is materially affected by military service.

[''(d) TREATMENT OF GUARANTEED PREMIUMS.—For purposes of this subsection, premiums guaranteed under the provisions of title IV shall not be considered due and unpaid.

[''(e) PENALTIES.—

[''(1) MISDEMEANOR.—A person who knowingly takes an action contrary to this section, or attempts to do so, shall be fined as provided in title 18, United States Code, imprisoned for not more than one year, or both.

[''(2) PRESERVATION OF OTHER REMEDIES.—The remedy and rights provided under this section are in addition to and do not preclude any remedy for wrongful conversion otherwise available under law to the person claiming relief under this section, including any consequential or punitive damages.

["SEC. 307. ENFORCEMENT OF STORAGE LIENS.

[''(a) LIENS.—

[''(1) LIMITATION ON FORECLOSURE OR ENFORCEMENT.—A person holding a lien on the property or effects of a servicemember may not, during any period of military service of the servicemember and for 90 days thereafter, foreclose or enforce any lien on such property or effects without a court order granted before foreclosure or enforcement.

[''(2) LIEN DEFINED.—For the purposes of paragraph (1), the term 'lien' includes a lien for storage, repair, or cleaning of the property or effects of a servicemember or a lien on such property or effects for any other reason.

[''(b) STAY OF PROCEEDINGS.—In a proceeding to foreclose or enforce a lien subject to this section, the court may on its own motion, and shall if requested by a servicemember whose ability to comply with the obligation resulting in the proceeding is materially affected by military service—

[''(1) stay the proceeding for a period of time as justice and equity require; or

[''(2) adjust the obligation to preserve the interests of all parties.

The provisions of this subsection do not affect the scope of section 303.

[''(c) PENALTIES.—

[''(1) MISDEMEANOR.—A person who knowingly takes an action contrary to this section, or attempts to do so, shall be fined as provided in title 18, United States Code, imprisoned for not more than one year, or both.

[''(2) PRESERVATION OF OTHER REMEDIES.—The remedy and rights provided under this section are in addition to and do not preclude any remedy for wrongful conversion otherwise available under law to the person claiming relief under this section, including any consequential or punitive damages.

["SEC. 308. EXTENSION OF PROTECTIONS TO DEPENDENTS.

[''Upon application to a court, a dependent of a servicemember is entitled to the protections of this title if the dependent's ability to comply with a lease, contract, bailment, or other obligation is materially affected by reason of the servicemember's military service.

["TITLE IV—INSURANCE

["SEC. 401. DEFINITIONS.

[''For the purposes of this title:

[''(1) POLICY.—The term 'policy' means any contract for whole, endowment, universal, or term life insurance, including any benefit in the nature of such insurance arising out of membership in any fraternal or beneficial association which—

[''(A) provides that the insurer may not—

[''(i) decrease the amount of coverage or increase the amount of premiums if the insured is in military service; or

[''(ii) limit or restrict coverage for any activity required by military service; and

[''(B) is in force not less than 180 days before the date of the insured's entry into military service and at the time of application under this title.

[''(2) PREMIUM.—The term 'premium' means the amount specified in an insurance policy to be paid to keep the policy in force.

[''(3) INSURED.—The term 'insured' means a servicemember whose life is insured under a policy.

[''(4) INSURER.—The term 'insurer' includes any firm, corporation, partnership, association, or business that is chartered or authorized to provide insurance and issue contracts or policies by the laws of a State or the United States.

["SEC. 402. INSURANCE RIGHTS AND PROTECTIONS.

[''(a) RIGHTS AND PROTECTIONS.—The rights and protections under this title apply to the insured when the insured, the insured's designee, or the insured's beneficiary applies in writing for protection under this title, unless the Secretary of Veterans Affairs determines that the insured's policy is not entitled to protection under this title.

[''(b) NOTIFICATION AND APPLICATION.—The Secretary of Veterans Affairs shall notify the Secretary concerned of the procedures to be used to apply for the protections provided under this title. The applicant shall send the original application to the insurer and a copy to the Secretary of Veterans Affairs.

[''(c) LIMITATION ON AMOUNT.—The total amount of life insurance coverage protection provided by this title for a servicemember may not exceed $250,000, or an amount equal to the Servicemember's Group Life Insurance maximum limit, whichever is greater, regardless of the number of policies submitted.

["SEC. 403. APPLICATION FOR INSURANCE PROTECTION.

[''(a) APPLICATION PROCEDURE.—An application for protection under this title shall—

[''(1) be in writing and signed by the insured, the insured's designee, or the insured's beneficiary, as the case may be;

[''(2) identify the policy and the insurer; and

[''(3) include an acknowledgement that the insured's rights under the policy are subject to and modified by the provisions of this title.

[''(b) ADDITIONAL REQUIREMENTS.—The Secretary of Veterans Affairs may require additional information from the applicant, the insured, and the insurer to determine if the policy is entitled to protection under this title.

[''(c) NOTICE TO THE SECRETARY BY THE INSURED.—Upon receipt of the application of the insured, the insurer shall furnish a report concerning the policy to the Secretary of Veterans Affairs as required by regulations prescribed by the Secretary.

[''(d) POLICY MODIFICATION.—Upon application for protection under this title, the insured and the insurer shall have constructively agreed to any policy modification necessary to give this title full force and effect.

["SEC. 404. POLICIES ENTITLED TO PROTECTION AND LAPSE OF POLICIES.

[''(a) DETERMINATION.—The Secretary of Veterans Affairs shall determine whether a policy is entitled to protection under this title and shall notify the insured and the insurer of that determination.

[''(b) LAPSE PROTECTION.—A policy that the Secretary determines is entitled to protection under this title shall not lapse or otherwise terminate or be forfeited for the nonpayment of a premium, or interest or indebtedness on a premium, after the date of the application for protection.

[''(c) TIME APPLICATION.—The protection provided by this title applies during the insured's period of military service and for a period of two years thereafter.

["SEC. 405. POLICY RESTRICTIONS.

[''(a) DIVIDENDS.—While a policy is protected under this title, a dividend or other monetary benefit under a policy may not be paid to an insured or used to purchase dividend additions without the approval of the Secretary of Veterans Affairs. If such approval is not obtained, the dividends or benefits shall be added to the value of the policy to be used as a credit when final settlement is made with the insurer.

[''(b) SPECIFIC RESTRICTIONS.—While a policy is protected under this title, cash value, loan value, withdrawal of dividend accumulation, unearned premiums, or other value of similar character may not be available to the insured without the approval of the Secretary. The right of the insured to change a beneficiary designation or select an optional settlement for a beneficiary shall not be affected by the provisions of this title.

["SEC. 406. DEDUCTION OF UNPAID PREMIUMS.

[''(a) SETTLEMENT OF PROCEEDS.—If a policy matures as a result of a servicemember's death or otherwise during the period of protection of the policy under this title, the insurer in making settlement shall deduct from the insurance proceeds the amount of the unpaid premiums guaranteed under this title, together with interest due at the rate fixed in the policy for policy loans.

[''(b) INTEREST RATE.—If the interest rate is not specifically fixed in the policy, the rate shall be the same as for policy loans in other policies issued by the insurer at the time the insured's policy was issued.

[''(c) REPORTING REQUIREMENT.—The amount deducted under this section, if any, shall be reported by the insurer to the Secretary of Veterans Affairs.

["SEC. 407. PREMIUMS AND INTEREST GUARANTEED BY UNITED STATES.

[''(a) GUARANTEE OF PREMIUMS AND INTEREST BY THE UNITED STATES.—

[''(1) GUARANTEE.—Payment of premiums, and interest on premiums at the rate specified in section 406, which become due on a policy under the protection of this title is guaranteed by the United States. If the amount guaranteed is not paid to the insurer before the period of insurance protection under this title expires, the amount due shall be treated by the insurer as a policy loan on the policy.

[''(2) POLICY TERMINATION.—If, at the expiration of insurance protection under this title, the cash surrender value of a policy is less than the amount due to pay premiums and interest on premiums on the policy, the policy shall terminate. Upon such termination, the United States shall pay the insurer the difference between the amount due and the cash surrender value.

[''(b) RECOVERY FROM INSURED OF AMOUNTS PAID BY THE UNITED STATES.—

[''(1) DEBT PAYABLE TO THE UNITED STATES.—The amount paid by the United States to an insurer under this title shall be a debt payable to the United States by the insured on whose policy payment was made.

[''(2) COLLECTION.—Such amount may be collected by the United States, either as an offset from any amount due the insured by the United States or as otherwise authorized by law.

[''(3) DEBT NOT DISCHARGEABLE IN BANKRUPTCY.—Such debt payable to the United States is not dischargeable in bankruptcy proceedings.

[''(c) CREDITING OF AMOUNTS RECOVERED.—Any amounts received by the United States as repayment of debts incurred by an insured under this title shall be credited to the appropriation for the payment of claims under this title.

[“SEC. 408. REGULATIONS.

[“The Secretary of Veterans Affairs shall prescribe regulations for the implementation of this title.

[“SEC. 409. REVIEW OF FINDINGS OF FACT AND CONCLUSIONS OF LAW.

[“The findings of fact and conclusions of law made by the Secretary of Veterans Affairs in administering this title may be reviewed by the Board of Veterans’ Appeals and the United States Court of Appeals for Veterans Claims.

[“TITLE V—TAXES AND PUBLIC LANDS

[“SEC. 501. TAXES RESPECTING PERSONAL PROPERTY, MONEY, CREDITS, AND REAL PROPERTY.

[“(a) APPLICATION.—This section applies in any case in which a tax or assessment, whether general or special (other than a tax on personal income), falls due and remains unpaid before or during a period of military service with respect to a servicemember’s—

[“(1) personal property; or

[“(2) real property occupied for dwelling, professional, business, or agricultural purposes by a servicemember or the servicemember’s dependents or employees—

[“(A) before the servicemember’s entry into military service; and

[“(B) during the time the tax or assessment remains unpaid.

[“(b) SALE OF PROPERTY.—

[“(1) LIMITATION ON SALE OF PROPERTY TO ENFORCE TAX ASSESSMENT.—Property described in subsection (a) may not be sold to enforce the collection of such tax or assessment except by court order and upon the determination by the court that military service does not materially affect the servicemember’s ability to pay the unpaid tax or assessment.

[“(2) STAY OF COURT PROCEEDINGS.—A court may stay a proceeding to enforce the collection of such tax or assessment, or sale of such property, during a period of military service of the servicemember and for a period not more than 180 days after the termination of, or release of the servicemember from, military service.

[“(c) REDEMPTION.—When property described in subsection (a) is sold or forfeited to enforce the collection of a tax or assessment, a servicemember shall have the right to redeem or commence an action to redeem the servicemember’s property during the period of military service or within 180 days after termination of or release from military service. This subsection may not be construed to shorten any period provided by the law of a State (including any political subdivision of a State) for redemption.

[“(d) INTEREST ON TAX OR ASSESSMENT.—Whenever a servicemember does not pay a tax or assessment on property described in subsection (a) when due, the amount of the tax or assessment due and unpaid shall bear interest until paid at the rate of 6 percent per year. An additional penalty or interest shall not be incurred by reason of nonpayment. A lien for such unpaid tax or assessment may include interest under this subsection.

[“(e) JOINT OWNERSHIP APPLICATION.—This section applies to all forms of property described in subsection (a) owned individually by a servicemember or jointly by a servicemember and a dependent or dependents.

[“SEC. 502. RIGHTS IN PUBLIC LANDS.

[“(a) RIGHTS NOT FORFEITED.—The rights of a servicemember to lands owned or controlled by the United States, and initiated or acquired by the servicemember under the laws of the United States (including the mining and mineral leasing laws) before military service, shall not be forfeited or prejudiced as a result of being absent from the land, or by failing to begin or complete any work or improvements to the land, during the period of military service.

[“(b) TEMPORARY SUSPENSION OF PERMITS OR LICENSES.—If a permittee or licensee under the Act of June 28, 1934 (43 U.S.C. 315 et seq.), enters military service, the permittee or licensee may suspend the permit or license for the period of military service and for 180 days after termination of or release from military service.

[“(c) REGULATIONS.—Regulations prescribed by the Secretary of the Interior shall provide for such suspension of permits and licenses and for the remission, reduction, or refund of grazing fees during the period of such suspension.

[“SEC. 503. DESERT-LAND ENTRIES.

[“(a) DESERT-LAND RIGHTS NOT FORFEITED.—A desert-land entry made or held under the desert-land laws before the entrance of the entryman or the entryman’s successor in interest into military service shall not be subject to contest or cancellation—

[“(1) for failure to expend any required amount per acre per year in improvements upon the claim;

[“(2) for failure to effect the reclamation of the claim during the period the entryman or the entryman’s successor in interest is in the military service, or for 180 days after termination of or release from military service; or

[“(3) during any period of hospitalization or rehabilitation due to an injury or disability incurred in the line of duty.

The time within which the entryman or claimant is required to make such expenditures and effect reclamation of the land shall be exclusive of the time periods described in paragraphs (2) and (3).

[“(b) SERVICE-RELATED DISABILITY.—If an entryman or claimant is honorably discharged and is unable to accomplish reclamation of, and payment for, desert land due to a disability incurred in the line of duty, the entryman or claimant may make proof without further reclamation or payments, under regulations prescribed by the Secretary of the Interior, and receive a patent for the land entered or claimed.

[“(c) FILING REQUIREMENT.—In order to obtain the protection of this section, the entryman or claimant shall, within 180 days after entry into military service, cause to be filed in the land office of the district where the claim is situated a notice communicating the fact of military service and the desire to hold the claim under this section.

[“SEC. 504. MINING CLAIMS.

[“(a) REQUIREMENTS SUSPENDED.—The provisions of section 2324 of the Revised Statutes of the United States (30 U.S.C. 28) specified in subsection (b) shall not apply to a servicemember’s claims or interests in claims, regularly located and recorded, during a period of military service and 180 days thereafter, or during any period of hospitalization or rehabilitation due to injuries or disabilities incurred in the line of duty.

[“(b) REQUIREMENTS.—The provisions in section 2324 of the Revised Statutes that shall not apply under subsection (a) are those which require that on each mining claim located after May 10, 1872, and until a patent has been issued for such claim, not less than $100 worth of labor shall be performed or improvements made during each year.

[“(c) PERIOD OF PROTECTION FROM FORFEITURE.—A mining claim or an interest in a claim owned by a servicemember that has been regularly located and recorded shall not be subject to forfeiture for nonperformance of annual assessments during the period of military service and for 180 days thereafter, or for any period of hospitalization or rehabilitation described in subsection (a).

[“(d) FILING REQUIREMENT.—In order to obtain the protections of this section, the claimant of a mining location shall, before the end of the assessment year in which military service is begun or within 60 days after the end of such assessment year, cause to be filed in the office where the location notice or certificate is recorded a notice communicating the fact of military service and the desire to hold the mining claim under this section.

[“SEC. 505. MINERAL PERMITS AND LEASES.

[“(a) SUSPENSION DURING MILITARY SERVICE.—A person holding a permit or lease on the public domain under the Federal mineral leasing laws who enters military service may suspend all operations under the permit or lease for the duration of military service and for 180 days thereafter. The term of the permit or lease shall not run during the period of suspension, nor shall any rental or royalties be charged against the permit or lease during the period of suspension.

[“(b) NOTIFICATION.—In order to obtain the protection of this section, the permittee or lessee shall, within 180 days after entry into military service, notify the Secretary of the Interior by registered mail of the fact that military service has begun and of the desire to hold the claim under this section.

[“(c) CONTRACT MODIFICATION.—This section shall not be construed to supersede the terms of any contract for operation of a permit or lease.

[“SEC. 506. PERFECTION OR DEFENSE OF RIGHTS.

[“(a) RIGHT TO TAKE ACTION NOT AFFECTED.—This title shall not affect the right of a servicemember to take action during a period of military service that is authorized by law or regulations of the Department of the Interior, for the perfection, defense, or further assertion of rights initiated or acquired before entering military service.

[“(b) AFFIDAVITS AND PROOFS.—

[“(1) IN GENERAL.—A servicemember during a period of military service may make any affidavit or submit any proof required by law, practice, or regulation of the Department of the Interior in connection with the entry, perfection, defense, or further assertion of rights initiated or acquired before entering military service before an officer authorized to provide notary services under section 1044a of title 10, United States Code, or any superior commissioned officer.

[“(2) LEGAL STATUS OF AFFIDAVITS.—Such affidavits shall be binding in law and subject to the same penalties as prescribed by section 1001 of title 18, United State Code.

[“SEC. 507. DISTRIBUTION OF INFORMATION CONCERNING BENEFITS OF TITLE.

[“(a) DISTRIBUTION OF INFORMATION BY SECRETARY CONCERNED.—The Secretary concerned shall issue to servicemembers information explaining the provisions of this title.

[“(b) APPLICATION FORMS.—The Secretary concerned shall provide application forms to servicemembers requesting relief under this title.

[“(c) INFORMATION FROM SECRETARY OF THE INTERIOR.—The Secretary of the Interior shall furnish to the Secretary concerned information explaining the provisions of this title (other than sections 501, 510, and 511) and related application forms.

[“SEC. 508. LAND RIGHTS OF SERVICEMEMBERS.

[“(a) NO AGE LIMITATIONS.—Any servicemember under the age of 21 in military service shall be entitled to the same rights under the laws relating to lands owned or controlled by the United States, including mining and mineral leasing laws, as those servicemembers who are 21 years of age.

[“(b) RESIDENCY REQUIREMENT.—Any requirement related to the establishment of a

residence within a limited time shall be suspended as to entry by a servicemember in military service until 180 days after termination of or release from military service.

[''(c) ENTRY APPLICATIONS.—Applications for entry may be verified before a person authorized to administer oaths under section 1044a of title 10, United States Code, or under the laws of the State where the land is situated.

[''SEC. 509. REGULATIONS.

[''The Secretary of the Interior may issue regulations necessary to carry out this title (other than sections 501, 510, and 511).

[''SEC. 510. INCOME TAXES.

[''(a) DEFERRAL OF TAX.—Upon notice to the Internal Revenue Service or the tax authority of a State or a political subdivision of a State, the collection of income tax on the income of a servicemember falling due before or during military service shall be deferred for a period not more than 180 days after termination of or release from military service, if a servicemember's ability to pay such income tax is materially affected by military service.

[''(b) ACCRUAL OF INTEREST OR PENALTY.—No interest or penalty shall accrue for the period of deferment by reason of nonpayment on any amount of tax deferred under this section.

[''(c) STATUTE OF LIMITATIONS.—The running of a statute of limitations against the collection of tax deferred under this section, by seizure or otherwise, shall be suspended for the period of military service of the servicemember and for an additional period of 270 days thereafter.

[''(d) APPLICATION LIMITATION.—This section shall not apply to the tax imposed on employees by section 3101 of the Internal Revenue Code of 1986.

[''SEC. 511. RESIDENCE FOR TAX PURPOSES.

[''(a) RESIDENCE OR DOMICILE.—A servicemember shall neither lose nor acquire a residence or domicile for purposes of taxation with respect to the person, personal property, or income of the servicemember by reason of being absent or present in any tax jurisdiction of the United States solely in compliance with military orders.

[''(b) MILITARY SERVICE COMPENSATION.—Compensation of a servicemember for military service shall not be deemed to be income for services performed or from sources within a tax jurisdiction of the United States if the servicemember is not a resident or domiciliary of the jurisdiction in which the servicemember is serving in compliance with military orders.

[''(c) PERSONAL PROPERTY.—

[''(1) RELIEF FROM PERSONAL PROPERTY TAXES.—The personal property of a servicemember shall not be deemed to be located or present in, or to have a situs for taxation in, the tax jurisdiction in which the servicemember is serving in compliance with military orders.

[''(2) EXCEPTION FOR PROPERTY WITHIN MEMBER'S DOMICILE OR RESIDENCE.—This subsection applies to personal property or its use within any tax jurisdiction other than the servicemember's domicile or residence.

[''(3) EXCEPTION FOR PROPERTY USED IN TRADE OR BUSINESS.—This section does not prevent taxation by a tax jurisdiction with respect to personal property used in or arising from a trade or business, if it has jurisdiction.

[''(4) RELATIONSHIP TO LAW OF STATE OF DOMICILE.—Eligibility for relief from personal property taxes under this subsection is not contingent on whether or not such taxes are paid to the State of domicile.

[''(d) INCREASE OF TAX LIABILITY.—A tax jurisdiction may not use the military compensation of a nonresident servicemember to increase the tax liability imposed on other income earned by the nonresident servicemember or spouse subject to tax by the jurisdiction.

[''(e) FEDERAL INDIAN RESERVATIONS.—An Indian servicemember whose legal residence or domicile is a Federal Indian reservation shall be taxed by the laws applicable to Federal Indian reservations and not the State where the reservation is located.

[''(f) DEFINITIONS.—For purposes of this section:

[''(1) PERSONAL PROPERTY.—The term 'personal property' means intangible and tangible property (including motor vehicles).

[''(2) TAXATION.—The term 'taxation' includes licenses, fees, or excises imposed with respect to motor vehicles and their use, if the license, fee, or excise is paid by the servicemember in the servicemember's State of domicile or residence.

[''(3) TAX JURISDICTION.—The term 'tax jurisdiction' means a State or a political subdivision of a State.

[''TITLE VI—ADMINISTRATIVE REMEDIES

[''SEC. 601. INAPPROPRIATE USE OF ACT.

[''If a court determines, in any proceeding to enforce a civil right, that any interest, property, or contract has been transferred or acquired with the intent to delay the just enforcement of such right by taking advantage of this Act, the court shall enter such judgment or make such order as might lawfully be entered or made concerning such transfer or acquisition.

[''SEC. 602. CERTIFICATES OF SERVICE; PERSONS REPORTED MISSING.

[''(a) PRIMA FACIE EVIDENCE.—In any proceeding under this Act, a certificate signed by the Secretary concerned is prima facie evidence as to any of the following facts stated in the certificate:

[''(1) That a person named is, is not, has been, or has not been in military service.

[''(2) The time and the place the person entered military service.

[''(3) The person's residence at the time the person entered military service.

[''(4) The rank, branch, and unit of military service of the person upon entry.

[''(5) The inclusive dates of the person's military service.

[''(6) The monthly pay received by the person at the date of the certificate's issuance.

[''(7) The time and place of the person's termination of or release from military service, or the person's death during military service.

[''(b) CERTIFICATES.—The Secretary concerned shall furnish a certificate under subsection (a) upon receipt of an application for such a certificate. A certificate appearing to be signed by the Secretary concerned is prima facie evidence of its contents and of the signer's authority to issue it.

[''(c) TREATMENT OF SERVICEMEMBERS IN MISSING STATUS.—A servicemember who has been reported missing is presumed to continue in service until accounted for. A requirement under this Act that begins or ends with the death of a servicemember does not begin or end until the servicemember's death is reported to, or determined by, the Secretary concerned or by a court of competent jurisdiction.

[''SEC. 603. INTERLOCUTORY ORDERS.

[''An interlocutory order issued by a court under this Act may be revoked, modified, or extended by the court upon its own motion or otherwise, upon notification to affected parties as required by the court.

[''TITLE VII—FURTHER RELIEF

[''SEC. 701. ANTICIPATORY RELIEF.

[''(a) APPLICATION FOR RELIEF.—A servicemember may, during military service or within 180 days of termination of or release from military service, apply to a court for relief—

[''(1) from any obligation or liability incurred by the servicemember before the servicemember's military service; or

[''(2) from a tax or assessment falling due before or during the servicemember's military service.

[''(b) TAX LIABILITY OR ASSESSMENT.—In a case covered by subsection (a), the court may, if the ability of the servicemember to comply with the terms of such obligation or liability or pay such tax or assessment has been materially affected by reason of military service, after appropriate notice and hearing, grant the following relief:

[''(1) STAY OF ENFORCEMENT OF REAL ESTATE CONTRACTS.—

[''(A) In the case of an obligation payable in installments under a contract for the purchase of real estate, or secured by a mortgage or other instrument in the nature of a mortgage upon real estate, the court may grant a stay of the enforcement of the obligation—

[''(i) during the servicemember's period of military service; and

[''(ii) from the date of termination of or release from military service, or from the date of application if made after termination of or release from military service.

[''(B) Any stay under this paragraph shall be—

[''(i) for a period equal to the remaining life of the installment contract or other instrument, plus a period of time equal to the period of military service of the servicemember, or any part of such combined period; and

[''(ii) subject to payment of the balance of the principal and accumulated interest due and unpaid at the date of termination or release from the applicant's military service or from the date of application in equal installments during the combined period at the rate of interest on the unpaid balance prescribed in the contract or other instrument evidencing the obligation, and subject to other terms as may be equitable.

[''(2) STAY OF ENFORCEMENT OF OTHER CONTRACTS.—

[''(A) In the case of any other obligation, liability, tax, or assessment, the court may grant a stay of enforcement—

[''(i) during the servicemember's military service; and

[''(ii) from the date of termination of or release from military service, or from the date of application if made after termination or release from military service.

[''(B) Any stay under this paragraph shall be—

[''(i) for a period of time equal to the period of the servicemember's military service or any part of such period; and

[''(ii) subject to payment of the balance of principal and accumulated interest due and unpaid at the date of termination or release from military service, or the date of application, in equal periodic installments during this extended period at the rate of interest as may be prescribed for this obligation, liability, tax, or assessment, if paid when due, and subject to other terms as may be equitable.

[''(c) AFFECT OF STAY ON FINE OR PENALTY.—When a court grants a stay under this section, a fine or penalty shall not accrue on the obligation, liability, tax, or assessment for the period of compliance with the terms and conditions of the stay.

[''SEC. 702. POWER OF ATTORNEY.

[''(a) AUTOMATIC EXTENSION.—A power of attorney of a servicemember shall be automatically extended for the period the servicemember is in a missing status (as defined in section 551(2) of title 37, United States Code) if the power of attorney—

[''(1) was duly executed by the servicemember—

[''(A) while in military service; or

[''(B) before entry into military service but after the servicemember—

[''(i) received a call or order to report for military service; or

[''(ii) was notified by an official of the Department of Defense that the person could receive a call or order to report for military service;

[''(2) designates the servicemember's spouse, parent, or other named relative as the servicemember's attorney in fact for certain, specified, or all purposes; and

[''(3) expires by its terms after the servicemember entered a missing status.

[''(b) LIMITATION ON POWER OF ATTORNEY EXTENSION.—A power of attorney executed by a servicemember may not be extended under subsection (a) if the document by its terms clearly indicates that the power granted expires on the date specified even though the servicemember, after the date of execution of the document, enters a missing status.

["SEC. 703. PROFESSIONAL LIABILITY PROTECTION.

[''(a) APPLICABILITY.—This section applies to a servicemember who—

[''(1) after July 31, 1990, is ordered to active duty (other than for training) pursuant to sections 688, 12301(a), 12301(g), 12302, 12304, 12306, or 12307 of title 10, United States Code, or who is ordered to active duty under section 12301(d) of such title during a period when members are on active duty pursuant to any of the preceding sections; and

[''(2) immediately before receiving the order to active duty—

[''(A) was engaged in the furnishing of health-care or legal services or other services determined by the Secretary of Defense to be professional services; and

[''(B) had in effect a professional liability insurance policy that does not continue to cover claims filed with respect to the servicemember during the period of the servicemember's active duty unless the premiums are paid for such coverage for such period.

[''(b) SUSPENSION OF COVERAGE.—

[''(1) SUSPENSION.—Coverage of a servicemember referred to in subsection (a) by a professional liability insurance policy shall be suspended by the insurance carrier in accordance with this subsection upon receipt of a written request from the servicemember, or the servicemember's legal representative, by the insurance carrier.

[''(2) PREMIUMS FOR SUSPENDED CONTRACTS.—A professional liability insurance carrier—

[''(A) may not require that premiums be paid by or on behalf of a servicemember for any professional liability insurance coverage suspended pursuant to paragraph (1); and

[''(B) shall refund any amount paid for coverage for the period of such suspension or, upon the election of such servicemember, apply such amount for the payment of any premium becoming due upon the reinstatement of such coverage.

[''(3) NONLIABILITY OF CARRIER DURING SUSPENSION.—A professional liability insurance carrier shall not be liable with respect to any claim that is based on professional conduct (including any failure to take any action in a professional capacity) of a servicemember that occurs during a period of suspension of that servicemember's professional liability insurance under this subsection.

[''(4) CERTAIN CLAIMS CONSIDERED TO ARISE BEFORE SUSPENSION.—For the purposes of paragraph (3), a claim based upon the failure of a professional to make adequate provision for a patient, client, or other person to receive professional services or other assistance during the period of the professional's active duty service shall be considered to be based on an action or failure to take action before the beginning of the period of the suspension of professional liability insurance under this subsection, except in a case in which professional services were provided after the date of the beginning of such period.

[''(c) REINSTATEMENT OF COVERAGE.—

[''(1) REINSTATEMENT REQUIRED.—Professional liability insurance coverage suspended in the case of any servicemember pursuant to subsection (b) shall be reinstated by the insurance carrier on the date on which that servicemember transmits to the insurance carrier a written request for reinstatement.

[''(2) TIME AND PREMIUM FOR REINSTATEMENT.—The request of a servicemember for reinstatement shall be effective only if the servicemember transmits the request to the insurance carrier within 30 days after the date on which the servicemember is released from active duty. The insurance carrier shall notify the servicemember of the due date for payment of the premium of such insurance. Such premium shall be paid by the servicemember within 30 days after receipt of that notice.

[''(3) PERIOD OF REINSTATED COVERAGE.—The period for which professional liability insurance coverage shall be reinstated for a servicemember under this subsection may not be less than the balance of the period for which coverage would have continued under the insurance policy if the coverage had not been suspended.

[''(d) INCREASE IN PREMIUM.—

[''(1) LIMITATION ON PREMIUM INCREASES.—An insurance carrier may not increase the amount of the premium charged for professional liability insurance coverage of any servicemember for the minimum period of the reinstatement of such coverage required under subsection (c)(3) to an amount greater than the amount chargeable for such coverage for such period before the suspension.

[''(2) EXCEPTION.—Paragraph (1) does not prevent an increase in premium to the extent of any general increase in the premiums charged by that carrier for the same professional liability coverage for persons similarly covered by such insurance during the period of the suspension.

[''(e) CONTINUATION OF COVERAGE OF UNAFFECTED PERSONS.—This section does not—

[''(1) require a suspension of professional liability insurance protection for any person who is not a person referred to in subsection (a) and who is covered by the same professional liability insurance as a person referred to in such subsection; or

[''(2) relieve any person of the obligation to pay premiums for the coverage not required to be suspended.

[''(f) STAY OF CIVIL OR ADMINISTRATIVE ACTIONS.—

[''(1) STAY OF ACTIONS.—A civil or administrative action for damages on the basis of the alleged professional negligence or other professional liability of a servicemember whose professional liability insurance coverage has been suspended under subsection (b) shall be stayed until the end of the period of the suspension if—

[''(A) the action was commenced during the period of the suspension;

[''(B) the action is based on an act or omission that occurred before the date on which the suspension became effective; and

[''(C) the suspended professional liability insurance would, except for the suspension, on its face cover the alleged professional negligence or other professional liability negligence or other professional liability of the servicemember.

[''(2) DATE OF COMMENCEMENT OF ACTION.—Whenever a civil or administrative action for damages is stayed under paragraph (1) in the case of any servicemember, the action shall have been deemed to have been filed on the date on which the professional liability insurance coverage of the servicemember is reinstated under subsection (c).

[''(g) EFFECT OF SUSPENSION UPON LIMITATIONS PERIOD.—In the case of a civil or administrative action for which a stay could have been granted under subsection (f) by reason of the suspension of professional liability insurance coverage of the defendant under this section, the period of the suspension of the coverage shall be excluded from the computation of any statutory period of limitation on the commencement of such action.

[''(h) DEATH DURING PERIOD OF SUSPENSION.—If a servicemember whose professional liability insurance coverage is suspended under subsection (b) dies during the period of the suspension—

[''(1) the requirement for the grant or continuance of a stay in any civil or administrative action against such servicemember under subsection (f)(1) shall terminate on the date of the death of such servicemember; and

[''(2) the carrier of the professional liability insurance so suspended shall be liable for any claim for damages for professional negligence or other professional liability of the deceased servicemember in the same manner and to the same extent as such carrier would be liable if the servicemember had died while covered by such insurance but before the claim was filed.

[''(i) DEFINITIONS.—For purposes of this section:

[''(1) The term 'active duty' has the meaning given that term in section 101(d)(1) of title 10, United States Code.

[''(2) The term 'profession' includes occupation.

[''(3) The term 'professional' includes occupational.

["SEC. 704. HEALTH INSURANCE REINSTATEMENT.

[''(a) REINSTATEMENT OF HEALTH INSURANCE.—A servicemember who, by reason of military service as defined in section 703(a)(1), is entitled to the rights and protections of this Act shall also be entitled upon termination or release from such service to reinstatement of any health insurance that—

[''(1) was in effect on the day before such service commenced; and

[''(2) was terminated effective on a date during the period of such service.

[''(b) NO EXCLUSION OR WAITING PERIOD.—The reinstatement of health care insurance coverage for the health or physical condition of a servicemember described in subsection (a), or any other person who is covered by the insurance by reason of the coverage of the servicemember, shall not be subject to an exclusion or a waiting period, if—

[''(1) the condition arose before or during the period of such service;

[''(2) an exclusion or a waiting period would not have been imposed for the condition during the period of coverage; and

[''(3) if the condition relates to the servicemember, the condition has not been determined by the Secretary of Veterans Affairs to be a disability incurred or aggravated in the line of duty (within the meaning of section 105 of title 38, United States Code).

[''(c) EXCEPTIONS.—Subsection (a) does not apply to a servicemember entitled to participate in employer-offered insurance benefits pursuant to the provisions of chapter 43 of title 38, United States Code.

[''(d) TIME FOR APPLYING FOR REINSTATEMENT.—An application under this section must be filed not later than 120 days after the date of the termination of or release from military service.

[“SEC. 705. GUARANTEE OF RESIDENCY FOR MILITARY PERSONNEL.

[“For the purposes of voting for any Federal office (as defined in section 301 of the Federal Election Campaign Act of 1971 (2 U.S.C. 431)) or a State or local office, a person who is absent from a State in compliance with military or naval orders shall not, solely by reason of that absence—

[“(1) be deemed to have lost a residence or domicile in that State, without regard to whether or not the person intends to return to that State;

[“(2) be deemed to have acquired a residence or domicile in any other State; or

[“(3) be deemed to have become a resident in or a resident of any other State.

[“SEC. 706. BUSINESS OR TRADE OBLIGATIONS.

[“(a) AVAILABILITY OF NON-BUSINESS ASSETS TO SATISFY OBLIGATIONS.—If the trade or business (without regard to the form in which such trade or business is carried out) of a servicemember has an obligation or liability for which the servicemember is personally liable, the assets of the servicemember not held in connection with the trade or business may not be available for satisfaction of the obligation or liability during the servicemember's military service.

[“(b) RELIEF TO OBLIGORS.—Upon application to a court by the holder of an obligation or liability covered by this section, relief granted by this section to a servicemember may be modified as justice and equity require.

[“SEC. 707. RETURN TO CLASSES AT NO ADDITIONAL COST.

[“(a) IN GENERAL.—Each institution of higher education that receives Federal assistance or participates in a program assisted under the Higher Education Act of 1965 (20 U.S.C. 1001 et seq.) shall permit each student who is enrolled in the institution and enters into military service—

[“(1) to return to the institution of higher education after completion of the period of military service; and

[“(2) complete, at no additional cost, each class the student was unable to complete as a result of the period of military service.

[“(b) INSTITUTION OF HIGHER EDUCATION DEFINED.—In this section, the term ‘institution of higher education’ has the meaning given the term in section 101 of the Higher Education Act of 1965 (20 U.S.C. 1001).”.

[SEC. 2. CONFORMING AMENDMENTS.

[(a) MILITARY SELECTIVE SERVICE ACT.—Section 14 of the Military Selective Service Act (50 U.S.C. App. 464) is repealed.

[(b) TITLE 5, UNITED STATES CODE.—(1) Section 5520a(k)(2)(A) of title 5, United States Code, is amended by striking “Soldiers' and Sailors' Civil Relief Act of 1940” and inserting “Servicemembers Civil Relief Act”; and

[(2) Section 5569(e) of title 5, United States Code, is amended—

[(A) in paragraph (1), by striking “provided by the Soldiers' and Sailors' Civil Relief Act of 1940” and all that follows through “of such Act” and inserting “provided by the Servicemembers Civil Relief Act, including the benefits provided by section 702 of such Act but excluding the benefits provided by sections 104 and 106, title IV, and title V (other than sections 501 and 510) of such Act”; and

[(B) in paragraph (2), by striking “person in the military service” and inserting “servicemember”.

[(c) TITLE 10, UNITED STATES CODE.—Section 1408(b)(1)(D) of title 10, United States Code, is amended by striking “Soldiers' and Sailors' Civil Relief Act of 1940” and inserting “Servicemembers Civil Relief Act”.

[(d) INTERNAL REVENUE CODE.—Section 7654(d)(1) of the Internal Revenue Code of 1986 is amended by striking “Soldiers' and Sailors' Civil Relief Act” and inserting “Servicemembers Civil Relief Act”.

[(e) PUBLIC LAW 91–621.—Section 3(a)(3) of Public Law 91–621 (33 U.S.C. 857–3(a)(3)) is amended by striking “Soldiers' and Sailors' Civil Relief Act of 1940, as amended” and inserting “Servicemembers Civil Relief Act”.

[(f) PUBLIC HEALTH SERVICE ACT.—Section 212(e) of the Public Health Service Act (42 U.S.C. 213(e)) is amended by striking “Soldiers' and Sailors' Civil Relief Act of 1940” and inserting “Servicemembers Civil Relief Act”.

[(g) ELEMENTARY AND SECONDARY EDUCATION ACT OF 1965.—Section 8001 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7701) is amended by striking “section 514 of the Soldiers' and Sailors' Civil Relief Act of 1940 (50 U.S.C. App. 574)” in the matter preceding paragraph (1) and inserting “section 511 of the Servicemembers Civil Relief Act”.

[SEC. 3. EFFECTIVE DATE.

[The amendment made by section 1 shall apply to any case decided after the date of the enactment of this Act.]

SECTION 1. RESTATEMENT OF ACT.

The Soldiers' and Sailors' Civil Relief Act of 1940 (50 U.S.C. App. 501 et seq.) is amended to read as follows:

“SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

“(a) SHORT TITLE.—This Act may be cited as the ‘Servicemembers Civil Relief Act’.

“(b) TABLE OF CONTENTS.—The table of contents of this Act is as follows:

“Sec. 1. Short title; table of contents.
“Sec. 2. Purpose.

“TITLE I—GENERAL PROVISIONS

“Sec. 101. Definitions.
“Sec. 102. Jurisdiction and applicability of Act.
“Sec. 103. Protection of persons secondarily liable.
“Sec. 104. Extension of protections to citizens serving with allied forces.
“Sec. 105. Notification of benefits.
“Sec. 106. Extension of rights and protections to Reserves ordered to report for military service and to persons ordered to report for induction.
“Sec. 107. Waiver of rights pursuant to written agreement.
“Sec. 108. Exercise of rights under Act not to affect certain future financial transactions.
“Sec. 109. Legal representatives.

“TITLE II—GENERAL RELIEF

“Sec. 201. Protection of servicemembers against default judgments.
“Sec. 202. Stay of proceedings when servicemember has notice.
“Sec. 203. Fines and penalties under contracts.
“Sec. 204. Stay or vacation of execution of judgments, attachments, and garnishments.
“Sec. 205. Duration and term of stays; codefendants not in service.
“Sec. 206. Statute of limitations.
“Sec. 207. Maximum rate of interest on debts incurred before military service.

“TITLE III—RENT, INSTALLMENT CONTRACTS, MORTGAGES, LIENS, ASSIGNMENT, LEASES

“Sec. 301. Evictions and distress.
“Sec. 302. Protection under installment contracts for purchase or lease.
“Sec. 303. Mortgages and trust deeds.
“Sec. 304. Settlement of stayed cases relating to personal property.
“Sec. 305. Termination of residential or motor vehicle leases.
“Sec. 306. Protection of life insurance policy.
“Sec. 307. Enforcement of storage liens.
“Sec. 308. Extension of protections to dependents.

“TITLE IV—LIFE INSURANCE

“Sec. 401. Definitions.
“Sec. 402. Insurance rights and protections.
“Sec. 403. Application for insurance protection.
“Sec. 404. Policies entitled to protection and lapse of policies.
“Sec. 405. Policy restrictions.
“Sec. 406. Deduction of unpaid premiums.
“Sec. 407. Premiums and interest guaranteed by United States.
“Sec. 408. Regulations.
“Sec. 409. Review of findings of fact and conclusions of law.

“TITLE V—TAXES AND PUBLIC LANDS

“Sec. 501. Taxes respecting personal property, money, credits, and real property.
“Sec. 502. Rights in public lands.
“Sec. 503. Desert-land entries.
“Sec. 504. Mining claims.
“Sec. 505. Mineral permits and leases.
“Sec. 506. Perfection or defense of rights.
“Sec. 507. Distribution of information concerning benefits of title.
“Sec. 508. Land rights of servicemembers.
“Sec. 509. Regulations.
“Sec. 510. Income taxes.
“Sec. 511. Residence for tax purposes.

“TITLE VI—ADMINISTRATIVE REMEDIES

“Sec. 601. Inappropriate use of Act.
“Sec. 602. Certificates of service; persons reported missing.
“Sec. 603. Interlocutory orders.

“TITLE VII—FURTHER RELIEF

“Sec. 701. Anticipatory relief.
“Sec. 702. Power of attorney.
“Sec. 703. Professional liability protection.
“Sec. 704. Health insurance reinstatement.
“Sec. 705. Guarantee of residency for military personnel.
“Sec. 706. Business or trade obligations.

“SEC. 2. PURPOSE.

“The purposes of this Act are—

“(1) to provide for, strengthen, and expedite the national defense through protection extended by this Act to servicemembers of the United States to enable such persons to devote their entire energy to the defense needs of the Nation; and

“(2) to provide for the temporary suspension of judicial and administrative proceedings and transactions that may adversely affect the civil rights of servicemembers during their military service.

“TITLE I—GENERAL PROVISIONS

“SEC. 101. DEFINITIONS.

“For the purposes of this Act:

“(1) SERVICEMEMBER.—The term ‘servicemember’ means a member of the uniformed services, as that term is defined in section 101(a)(5) of title 10, United States Code.

“(2) MILITARY SERVICE.—The term ‘military service’ means—

“(A) in the case of a servicemember who is a member of the Army, Navy, Air Force, Marine Corps, or Coast Guard—

“(i) active duty, as defined in section 101(d)(1) of title 10, United States Code, and

“(ii) in the case of a member of the National Guard, includes service under a call to active service authorized by the President or the Secretary of Defense for a period of more than 30 consecutive days under section 502(f) of title 32, United States Code, for purposes of responding to a national emergency declared by the President and supported by Federal funds;

“(B) in the case of a servicemember who is a commissioned officer of the Public Health Service or the National Oceanic and Atmospheric Administration, active service; and

“(C) any period during which a servicemember is absent from duty on account of sickness, wounds, leave, or other lawful cause.

“(3) PERIOD OF MILITARY SERVICE.—The term ‘period of military service’ means the period beginning on the date on which a servicemember enters military service and ending on the date on which the servicemember is released from military service or dies while in military service.

''(4) DEPENDENT.—The term 'dependent', with respect to a servicemember, means—

''(A) the servicemember's spouse;

''(B) the servicemember's child (as defined in section 101(4) of title 38, United States Code); or

''(C) an individual for whom the servicemember provided more than one-half of the individual's support for 180 days immediately preceding an application for relief under this Act.

''(5) COURT.—The term 'court' means a court or an administrative agency of the United States or of any State (including any political subdivision of a State), whether or not a court or administrative agency of record.

''(6) STATE.—The term 'State' includes—

''(A) a commonwealth, territory, or possession of the United States; and

''(B) the District of Columbia.

''(7) SECRETARY CONCERNED.—The term 'Secretary concerned'—

''(A) with respect to a member of the armed forces, has the meaning given that term in section 101(a)(9) of title 10, United States Code;

''(B) with respect to a commissioned officer of the Public Health Service, means the Secretary of Health and Human Services; and

''(C) with respect to a commissioned officer of the National Oceanic and Atmospheric Administration, means the Secretary of Commerce.

''(8) MOTOR VEHICLE.—The term 'motor vehicle' has the meaning given that term in section 30102(a)(6) of title 49, United States Code.

"SEC. 102. JURISDICTION AND APPLICABILITY OF ACT.

''(a) JURISDICTION.—This Act applies to—

''(1) the United States;

''(2) each of the States, including the political subdivisions thereof; and

''(3) all territory subject to the jurisdiction of the United States.

''(b) APPLICABILITY TO PROCEEDINGS.—This Act applies to any judicial or administrative proceeding commenced in any court or agency in any jurisdiction subject to this Act. This Act does not apply to criminal proceedings.

''(c) COURT IN WHICH APPLICATION MAY BE MADE.—When under this Act any application is required to be made to a court in which no proceeding has already been commenced with respect to the matter, such application may be made to any court which would otherwise have jurisdiction over the matter.

"SEC. 103. PROTECTION OF PERSONS SECONDARILY LIABLE.

''(a) EXTENSION OF PROTECTION WHEN ACTIONS STAYED, POSTPONED, OR SUSPENDED.—Whenever pursuant to this Act a court stays, postpones, or suspends (1) the enforcement of an obligation or liability, (2) the prosecution of a suit or proceeding, (3) the entry or enforcement of an order, writ, judgment, or decree, or (4) the performance of any other act, the court may likewise grant such a stay, postponement, or suspension to a surety, guarantor, endorser, accommodation maker, comaker, or other person who is or may be primarily or secondarily subject to the obligation or liability the performance or enforcement of which is stayed, postponed, or suspended.

''(b) VACATION OR SET-ASIDE OF JUDGMENTS.—When a judgment or decree is vacated or set aside, in whole or in part, pursuant to this Act, the court may also set aside or vacate, as the case may be, the judgment or decree as to a surety, guarantor, endorser, accommodation maker, comaker, or other person who is or may be primarily or secondarily liable on the contract or liability for the enforcement of the judgment or decree.

''(c) BAIL BOND NOT TO BE ENFORCED DURING PERIOD OF MILITARY SERVICE.—A court may not enforce a bail bond during the period of military service of the principal on the bond when military service prevents the surety from obtaining the attendance of the principal. The court may discharge the surety and exonerate the bail, in accordance with principles of equity and justice, during or after the period of military service of the principal.

''(d) WAIVER OF RIGHTS.—

''(1) WAIVERS NOT PRECLUDED.—This Act does not prevent a waiver in writing by a surety, guarantor, endorser, accommodation maker, comaker, or other person (whether primarily or secondarily liable on an obligation or liability) of the protections provided under subsections (a) and (b). Any such waiver is effective only if it is executed as an instrument separate from the obligation or liability with respect to which it applies.

''(2) WAIVER INVALIDATED UPON ENTRANCE TO MILITARY SERVICE.—If a waiver under paragraph (1) is executed by an individual who after the execution of the waiver enters military service, or by a dependent of an individual who after the execution of the waiver enters military service, the waiver is not valid after the beginning of the period of such military service unless the waiver was executed by such individual or dependent during the period specified in section 106.

"SEC. 104. EXTENSION OF PROTECTIONS TO CITIZENS SERVING WITH ALLIED FORCES.

''A citizen of the United States who is serving with the forces of a nation with which the United States is allied in the prosecution of a war or military action is entitled to the relief and protections provided under this Act if that service with the allied force is similar to military service as defined in this Act. The relief and protections provided to such citizen shall terminate on the date of discharge or release from such service.

"SEC. 105. NOTIFICATION OF BENEFITS.

''The Secretary concerned shall ensure that notice of the benefits accorded by this Act is provided in writing to persons in military service and to persons entering military service.

"SEC. 106. EXTENSION OF RIGHTS AND PROTECTIONS TO RESERVES ORDERED TO REPORT FOR MILITARY SERVICE AND TO PERSONS ORDERED TO REPORT FOR INDUCTION.

''(a) RESERVES ORDERED TO REPORT FOR MILITARY SERVICE.—A member of a reserve component who is ordered to report for military service is entitled to the rights and protections of this title and titles II and III during the period beginning on the date of the member's receipt of the order and ending on the date on which the member reports for military service (or, if the order is revoked before the member so reports, or the date on which the order is revoked).

''(b) PERSONS ORDERED TO REPORT FOR INDUCTION.—A person who has been ordered to report for induction under the Military Selective Service Act (50 U.S.C. App. 451 et seq.) is entitled to the rights and protections provided a servicemember under this title and titles II and III during the period beginning on the date of receipt of the order for induction and ending on the date on which the person reports for induction (or, if the order to report for induction is revoked before the date on which the person reports for induction, on the date on which the order is revoked).

"SEC. 107. WAIVER OF RIGHTS PURSUANT TO WRITTEN AGREEMENT.

''(a) IN GENERAL.—A servicemember may waive any of the rights and protections provided by this Act. In the case of a waiver that permits an action described in subsection (b), the waiver is effective only if made pursuant to a written agreement of the parties that is executed during or after the servicemember's period of military service. The written agreement shall specify the legal instrument to which the waiver applies and, if the servicemember is not a party to that instrument, the servicemember concerned.

''(b) ACTIONS REQUIRING WAIVERS IN WRITING.—The requirement in subsection (a) for a written waiver applies to the following:

''(1) The modification, termination, or cancellation of—

''(A) a contract, lease, or bailment; or

''(B) an obligation secured by a mortgage, trust, deed, lien, or other security in the nature of a mortgage.

''(2) The repossession, retention, foreclosure, sale, forfeiture, or taking possession of property that—

''(A) is security for any obligation; or

''(B) was purchased or received under a contract, lease, or bailment.

''(c) COVERAGE OF PERIODS AFTER ORDERS RECEIVED.—For the purposes of this section—

''(1) a person to whom section 106 applies shall be considered to be a servicemember; and

''(2) the period with respect to such a person specified in subsection (a) or (b), as the case may be, of section 106 shall be considered to be a period of military service.

"SEC. 108. EXERCISE OF RIGHTS UNDER ACT NOT TO AFFECT CERTAIN FUTURE FINANCIAL TRANSACTIONS.

''Application by a servicemember for, or receipt by a servicemember of, a stay, postponement, or suspension pursuant to this Act in the payment of a tax, fine, penalty, insurance premium, or other civil obligation or liability of that servicemember shall not itself (without regard to other considerations) provide the basis for any of the following:

''(1) A determination by a lender or other person that the servicemember is unable to pay the civil obligation or liability in accordance with its terms.

''(2) With respect to a credit transaction between a creditor and the servicemember—

''(A) a denial or revocation of credit by the creditor;

''(B) a change by the creditor in the terms of an existing credit arrangement; or

''(C) a refusal by the creditor to grant credit to the servicemember in substantially the amount or on substantially the terms requested.

''(3) An adverse report relating to the creditworthiness of the servicemember by or to a person engaged in the practice of assembling or evaluating consumer credit information.

''(4) A refusal by an insurer to insure the servicemember.

''(5) An annotation in a servicemember's record by a creditor or a person engaged in the practice of assembling or evaluating consumer credit information, identifying the servicemember as a member of the National Guard or a reserve component.

''(6) A change in the terms offered or conditions required for the issuance of insurance.

"SEC. 109. LEGAL REPRESENTATIVES.

''(a) REPRESENTATIVE.—A legal representative of a servicemember for purposes of this Act is either of the following:

''(1) An attorney acting on the behalf of a servicemember.

''(2) An individual possessing a power of attorney.

''(b) APPLICATION.—Whenever the term 'servicemember' is used in this Act, such term shall be treated as including a reference to a legal representative of the servicemember.

"TITLE II—GENERAL RELIEF

"SEC. 201. PROTECTION OF SERVICEMEMBERS AGAINST DEFAULT JUDGMENTS.

''(a) APPLICABILITY OF SECTION.—This section applies to any civil action or proceeding in which the defendant does not make an appearance.

''(b) AFFIDAVIT REQUIREMENT.—

''(1) PLAINTIFF TO FILE AFFIDAVIT.—In any action or proceeding covered by this section, the court, before entering judgment for the plaintiff, shall require the plaintiff to file with the court an affidavit—

''(A) stating whether or not the defendant is in military service and showing necessary facts to support the affidavit; or

''(B) if the plaintiff is unable to determine whether or not the defendant is in military service, stating that the plaintiff is unable to determine whether or not the defendant is in military service.

''(2) APPOINTMENT OF ATTORNEY TO REPRESENT DEFENDANT IN MILITARY SERVICE.—If in an action covered by this section it appears that the defendant is in military service, the court may not enter a judgment until after the court appoints an attorney to represent the defendant. If an attorney appointed under this section to represent a servicemember cannot locate the servicemember, actions by the attorney in the case shall not waive any defense of the servicemember or otherwise bind the servicemember.

''(3) DEFENDANT'S MILITARY STATUS NOT ASCERTAINED BY AFFIDAVIT.—If based upon the affidavits filed in such an action, the court is unable to determine whether the defendant is in military service, the court, before entering judgment, may require the plaintiff to file a bond in an amount approved by the court. If the defendant is later found to be in military service, the bond shall be available to indemnify the defendant against any loss or damage the defendant may suffer by reason of any judgment for the plaintiff against the defendant, should the judgment be set aside in whole or in part. The bond shall remain in effect until expiration of the time for appeal and setting aside of a judgment under applicable Federal or State law or regulation or under any applicable ordinance of a political subdivision of a State. The court may issue such orders or enter such judgments as the court determines necessary to protect the rights of the defendant under this Act.

''(4) SATISFACTION OF REQUIREMENT FOR AFFIDAVIT.—The requirement for an affidavit under paragraph (1) may be satisfied by a statement, declaration, verification, or certificate, in writing, subscribed and certified or declared to be true under penalty of perjury.

''(c) PENALTY FOR MAKING OR USING FALSE AFFIDAVIT.—A person who makes or uses an affidavit permitted under subsection (b) (or a statement, declaration, verification, or certificate as authorized under subsection (b)(4)) knowing it to be false, shall be fined as provided in title 18, United States Code, or imprisoned for not more than one year, or both.

''(d) STAY OF PROCEEDINGS.—In an action covered by this section in which the defendant is in military service, the court shall grant a stay of proceedings for a minimum period of 90 days under this subsection upon application of counsel, or on the court's own motion, if the court determines that—

''(1) there may be a defense to the action and a defense cannot be presented without the presence of the defendant; or

''(2) after due diligence, counsel has been unable to contact the defendant or otherwise determine if a meritorious defense exists.

''(e) INAPPLICABILITY OF SECTION 202 PROCEDURES.—A stay of proceedings under subsection (d) shall not be controlled by procedures or requirements under section 202.

''(f) SECTION 202 PROTECTION.—If a servicemember who is a defendant in an action covered by this section receives actual notice of the action, the servicemember may request a stay of proceeding under section 202.

''(g) VACATION OR SETTING ASIDE OF DEFAULT JUDGMENTS.—

''(1) AUTHORITY FOR COURT TO VACATE OR SET ASIDE JUDGMENT.—If a default judgment is entered in an action covered by this section against a servicemember during the servicemember's period of military service (or within 60 days after termination of or release from such military service), the court entering the judgment shall, upon application by or on behalf of the servicemember, reopen the judgment for the purpose of allowing the servicemember to defend the action if it appears that—

''(A) the servicemember was materially affected by reason of that military service in making a defense to the action; and

''(B) the servicemember has a meritorious or legal defense to the action or some part of it.

''(2) TIME FOR FILING APPLICATION.—An application under this subsection must be filed not later than 90 days after the date of the termination of or release from military service.

''(h) PROTECTION OF BONA FIDE PURCHASER.—If a court vacates, sets aside, or reverses a default judgment against a servicemember and the vacating, setting aside, or reversing is because of a provision of this Act, that action shall not impair a right or title acquired by a bona fide purchaser for value under the default judgment.

"SEC. 202. STAY OF PROCEEDINGS WHEN SERVICEMEMBER HAS NOTICE.

''(a) APPLICABILITY OF SECTION.—This section applies to any civil action or proceeding in which the defendant at the time of filing an application under this section—

''(1) is in military service or is within 90 days after termination of or release from military service; and

''(2) has received notice of the action or proceeding.

''(b) STAY OF PROCEEDINGS.—

''(1) AUTHORITY FOR STAY.—At any stage before final judgment in a civil action or proceeding in which a servicemember described in subsection (a) is a party, the court may on its own motion and shall, upon application by the servicemember, stay the action for a period of not less than 90 days, if the conditions in paragraph (2) are met.

''(2) CONDITIONS FOR STAY.—An application for a stay under paragraph (1) shall include the following:

''(A) A letter or other communication setting forth facts stating the manner in which current military duty requirements materially affect the servicemember's ability to appear and stating a date when the servicemember will be available to appear.

''(B) A letter or other communication from the servicemember's commanding officer stating that the servicemember's current military duty prevents appearance and that military leave is not authorized for the servicemember at the time of the letter.

''(c) APPLICATION NOT A WAIVER OF DEFENSES.—An application for a stay under this section does not constitute an appearance for jurisdictional purposes and does not constitute a waiver of any substantive or procedural defense (including a defense relating to lack of personal jurisdiction).

''(d) ADDITIONAL STAY.—

''(1) APPLICATION.—A servicemember who is granted a stay of a civil action or proceeding under subsection (b) may apply for an additional stay based on continuing material affect of military duty on the servicemember's ability to appear. Such an application may be made by the servicemember at the time of the initial application under subsection (b) or when it appears that the servicemember is unavailable to prosecute or defend the action. The same information required under subsection (b)(2) shall be included in an application under this subsection.

''(2) APPOINTMENT OF COUNSEL WHEN ADDITIONAL STAY REFUSED.—If the court refuses to grant an additional stay of proceedings under paragraph (1), the court shall appoint counsel to represent the servicemember in the action or proceeding.

''(e) COORDINATION WITH SECTION 201.—A servicemember who applies for a stay under this section and is unsuccessful may not seek the protections afforded by section 201.

''(f) INAPPLICABILITY TO SECTION 301.—The protections of this section do not apply to section 301.

"SEC. 203. FINES AND PENALTIES UNDER CONTRACTS.

''(a) PROHIBITION OF PENALTIES.—When an action for compliance with the terms of a contract is stayed pursuant to this Act, a penalty shall not accrue for failure to comply with the terms of the contract during the period of the stay.

''(b) REDUCTION OR WAIVER OF FINES OR PENALTIES.—If a servicemember fails to perform an obligation arising under a contract and a penalty is incurred arising from that nonperformance, a court may reduce or waive the fine or penalty if—

''(1) the servicemember was in military service at the time the fine or penalty was incurred; and

''(2) the ability of the servicemember to perform the obligation was materially affected by such military service.

"SEC. 204. STAY OR VACATION OF EXECUTION OF JUDGMENTS, ATTACHMENTS, AND GARNISHMENTS.

''(a) COURT ACTION UPON MATERIAL AFFECT DETERMINATION.—If a servicemember, in the opinion of the court, is materially affected by reason of military service in complying with a court judgment or order, the court may on its own motion and shall on application by the servicemember—

''(1) stay the execution of any judgment or order entered against the servicemember; and

''(2) vacate or stay an attachment or garnishment of property, money, or debts in the possession of the servicemember or a third party, whether before or after judgment.

''(b) APPLICABILITY.—This section applies to an action or proceeding commenced in a court against a servicemember before or during the period of the servicemember's military service or within 90 days after such service terminates.

"SEC. 205. DURATION AND TERM OF STAYS; CODEFENDANTS NOT IN SERVICE.

''(a) PERIOD OF STAY.—A stay of an action, proceeding, attachment, or execution made pursuant to the provisions of this Act by a court may be ordered for the period of military service and 90 days thereafter, or for any part of that period. The court may set the terms and amounts for such installment payments as is considered reasonable by the court.

''(b) CODEFENDANTS.—If the servicemember is a codefendant with others who are not in military service and who are not entitled to the relief and protections provided under this Act, the plaintiff may proceed against those other defendants with the approval of the court.

''(c) INAPPLICABILITY OF SECTION.—This section does not apply to sections 202 and 701.

"SEC. 206. STATUTE OF LIMITATIONS.

''(a) TOLLING OF STATUTES OF LIMITATION DURING MILITARY SERVICE.—The period of a servicemember's military service may not be included in computing any period limited by law, regulation, or order for the bringing of any action or proceeding in a court, or in any board, bureau, commission, department, or other agency of a State (or political subdivision of a State) or the United States by or against the servicemember or the servicemember's heirs, executors, administrators, or assigns.

''(b) REDEMPTION OF REAL PROPERTY.—A period of military service may not be included in computing any period provided by law for the redemption of real property sold or forfeited to enforce an obligation, tax, or assessment.

''(c) INAPPLICABILITY TO INTERNAL REVENUE LAWS.—This section does not apply to any period of limitation prescribed by or under the internal revenue laws of the United States.

"SEC. 207. MAXIMUM RATE OF INTEREST ON DEBTS INCURRED BEFORE MILITARY SERVICE.

''(a) INTEREST RATE LIMITATION.—

''(1) LIMITATION TO 6 PERCENT.—An obligation or liability bearing interest at a rate in excess of 6 percent per year that is incurred by a servicemember, or the servicemember and the servicemember's spouse jointly, before the servicemember enters military service shall not bear interest at a rate in excess of 6 percent per year during the period of military service.

''(2) FORGIVENESS OF INTEREST IN EXCESS OF 6 PERCENT.—Interest at a rate in excess of 6 percent per year that would otherwise be incurred but for the prohibition in paragraph (1) is forgiven.

''(3) PREVENTION OF ACCELERATION OF PRINCIPAL.—The amount of any periodic payment due from a servicemember under the terms of the instrument that created an obligation or liability covered by this section shall be reduced by the amount of the interest forgiven under paragraph (2) that is allocable to the period for which such payment is made.

''(b) IMPLEMENTATION OF LIMITATION.—

''(1) WRITTEN NOTICE TO CREDITOR.—In order for an obligation or liability of a servicemember to be subject to the interest rate limitation in subsection (a), the servicemember shall provide to the creditor written notice and a copy of the military orders calling the servicemember to military service and any orders further extending military service, not later than 180 days after the date of the servicemember's termination or release from military service.

''(2) LIMITATION EFFECTIVE AS OF DATE OF ORDER TO ACTIVE DUTY.—Upon receipt of written notice and a copy of orders calling a servicemember to military service, the creditor shall treat the debt in accordance with subsection (a), effective as of the date on which the servicemember is called to military service.

''(c) CREDITOR PROTECTION.—A court may grant a creditor relief from the limitations of this section if, in the opinion of the court, the ability of the servicemember to pay interest upon the obligation or liability at a rate in excess of 6 percent per year is not materially affected by reason of the servicemember's military service.

''(d) INTEREST.—As used in this section, the term 'interest' includes service charges, renewal charges, fees, or any other charges (except bona fide insurance) with respect to an obligation or liability.

"TITLE III—RENT, INSTALLMENT CONTRACTS, MORTGAGES, LIENS, ASSIGNMENT, LEASES

"SEC. 301. EVICTIONS AND DISTRESS.

''(a) COURT-ORDERED EVICTION.—

''(1) IN GENERAL.—Except by court order, a landlord (or another person with paramount title) may not—

''(A) evict a servicemember, or the dependents of a servicemember, during a period of military service of the servicemember, from premises—

''(i) that are occupied or intended to be occupied primarily as a residence; and

''(ii) for which the monthly rent does not exceed $2,400, as adjusted under paragraph (2) for years after 2003; or

''(B) subject such premises to a distress during the period of military service.

''(2) HOUSING PRICE INFLATION ADJUSTMENT.—(A) For calendar years beginning with 2004, the amount in effect under paragraph (1)(A)(ii) shall be increased by the housing price inflation adjustment for the calendar year involved.

''(B) For purposes of this paragraph—

''(i) The housing price inflation adjustment for any calendar year is the percentage change (if any) by which—

''(I) the CPI housing component for November of the preceding calendar year, exceeds

''(II) the CPI housing component for November of 1984.

''(ii) The term 'CPI housing component' means the index published by the Bureau of Labor Statistics of the Department of Labor known as the Consumer Price Index, All Urban Consumers, Rent of Primary Residence, U.S. City Average.

''(3) PUBLICATION OF HOUSING PRICE INFLATION ADJUSTMENT.—The Secretary of Defense shall cause to be published in the Federal Register each year the amount in effect under paragraph (1)(A)(ii) for that year following the housing price inflation adjustment for that year pursuant to paragraph (2). Such publication shall be made for a year not later than 60 days after such adjustment is made for that year.

''(b) STAY OF EXECUTION.—

''(1) COURT AUTHORITY.—Upon an application for eviction or distress with respect to premises covered by this section, the court may on its own motion and shall, if a request is made by or on behalf of a servicemember whose ability to pay the agreed rent is materially affected by military service—

''(A) stay the proceedings for a period of 90 days, unless in the opinion of the court, justice and equity require a longer or shorter period of time; or

''(B) adjust the obligation under the lease to preserve the interests of all parties.

''(2) RELIEF TO LANDLORD.—If a stay is granted under paragraph (1), the court may grant to the landlord (or other person with paramount title) such relief as equity may require.

''(c) PENALTIES.—

''(1) MISDEMEANOR.—Except as provided in subsection (a), a person who knowingly takes part in an eviction or distress described in subsection (a), or who knowingly attempts to do so, shall be fined as provided in title 18, United States Code, or imprisoned for not more than one year, or both.

''(2) PRESERVATION OF OTHER REMEDIES AND RIGHTS.—The remedies and rights provided under this section are in addition to and do not preclude any remedy for wrongful conversion (or wrongful eviction) otherwise available under the law to the person claiming relief under this section, including any award for consequential and punitive damages.

''(d) RENT ALLOTMENT FROM PAY OF SERVICEMEMBER.—To the extent required by a court order related to property which is the subject of a court action under this section, the Secretary concerned shall make an allotment from the pay of a servicemember to satisfy the terms of such order, except that any such allotment shall be subject to regulations prescribed by the Secretary concerned establishing the maximum amount of pay of servicemembers that may be allotted under this subsection.

''(e) LIMITATION OF APPLICABILITY.—Section 202 is not applicable to this section.

"SEC. 302. PROTECTION UNDER INSTALLMENT CONTRACTS FOR PURCHASE OR LEASE.

''(a) PROTECTION UPON BREACH OF CONTRACT.—

''(1) PROTECTION AFTER ENTERING MILITARY SERVICE.—After a servicemember enters military service, a contract by the servicemember for—

''(A) the purchase of real or personal property (including a motor vehicle); or

''(B) the lease or bailment of such property, may not be rescinded or terminated for a breach of terms of the contract occurring before or during that person's military service, nor may the property be repossessed for such breach without a court order.

''(2) APPLICABILITY.—This section applies only to a contract for which a deposit or installment has been paid by the servicemember before the servicemember enters military service.

''(b) PENALTIES.—

''(1) MISDEMEANOR.—A person who knowingly resumes possession of property in violation of subsection (a), or in violation of section 107 of this Act, or who knowingly attempts to do so, shall be fined as provided in title 18, United States Code, or imprisoned for not more than one year, or both.

''(2) PRESERVATION OF OTHER REMEDIES AND RIGHTS.—The remedies and rights provided under this section are in addition to and do not preclude any remedy for wrongful conversion otherwise available under law to the person claiming relief under this section, including any award for consequential and punitive damages.

''(c) AUTHORITY OF COURT.—In a hearing based on this section, the court—

''(1) may order repayment to the servicemember of all or part of the prior installments or deposits as a condition of terminating the contract and resuming possession of the property;

''(2) may, on its own motion, and shall on application by a servicemember when the servicemember's ability to comply with the contract is materially affected by military service, stay the proceedings for a period of time as, in the opinion of the court, justice and equity require; or

''(3) may make other disposition as is equitable to preserve the interests of all parties.

"SEC. 303. MORTGAGES AND TRUST DEEDS.

''(a) MORTGAGE AS SECURITY.—This section applies only to an obligation on real or personal property owned by a servicemember that—

''(1) originated before the period of the servicemember's military service and for which the servicemember is still obligated; and

''(2) is secured by a mortgage, trust deed, or other security in the nature of a mortgage.

''(b) STAY OF PROCEEDINGS AND ADJUSTMENT OF OBLIGATION.—In an action filed during, or within 90 days after, a servicemember's period of military service to enforce an obligation described in subsection (a), the court may after a hearing and on its own motion and shall upon application by a servicemember when the servicemember's ability to comply with the obligation is materially affected by military service—

''(1) stay the proceedings for a period of time as justice and equity require, or

''(2) adjust the obligation to preserve the interests of all parties.

''(c) SALE OR FORECLOSURE.—A sale, foreclosure, or seizure of property for a breach of an obligation described in subsection (a) shall not be valid if made during, or within 90 days after, the period of the servicemember's military service except—

''(1) upon a court order granted before such sale, foreclosure, or seizure with a return made and approved by the court; or

''(2) if made pursuant to an agreement as provided in section 107.

''(d) PENALTIES.—

''(1) MISDEMEANOR.—A person who knowingly makes or causes to be made a sale, foreclosure, or seizure of property that is prohibited by subsection (c), or who knowingly attempts to do so, shall be fined as provided in title 18, United States Code, or imprisoned for not more than one year, or both.

''(2) PRESERVATION OF OTHER REMEDIES.—The remedies and rights provided under this section are in addition to and do not preclude any remedy for wrongful conversion otherwise available under law to the person claiming relief under this section, including consequential and punitive damages.

"SEC. 304. SETTLEMENT OF STAYED CASES RELATING TO PERSONAL PROPERTY.

''(a) APPRAISAL OF PROPERTY.—When a stay is granted pursuant to this Act in a proceeding to foreclose a mortgage on or to repossess personal property, or to rescind or terminate a contract for the purchase of personal property, the court may appoint three disinterested parties to appraise the property.

''(b) EQUITY PAYMENT.—Based on the appraisal, and if undue hardship to the servicemember's dependents will not result, the court may order that the amount of the servicemember's equity in the property be paid to the servicemember, or the servicemember's dependents, as a condition of foreclosing the mortgage, repossessing the property, or rescinding or terminating the contract.

"SEC. 305. TERMINATION OF RESIDENTIAL OR MOTOR VEHICLE LEASES.

''(a) TERMINATION BY LESSEE.—The lessee on a lease described in subsection (b) may, at the lessee's option, terminate the lease at any time after—

''(1) the lessee's entry into military service; or

''(2) the date of the lessee's military orders described in paragraph (1)(B) or (2)(B) of subsection (b), as the case may be.

''(b) COVERED LEASES.—This section applies to the following leases:

''(1) LEASES OF PREMISES.—A lease of premises occupied, or intended to be occupied, by a servicemember or a servicemember's dependents for a residential, professional, business, agricultural, or similar purpose if—

''(A) the lease is executed by or on behalf of a person who thereafter and during the term of the lease enters military service; or

''(B) the servicemember, while in military service, executes the lease and thereafter receives military orders for a permanent change of station or to deploy with a military unit for a period of not less than 90 days.

''(2) LEASES OF MOTOR VEHICLES.—A lease of a motor vehicle used, or intended to be used, by a servicemember or a servicemember's dependents for personal or business transportation if—

''(A) the lease is executed by or on behalf of a person who thereafter and during the term of the lease enters military service under a call or order specifying a period of not less than 180 days (or who enters military service under a call or order specifying a period of 180 days or less and who, without a break in service, receives orders extending the period of military service to a period of not less than 180 days); or

''(B) the servicemember, while in military service, executes the lease and thereafter receives military orders for a permanent change of station outside of the continental United States or to deploy with a military unit for a period of not less than 180 days.

''(c) MANNER OF TERMINATION.—

''(1) IN GENERAL.—Termination of a lease under subsection (a) is made—

''(A) by delivery by the lessee of written notice of such termination, and a copy of the servicemember's military orders, to the lessor (or the lessor's grantee), or to the lessor's agent (or the agent's grantee); and

''(B) in the case of a lease of a motor vehicle, by return of the motor vehicle by the lessee to the lessor (or the lessor's grantee), or to the lessor's agent (or the agent's grantee), not later than 15 days after the date of the delivery of written notice under subparagraph (A).

''(2) DELIVERY OF NOTICE.—Delivery of notice under paragraph (1)(A) may be accomplished—

''(A) by hand delivery;

''(B) by private business carrier; or

''(C) by placing the written notice in an envelope with sufficient postage and with return receipt requested, and addressed as designated by the lessor (or the lessor's grantee) or to the lessor's agent (or the agent's grantee), and depositing the written notice in the United States mails.

''(d) EFFECTIVE DATE OF LEASE TERMINATION.—

''(1) LEASE OF PREMISES.—In the case of a lease described in subsection (b)(1) that provides for monthly payment of rent, termination of the lease under subsection (a) is effective 30 days after the first date on which the next rental payment is due and payable after the date on which the notice under subsection (c) is delivered. In the case of any other lease described in subsection (b)(1), termination of the lease under subsection (a) is effective on the last day of the month following the month in which the notice is delivered.

''(2) LEASE OF MOTOR VEHICLES.—In the case of a lease described in subsection (b)(2), termination of the lease under subsection (a) is effective on the day on which the requirements of subsection (c) are met for such termination.

''(e) ARREARAGES AND OTHER OBLIGATIONS AND LIABILITIES.—Rents or lease amounts unpaid for the period preceding the effective date of the lease termination shall be paid on a prorated basis. In the case of the lease of a motor vehicle, the lessor may not impose an early termination charge, but any taxes, summonses, and title and registration fees and any other obligation and liability of the lessee in accordance with the terms of the lease, including reasonable charges to the lessee for excess wear, use and mileage, that are due and unpaid at the time of termination of the lease shall be paid by the lessee.

''(f) RENT PAID IN ADVANCE.—Rents or lease amounts paid in advance for a period after the effective date of the termination of the lease shall be refunded to the lessee by the lessor (or the lessor's assignee or the assignee's agent) within 30 days of the effective date of the termination of the lease.

''(g) RELIEF TO LESSOR.—Upon application by the lessor to a court before the termination date provided in the written notice, relief granted by this section to a servicemember may be modified as justice and equity require.

''(h) PENALTIES.—

''(1) MISDEMEANOR.—Any person who knowingly seizes, holds, or detains the personal effects, security deposit, or other property of a servicemember or a servicemember's dependent who lawfully terminates a lease covered by this section, or who knowingly interferes with the removal of such property from premises covered by such lease, for the purpose of subjecting or attempting to subject any of such property to a claim for rent accruing subsequent to the date of termination of such lease, or attempts to do so, shall be fined as provided in title 18, United States Code, or imprisoned for not more than one year, or both.

''(2) PRESERVATION OF OTHER REMEDIES.—The remedy and rights provided under this section are in addition to and do not preclude any remedy for wrongful conversion otherwise available under law to the person claiming relief under this section, including any award for consequential or punitive damages.

''SEC. 306. PROTECTION OF LIFE INSURANCE POLICY.

''(a) ASSIGNMENT OF POLICY PROTECTED.—If a life insurance policy on the life of a servicemember is assigned before military service to secure the payment of an obligation, the assignee of the policy (except the insurer in connection with a policy loan) may not exercise, during a period of military service of the servicemember or within one year thereafter, any right or option obtained under the assignment without a court order.

''(b) EXCEPTION.—The prohibition in subsection (a) shall not apply—

''(1) if the assignee has the written consent of the insured made during the period described in subsection (a);

''(2) when the premiums on the policy are due and unpaid; or

''(3) upon the death of the insured.

''(c) ORDER REFUSED BECAUSE OF MATERIAL AFFECT.—A court which receives an application for an order required under subsection (a) may refuse to grant such order if the court determines the ability of the servicemember to comply with the terms of the obligation is materially affected by military service.

''(d) TREATMENT OF GUARANTEED PREMIUMS.—For purposes of this subsection, premiums guaranteed under the provisions of title IV of this Act shall not be considered due and unpaid.

''(e) PENALTIES.—

''(1) MISDEMEANOR.—A person who knowingly takes an action contrary to this section, or attempts to do so, shall be fined as provided in title 18, United States Code, or imprisoned for not more than one year, or both.

''(2) PRESERVATION OF OTHER REMEDIES.—The remedy and rights provided under this section are in addition to and do not preclude any remedy for wrongful conversion otherwise available under law to the person claiming relief under this section, including any consequential or punitive damages.

''SEC. 307. ENFORCEMENT OF STORAGE LIENS.

''(a) LIENS.—

''(1) LIMITATION ON FORECLOSURE OR ENFORCEMENT.—A person holding a lien on the property or effects of a servicemember may not, during any period of military service of the servicemember and for 90 days thereafter, foreclose or enforce any lien on such property or effects without a court order granted before foreclosure or enforcement.

''(2) LIEN DEFINED.—For the purposes of paragraph (1), the term 'lien' includes a lien for storage, repair, or cleaning of the property or effects of a servicemember or a lien on such property or effects for any other reason.

''(b) STAY OF PROCEEDINGS.—In a proceeding to foreclose or enforce a lien subject to this section, the court may on its own motion, and shall if requested by a servicemember whose ability to comply with the obligation resulting in the proceeding is materially affected by military service—

''(1) stay the proceeding for a period of time as justice and equity require; or

''(2) adjust the obligation to preserve the interests of all parties.

The provisions of this subsection do not affect the scope of section 303.

''(c) PENALTIES.—

''(1) MISDEMEANOR.—A person who knowingly takes an action contrary to this section, or attempts to do so, shall be fined as provided in title 18, United States Code, or imprisoned for not more than one year, or both.

''(2) PRESERVATION OF OTHER REMEDIES.—The remedy and rights provided under this section are in addition to and do not preclude any remedy for wrongful conversion otherwise available under law to the person claiming relief under this section, including any consequential or punitive damages.

''SEC. 308. EXTENSION OF PROTECTIONS TO DEPENDENTS.

''Upon application to a court, a dependent of a servicemember is entitled to the protections of this title if the dependent's ability to comply with a lease, contract, bailment, or other obligation is materially affected by reason of the servicemember's military service.

''TITLE IV—LIFE INSURANCE

''SEC. 401. DEFINITIONS.

''For the purposes of this title:

''(1) POLICY.—The term 'policy' means any individual contract for whole, endowment, universal, or term life insurance (other than group term life insurance coverage), including any benefit in the nature of such insurance arising out of membership in any fraternal or beneficial association which—

''(A) provides that the insurer may not—

''(i) decrease the amount of coverage or require the payment of an additional amount as premiums if the insured engages in military service (except increases in premiums in individual term insurance based upon age); or

''(ii) limit or restrict coverage for any activity required by military service; and

''(B) is in force not less than 180 days before the date of the insured's entry into military service and at the time of application under this title.

''(2) PREMIUM.—The term 'premium' means the amount specified in an insurance policy to be paid to keep the policy in force.

''(3) INSURED.—The term 'insured' means a servicemember whose life is insured under a policy.

''(4) INSURER.—The term 'insurer' includes any firm, corporation, partnership, association, or business that is chartered or authorized to provide insurance and issue contracts or policies by the laws of a State or the United States.

''SEC. 402. INSURANCE RIGHTS AND PROTECTIONS.

''(a) RIGHTS AND PROTECTIONS.—The rights and protections under this title apply to the insured when—

''(1) the insured,

''(2) the insured's legal representative, or

''(3) the insured's beneficiary in the case of an insured who is outside a State,

applies in writing for protection under this title, unless the Secretary of Veterans Affairs determines that the insured's policy is not entitled to protection under this title.

''(b) NOTIFICATION AND APPLICATION.—The Secretary of Veterans Affairs shall notify the Secretary concerned of the procedures to be used to apply for the protections provided under this title. The applicant shall send the original application to the insurer and a copy to the Secretary of Veterans Affairs.

''(c) LIMITATION ON AMOUNT.—The total amount of life insurance coverage protection provided by this title for a servicemember may not exceed $250,000, or an amount equal to the Servicemember's Group Life Insurance maximum limit, whichever is greater, regardless of the number of policies submitted.

"SEC. 403. APPLICATION FOR INSURANCE PROTECTION.

''(a) APPLICATION PROCEDURE.—An application for protection under this title shall—

''(1) be in writing and signed by the insured, the insured's legal representative, or the insured's beneficiary, as the case may be;

''(2) identify the policy and the insurer; and

''(3) include an acknowledgement that the insured's rights under the policy are subject to and modified by the provisions of this title.

''(b) ADDITIONAL REQUIREMENTS.—The Secretary of Veterans Affairs may require additional information from the applicant, the insured and the insurer to determine if the policy is entitled to protection under this title.

''(c) NOTICE TO THE SECRETARY BY THE INSURER.—Upon receipt of the application of the insured, the insurer shall furnish a report concerning the policy to the Secretary of Veterans Affairs as required by regulations prescribed by the Secretary.

''(d) POLICY MODIFICATION.—Upon application for protection under this title, the insured and the insurer shall have constructively agreed to any policy modification necessary to give this title full force and effect.

"SEC. 404. POLICIES ENTITLED TO PROTECTION AND LAPSE OF POLICIES.

''(a) DETERMINATION.—The Secretary of Veterans Affairs shall determine whether a policy is entitled to protection under this title and shall notify the insured and the insurer of that determination.

''(b) LAPSE PROTECTION.—A policy that the Secretary determines is entitled to protection under this title shall not lapse or otherwise terminate or be forfeited for the nonpayment of a premium, or interest or indebtedness on a premium, after the date on which the application for protection is received by the Secretary.

''(c) TIME APPLICATION.—The protection provided by this title applies during the insured's period of military service and for a period of two years thereafter.

"SEC. 405. POLICY RESTRICTIONS.

''(a) DIVIDENDS.—While a policy is protected under this title, a dividend or other monetary benefit under a policy may not be paid to an insured or used to purchase dividend additions without the approval of the Secretary of Veterans Affairs. If such approval is not obtained, the dividends or benefits shall be added to the value of the policy to be used as a credit when final settlement is made with the insurer.

''(b) SPECIFIC RESTRICTIONS.—While a policy is protected under this title, cash value, loan value, withdrawal of dividend accumulation, unearned premiums, or other value of similar character may not be available to the insured without the approval of the Secretary. The right of the insured to change a beneficiary designation or select an optional settlement for a beneficiary shall not be affected by the provisions of this title.

"SEC. 406. DEDUCTION OF UNPAID PREMIUMS.

''(a) SETTLEMENT OF PROCEEDS.—If a policy matures as a result of a servicemember's death or otherwise during the period of protection of the policy under this title, the insurer in making settlement shall deduct from the insurance proceeds the amount of the unpaid premiums guaranteed under this title, together with interest due at the rate fixed in the policy for policy loans.

''(b) INTEREST RATE.—If the interest rate is not specifically fixed in the policy, the rate shall be the same as for policy loans in other policies issued by the insurer at the time the insured's policy was issued.

''(c) REPORTING REQUIREMENT.—The amount deducted under this section, if any, shall be reported by the insurer to the Secretary of Veterans Affairs.

"SEC. 407. PREMIUMS AND INTEREST GUARANTEED BY UNITED STATES.

''(a) GUARANTEE OF PREMIUMS AND INTEREST BY THE UNITED STATES.—

''(1) GUARANTEE.—Payment of premiums, and interest on premiums at the rate specified in section 406, which become due on a policy under the protection of this title is guaranteed by the United States. If the amount guaranteed is not paid to the insurer before the period of insurance protection under this title expires, the amount due shall be treated by the insurer as a policy loan on the policy.

''(2) POLICY TERMINATION.—If, at the expiration of insurance protection under this title, the cash surrender value of a policy is less than the amount due to pay premiums and interest on premiums on the policy, the policy shall terminate. Upon such termination, the United States shall pay the insurer the difference between the amount due and the cash surrender value.

''(b) RECOVERY FROM INSURED OF AMOUNTS PAID BY THE UNITED STATES.—

''(1) DEBT PAYABLE TO THE UNITED STATES.—The amount paid by the United States to an insurer under this title shall be a debt payable to the United States by the insured on whose policy payment was made.

''(2) COLLECTION.—Such amount may be collected by the United States, either as an offset from any amount due the insured by the United States or as otherwise authorized by law.

''(3) DEBT NOT DISCHARGEABLE IN BANKRUPTCY.—Such debt payable to the United States is not dischargeable in bankruptcy proceedings.

''(c) CREDITING OF AMOUNTS RECOVERED.—Any amounts received by the United States as repayment of debts incurred by an insured under this title shall be credited to the appropriation for the payment of claims under this title.

"SEC. 408. REGULATIONS.

''The Secretary of Veterans Affairs shall prescribe regulations for the implementation of this title.

"SEC. 409. REVIEW OF FINDINGS OF FACT AND CONCLUSIONS OF LAW.

''The findings of fact and conclusions of law made by the Secretary of Veterans Affairs in administering this title are subject to review on appeal to the Board of Veterans' Appeals pursuant to chapter 71 of title 38, United States Code, and to judicial review only as provided in chapter 72 of such title.

"TITLE V—TAXES AND PUBLIC LANDS

"SEC. 501. TAXES RESPECTING PERSONAL PROPERTY, MONEY, CREDITS, AND REAL PROPERTY.

''(a) APPLICATION.—This section applies in any case in which a tax or assessment, whether general or special (other than a tax on personal income), falls due and remains unpaid before or during a period of military service with respect to a servicemember's—

''(1) personal property (including motor vehicles); or

''(2) real property occupied for dwelling, professional, business, or agricultural purposes by a servicemember or the servicemember's dependents or employees—

''(A) before the servicemember's entry into military service; and

''(B) during the time the tax or assessment remains unpaid.

''(b) SALE OF PROPERTY.—

''(1) LIMITATION ON SALE OF PROPERTY TO ENFORCE TAX ASSESSMENT.—Property described in subsection (a) may not be sold to enforce the collection of such tax or assessment except by court order and upon the determination by the court that military service does not materially affect the servicemember's ability to pay the unpaid tax or assessment.

''(2) STAY OF COURT PROCEEDINGS.—A court may stay a proceeding to enforce the collection of such tax or assessment, or sale of such property, during a period of military service of the servicemember and for a period not more than 180 days after the termination of, or release of the servicemember from, military service.

''(c) REDEMPTION.—When property described in subsection (a) is sold or forfeited to enforce the collection of a tax or assessment, a servicemember shall have the right to redeem or commence an action to redeem the servicemember's property during the period of military service or within 180 days after termination of or release from military service. This subsection may not be construed to shorten any period provided by the law of a State (including any political subdivision of a State) for redemption.

''(d) INTEREST ON TAX OR ASSESSMENT.—Whenever a servicemember does not pay a tax or assessment on property described in subsection (a) when due, the amount of the tax or assessment due and unpaid shall bear interest until paid at the rate of 6 percent per year. An additional penalty or interest shall not be incurred by reason of nonpayment. A lien for such unpaid tax or assessment may include interest under this subsection.

''(e) JOINT OWNERSHIP APPLICATION.—This section applies to all forms of property described in subsection (a) owned individually by a servicemember or jointly by a servicemember and a dependent or dependents.

"SEC. 502. RIGHTS IN PUBLIC LANDS.

''(a) RIGHTS NOT FORFEITED.—The rights of a servicemember to lands owned or controlled by the United States, and initiated or acquired by the servicemember under the laws of the United States (including the mining and mineral leasing laws) before military service, shall not be forfeited or prejudiced as a result of being absent from the land, or by failing to begin or complete any work or improvements to the land, during the period of military service.

''(b) TEMPORARY SUSPENSION OF PERMITS OR LICENSES.—If a permittee or licensee under the Act of June 28, 1934 (43 U.S.C. 315 et seq.), enters military service, the permittee or licensee may suspend the permit or license for the period of military service and for 180 days after termination of or release from military service.

''(c) REGULATIONS.—Regulations prescribed by the Secretary of the Interior shall provide for such suspension of permits and licenses and for the remission, reduction, or refund of grazing fees during the period of such suspension.

"SEC. 503. DESERT-LAND ENTRIES.

''(a) DESERT-LAND RIGHTS NOT FORFEITED.—A desert-land entry made or held under the desert-land laws before the entrance of the entryman or the entryman's successor in interest into military service shall not be subject to contest or cancellation—

''(1) for failure to expend any required amount per acre per year in improvements upon the claim;

''(2) for failure to effect the reclamation of the claim during the period the entryman or the entryman's successor in interest is in the military service, or for 180 days after termination of or release from military service; or

''(3) during any period of hospitalization or rehabilitation due to an injury or disability incurred in the line of duty.

The time within which the entryman or claimant is required to make such expenditures and

effect reclamation of the land shall be exclusive of the time periods described in paragraphs (2) and (3).

''(b) SERVICE-RELATED DISABILITY.—If an entryman or claimant is honorably discharged and is unable to accomplish reclamation of, and payment for, desert land due to a disability incurred in the line of duty, the entryman or claimant may make proof without further reclamation or payments, under regulations prescribed by the Secretary of the Interior, and receive a patent for the land entered or claimed.

''(c) FILING REQUIREMENT.—In order to obtain the protection of this section, the entryman or claimant shall, within 180 days after entry into military service, cause to be filed in the land office of the district where the claim is situated a notice communicating the fact of military service and the desire to hold the claim under this section.

"SEC. 504. MINING CLAIMS.

''(a) REQUIREMENTS SUSPENDED.—The provisions of section 2324 of the Revised Statutes of the United States (30 U.S.C. 28) specified in subsection (b) shall not apply to a servicemember's claims or interests in claims, regularly located and recorded, during a period of military service and 180 days thereafter, or during any period of hospitalization or rehabilitation due to injuries or disabilities incurred in the line of duty.

''(b) REQUIREMENTS.—The provisions in section 2324 of the Revised Statutes that shall not apply under subsection (a) are those which require that on each mining claim located after May 10, 1872, and until a patent has been issued for such claim, not less than $100 worth of labor shall be performed or improvements made during each year.

''(c) PERIOD OF PROTECTION FROM FORFEITURE.—A mining claim or an interest in a claim owned by a servicemember that has been regularly located and recorded shall not be subject to forfeiture for nonperformance of annual assessments during the period of military service and for 180 days thereafter, or for any period of hospitalization or rehabilitation described in subsection (a).

''(d) FILING REQUIREMENT.—In order to obtain the protections of this section, the claimant of a mining location shall, before the end of the assessment year in which military service is begun or within 60 days after the end of such assessment year, cause to be filed in the office where the location notice or certificate is recorded a notice communicating the fact of military service and the desire to hold the mining claim under this section.

"SEC. 505. MINERAL PERMITS AND LEASES.

''(a) SUSPENSION DURING MILITARY SERVICE.—A person holding a permit or lease on the public domain under the Federal mineral leasing laws who enters military service may suspend all operations under the permit or lease for the duration of military service and for 180 days thereafter. The term of the permit or lease shall not run during the period of suspension, nor shall any rental or royalties be charged against the permit or lease during the period of suspension.

''(b) NOTIFICATION.—In order to obtain the protection of this section, the permittee or lessee shall, within 180 days after entry into military service, notify the Secretary of the Interior by registered mail of the fact that military service has begun and of the desire to hold the claim under this section.

''(c) CONTRACT MODIFICATION.—This section shall not be construed to supersede the terms of any contract for operation of a permit or lease.

"SEC. 506. PERFECTION OR DEFENSE OF RIGHTS.

''(a) RIGHT TO TAKE ACTION NOT AFFECTED.—This title shall not affect the right of a servicemember to take action during a period of military service that is authorized by law or regulations of the Department of the Interior, for the perfection, defense, or further assertion of rights initiated or acquired before entering military service.

''(b) AFFIDAVITS AND PROOFS.—

''(1) IN GENERAL.—A servicemember during a period of military service may make any affidavit or submit any proof required by law, practice, or regulation of the Department of the Interior in connection with the entry, perfection, defense, or further assertion of rights initiated or acquired before entering military service before an officer authorized to provide notary services under section 1044a of title 10, United States Code, or any superior commissioned officer.

''(2) LEGAL STATUS OF AFFIDAVITS.—Such affidavits shall be binding in law and subject to the same penalties as prescribed by section 1001 of title 18, United State Code.

"SEC. 507. DISTRIBUTION OF INFORMATION CONCERNING BENEFITS OF TITLE.

''(a) DISTRIBUTION OF INFORMATION BY SECRETARY CONCERNED.—The Secretary concerned shall issue to servicemembers information explaining the provisions of this title.

''(b) APPLICATION FORMS.—The Secretary concerned shall provide application forms to servicemembers requesting relief under this title.

''(c) INFORMATION FROM SECRETARY OF THE INTERIOR.—The Secretary of the Interior shall furnish to the Secretary concerned information explaining the provisions of this title (other than sections 501, 510, and 511) and related application forms.

"SEC. 508. LAND RIGHTS OF SERVICEMEMBERS.

''(a) NO AGE LIMITATIONS.—Any servicemember under the age of 21 in military service shall be entitled to the same rights under the laws relating to lands owned or controlled by the United States, including mining and mineral leasing laws, as those servicemembers who are 21 years of age.

''(b) RESIDENCY REQUIREMENT.—Any requirement related to the establishment of a residence within a limited time shall be suspended as to entry by a servicemember in military service until 180 days after termination of or release from military service.

''(c) ENTRY APPLICATIONS.—Applications for entry may be verified before a person authorized to administer oaths under section 1044a of title 10, United States Code, or under the laws of the State where the land is situated.

"SEC. 509. REGULATIONS.

''The Secretary of the Interior may issue regulations necessary to carry out this title (other than sections 501, 510, and 511).

"SEC. 510. INCOME TAXES.

''(a) DEFERRAL OF TAX.—Upon notice to the Internal Revenue Service or the tax authority of a State or a political subdivision of a State, the collection of income tax on the income of a servicemember falling due before or during military service shall be deferred for a period not more than 180 days after termination of or release from military service, if a servicemember's ability to pay such income tax is materially affected by military service.

''(b) ACCRUAL OF INTEREST OR PENALTY.—No interest or penalty shall accrue for the period of deferment by reason of nonpayment on any amount of tax deferred under this section.

''(c) STATUTE OF LIMITATIONS.—The running of a statute of limitations against the collection of tax deferred under this section, by seizure or otherwise, shall be suspended for the period of military service of the servicemember and for an additional period of 270 days thereafter.

''(d) APPLICATION LIMITATION.—This section shall not apply to the tax imposed on employees by section 3101 of the Internal Revenue Code of 1986.

"SEC. 511. RESIDENCE FOR TAX PURPOSES.

''(a) RESIDENCE OR DOMICILE.—A servicemember shall neither lose nor acquire a residence or domicile for purposes of taxation with respect to the person, personal property, or income of the servicemember by reason of being absent or present in any tax jurisdiction of the United States solely in compliance with military orders.

''(b) MILITARY SERVICE COMPENSATION.—Compensation of a servicemember for military service shall not be deemed to be income for services performed or from sources within a tax jurisdiction of the United States if the servicemember is not a resident or domiciliary of the jurisdiction in which the servicemember is serving in compliance with military orders.

''(c) PERSONAL PROPERTY.—

''(1) RELIEF FROM PERSONAL PROPERTY TAXES.—The personal property of a servicemember shall not be deemed to be located or present in, or to have a situs for taxation in, the tax jurisdiction in which the servicemember is serving in compliance with military orders.

''(2) EXCEPTION FOR PROPERTY WITHIN MEMBER'S DOMICILE OR RESIDENCE.—This subsection applies to personal property or its use within any tax jurisdiction other than the servicemember's domicile or residence.

''(3) EXCEPTION FOR PROPERTY USED IN TRADE OR BUSINESS.—This section does not prevent taxation by a tax jurisdiction with respect to personal property used in or arising from a trade or business, if it has jurisdiction.

''(4) RELATIONSHIP TO LAW OF STATE OF DOMICILE.—Eligibility for relief from personal property taxes under this subsection is not contingent on whether or not such taxes are paid to the State of domicile.

''(d) INCREASE OF TAX LIABILITY.—A tax jurisdiction may not use the military compensation of a nonresident servicemember to increase the tax liability imposed on other income earned by the nonresident servicemember or spouse subject to tax by the jurisdiction.

''(e) FEDERAL INDIAN RESERVATIONS.—An Indian servicemember whose legal residence or domicile is a Federal Indian reservation shall be taxed by the laws applicable to Federal Indian reservations and not the State where the reservation is located.

''(f) DEFINITIONS.—For purposes of this section:

''(1) PERSONAL PROPERTY.—The term 'personal property' means intangible and tangible property (including motor vehicles).

''(2) TAXATION.—The term 'taxation' includes licenses, fees, or excises imposed with respect to motor vehicles and their use, if the license, fee, or excise is paid by the servicemember in the servicemember's State of domicile or residence.

''(3) TAX JURISDICTION.—The term 'tax jurisdiction' means a State or a political subdivision of a State.

"TITLE VI—ADMINISTRATIVE REMEDIES

"SEC. 601. INAPPROPRIATE USE OF ACT.

''If a court determines, in any proceeding to enforce a civil right, that any interest, property, or contract has been transferred or acquired with the intent to delay the just enforcement of such right by taking advantage of this Act, the court shall enter such judgment or make such order as might lawfully be entered or made concerning such transfer or acquisition.

"SEC. 602. CERTIFICATES OF SERVICE; PERSONS REPORTED MISSING.

''(a) PRIMA FACIE EVIDENCE.—In any proceeding under this Act, a certificate signed by the Secretary concerned is prima facie evidence as to any of the following facts stated in the certificate:

''(1) That a person named is, is not, has been, or has not been in military service.

''(2) The time and the place the person entered military service.

''(3) The person's residence at the time the person entered military service.

''(4) The rank, branch, and unit of military service of the person upon entry.

''(5) The inclusive dates of the person's military service.

''(6) The monthly pay received by the person at the date of the certificate's issuance.

''(7) The time and place of the person's termination of or release from military service, or the person's death during military service.

''(b) CERTIFICATES.—The Secretary concerned shall furnish a certificate under subsection (a) upon receipt of an application for such a certificate. A certificate appearing to be signed by the Secretary concerned is prima facie evidence of its contents and of the signer's authority to issue it.

''(c) TREATMENT OF SERVICEMEMBERS IN MISSING STATUS.—A servicemember who has been reported missing is presumed to continue in service until accounted for. A requirement under this Act that begins or ends with the death of a servicemember does not begin or end until the servicemember's death is reported to, or determined by, the Secretary concerned or by a court of competent jurisdiction.

''SEC. 603. INTERLOCUTORY ORDERS.

''An interlocutory order issued by a court under this Act may be revoked, modified, or extended by that court upon its own motion or otherwise, upon notification to affected parties as required by the court.

''TITLE VII—FURTHER RELIEF

''SEC. 701. ANTICIPATORY RELIEF.

''(a) APPLICATION FOR RELIEF.—A servicemember may, during military service or within 180 days of termination of or release from military service, apply to a court for relief—

''(1) from any obligation or liability incurred by the servicemember before the servicemember's military service; or

''(2) from a tax or assessment falling due before or during the servicemember's military service.

''(b) TAX LIABILITY OR ASSESSMENT.—In a case covered by subsection (a), the court may, if the ability of the servicemember to comply with the terms of such obligation or liability or pay such tax or assessment has been materially affected by reason of military service, after appropriate notice and hearing, grant the following relief:

''(1) STAY OF ENFORCEMENT OF REAL ESTATE CONTRACTS.—

''(A) In the case of an obligation payable in installments under a contract for the purchase of real estate, or secured by a mortgage or other instrument in the nature of a mortgage upon real estate, the court may grant a stay of the enforcement of the obligation—

''(i) during the servicemember's period of military service; and

''(ii) from the date of termination of or release from military service, or from the date of application if made after termination of or release from military service.

''(B) Any stay under this paragraph shall be—

''(i) for a period equal to the remaining life of the installment contract or other instrument, plus a period of time equal to the period of military service of the servicemember, or any part of such combined period; and

''(ii) subject to payment of the balance of the principal and accumulated interest due and unpaid at the date of termination or release from the applicant's military service or from the date of application in equal installments during the combined period at the rate of interest on the unpaid balance prescribed in the contract or other instrument evidencing the obligation, and subject to other terms as may be equitable.

''(2) STAY OF ENFORCEMENT OF OTHER CONTRACTS.—

''(A) In the case of any other obligation, liability, tax, or assessment, the court may grant a stay of enforcement—

''(i) during the servicemember's military service; and

''(ii) from the date of termination of or release from military service, or from the date of application if made after termination or release from military service.

''(B) Any stay under this paragraph shall be—

''(i) for a period of time equal to the period of the servicemember's military service or any part of such period; and

''(ii) subject to payment of the balance of principal and accumulated interest due and unpaid at the date of termination or release from military service, or the date of application, in equal periodic installments during this extended period at the rate of interest as may be prescribed for this obligation, liability, tax, or assessment, if paid when due, and subject to other terms as may be equitable.

''(c) AFFECT OF STAY ON FINE OR PENALTY.—When a court grants a stay under this section, a fine or penalty shall not accrue on the obligation, liability, tax, or assessment for the period of compliance with the terms and conditions of the stay.

''SEC. 702. POWER OF ATTORNEY.

''(a) AUTOMATIC EXTENSION.—A power of attorney of a servicemember shall be automatically extended for the period the servicemember is in a missing status (as defined in section 551(2) of title 37, United States Code) if the power of attorney—

''(1) was duly executed by the servicemember—

''(A) while in military service; or

''(B) before entry into military service but after the servicemember—

''(i) received a call or order to report for military service; or

''(ii) was notified by an official of the Department of Defense that the person could receive a call or order to report for military service;

''(2) designates the servicemember's spouse, parent, or other named relative as the servicemember's attorney in fact for certain, specified, or all purposes; and

''(3) expires by its terms after the servicemember entered a missing status.

''(b) LIMITATION ON POWER OF ATTORNEY EXTENSION.—A power of attorney executed by a servicemember may not be extended under subsection (a) if the document by its terms clearly indicates that the power granted expires on the date specified even though the servicemember, after the date of execution of the document, enters a missing status.

''SEC. 703. PROFESSIONAL LIABILITY PROTECTION.

''(a) APPLICABILITY.—This section applies to a servicemember who—

''(1) after July 31, 1990, is ordered to active duty (other than for training) pursuant to sections 688, 12301(a), 12301(g), 12302, 12304, 12306, or 12307 of title 10, United States Code, or who is ordered to active duty under section 12301(d) of such title during a period when members are on active duty pursuant to any of the preceding sections; and

''(2) immediately before receiving the order to active duty—

''(A) was engaged in the furnishing of healthcare or legal services or other services determined by the Secretary of Defense to be professional services; and

''(B) had in effect a professional liability insurance policy that does not continue to cover claims filed with respect to the servicemember during the period of the servicemember's active duty unless the premiums are paid for such coverage for such period.

''(b) SUSPENSION OF COVERAGE.—

''(1) SUSPENSION.—Coverage of a servicemember referred to in subsection (a) by a professional liability insurance policy shall be suspended by the insurance carrier in accordance with this subsection upon receipt of a written request from the servicemember by the insurance carrier.

''(2) PREMIUMS FOR SUSPENDED CONTRACTS.—A professional liability insurance carrier—

''(A) may not require that premiums be paid by or on behalf of a servicemember for any professional liability insurance coverage suspended pursuant to paragraph (1); and

''(B) shall refund any amount paid for coverage for the period of such suspension or, upon the election of such servicemember, apply such amount for the payment of any premium becoming due upon the reinstatement of such coverage.

''(3) NONLIABILITY OF CARRIER DURING SUSPENSION.—A professional liability insurance carrier shall not be liable with respect to any claim that is based on professional conduct (including any failure to take any action in a professional capacity) of a servicemember that occurs during a period of suspension of that servicemember's professional liability insurance under this subsection.

''(4) CERTAIN CLAIMS CONSIDERED TO ARISE BEFORE SUSPENSION.—For the purposes of paragraph (3), a claim based upon the failure of a professional to make adequate provision for a patient, client, or other person to receive professional services or other assistance during the period of the professional's active duty service shall be considered to be based on an action or failure to take action before the beginning of the period of the suspension of professional liability insurance under this subsection, except in a case in which professional services were provided after the date of the beginning of such period.

''(c) REINSTATEMENT OF COVERAGE.—

''(1) REINSTATEMENT REQUIRED.—Professional liability insurance coverage suspended in the case of any servicemember pursuant to subsection (b) shall be reinstated by the insurance carrier on the date on which that servicemember transmits to the insurance carrier a written request for reinstatement.

''(2) TIME AND PREMIUM FOR REINSTATEMENT.—The request of a servicemember for reinstatement shall be effective only if the servicemember transmits the request to the insurance carrier within 30 days after the date on which the servicemember is released from active duty. The insurance carrier shall notify the servicemember of the due date for payment of the premium of such insurance. Such premium shall be paid by the servicemember within 30 days after receipt of that notice.

''(3) PERIOD OF REINSTATED COVERAGE.—The period for which professional liability insurance coverage shall be reinstated for a servicemember under this subsection may not be less than the balance of the period for which coverage would have continued under the insurance policy if the coverage had not been suspended.

''(d) INCREASE IN PREMIUM.—

''(1) LIMITATION ON PREMIUM INCREASES.—An insurance carrier may not increase the amount of the premium charged for professional liability insurance coverage of any servicemember for the minimum period of the reinstatement of such coverage required under subsection (c)(3) to an amount greater than the amount chargeable for such coverage for such period before the suspension.

''(2) EXCEPTION.—Paragraph (1) does not prevent an increase in premium to the extent of any general increase in the premiums charged by that carrier for the same professional liability coverage for persons similarly covered by such insurance during the period of the suspension.

''(e) CONTINUATION OF COVERAGE OF UNAFFECTED PERSONS.—This section does not—

''(1) require a suspension of professional liability insurance protection for any person who is not a person referred to in subsection (a) and who is covered by the same professional liability insurance as a person referred to in such subsection; or

''(2) relieve any person of the obligation to pay premiums for the coverage not required to be suspended.

''(f) STAY OF CIVIL OR ADMINISTRATIVE ACTIONS.—

''(1) STAY OF ACTIONS.—A civil or administrative action for damages on the basis of the alleged professional negligence or other professional liability of a servicemember whose professional liability insurance coverage has been suspended under subsection (b) shall be stayed until the end of the period of the suspension if—

''(A) the action was commenced during the period of the suspension;

''(B) the action is based on an act or omission that occurred before the date on which the suspension became effective; and

''(C) the suspended professional liability insurance would, except for the suspension, on its face cover the alleged professional negligence or other professional liability negligence or other professional liability of the servicemember.

''(2) DATE OF COMMENCEMENT OF ACTION.—Whenever a civil or administrative action for damages is stayed under paragraph (1) in the case of any servicemember, the action shall have been deemed to have been filed on the date on which the professional liability insurance coverage of the servicemember is reinstated under subsection (c).

''(g) EFFECT OF SUSPENSION UPON LIMITATIONS PERIOD.—In the case of a civil or administrative action for which a stay could have been granted under subsection (f) by reason of the suspension of professional liability insurance coverage of the defendant under this section, the period of the suspension of the coverage shall be excluded from the computation of any statutory period of limitation on the commencement of such action.

''(h) DEATH DURING PERIOD OF SUSPENSION.—If a servicemember whose professional liability insurance coverage is suspended under subsection (b) dies during the period of the suspension—

''(1) the requirement for the grant or continuance of a stay in any civil or administrative action against such servicemember under subsection (f)(1) shall terminate on the date of the death of such servicemember; and

''(2) the carrier of the professional liability insurance so suspended shall be liable for any claim for damages for professional negligence or other professional liability of the deceased servicemember in the same manner and to the same extent as such carrier would be liable if the servicemember had died while covered by such insurance but before the claim was filed.

''(i) DEFINITIONS.—For purposes of this section:

''(1) ACTIVE DUTY.—The term 'active duty' has the meaning given that term in section 101(d)(1) of title 10, United States Code.

''(2) PROFESSION.—The term 'profession' includes occupation.

''(3) PROFESSIONAL.—The term 'professional' includes occupational.

''SEC. 704. HEALTH INSURANCE REINSTATEMENT.

''(a) REINSTATEMENT OF HEALTH INSURANCE.—A servicemember who, by reason of military service as defined in section 703(a)(1), is entitled to the rights and protections of this Act shall also be entitled upon termination or release from such service to reinstatement of any health insurance that—

''(1) was in effect on the day before such service commenced; and

''(2) was terminated effective on a date during the period of such service.

''(b) NO EXCLUSION OR WAITING PERIOD.—The reinstatement of health care insurance coverage for the health or physical condition of a servicemember described in subsection (a), or any other person who is covered by the insurance by reason of the coverage of the servicemember, shall not be subject to an exclusion or a waiting period, if—

''(1) the condition arose before or during the period of such service;

''(2) an exclusion or a waiting period would not have been imposed for the condition during the period of coverage; and

''(3) if the condition relates to the servicemember, the condition has not been determined by the Secretary of Veterans Affairs to be a disability incurred or aggravated in the line of duty (within the meaning of section 105 of title 38, United States Code).

''(c) EXCEPTIONS.—Subsection (a) does not apply to a servicemember entitled to participate in employer-offered insurance benefits pursuant to the provisions of chapter 43 of title 38, United States Code.

''(d) TIME FOR APPLYING FOR REINSTATEMENT.—An application under this section must be filed not later than 120 days after the date of the termination of or release from military service.

''SEC. 705. GUARANTEE OF RESIDENCY FOR MILITARY PERSONNEL.

''For the purposes of voting for any Federal office (as defined in section 301 of the Federal Election Campaign Act of 1971 (2 U.S.C. 431)) or a State or local office, a person who is absent from a State in compliance with military or naval orders shall not, solely by reason of that absence—

''(1) be deemed to have lost a residence or domicile in that State, without regard to whether or not the person intends to return to that State;

''(2) be deemed to have acquired a residence or domicile in any other State; or

''(3) be deemed to have become a resident in or a resident of any other State.

''SEC. 706. BUSINESS OR TRADE OBLIGATIONS.

''(a) AVAILABILITY OF NON-BUSINESS ASSETS TO SATISFY OBLIGATIONS.—If the trade or business (without regard to the form in which such trade or business is carried out) of a servicemember has an obligation or liability for which the servicemember is personally liable, the assets of the servicemember not held in connection with the trade or business may not be available for satisfaction of the obligation or liability during the servicemember's military service.

''(b) RELIEF TO OBLIGORS.—Upon application to a court by the holder of an obligation or liability covered by this section, relief granted by this section to a servicemember may be modified as justice and equity require.''.

SEC. 2. CONFORMING AMENDMENTS.

(a) MILITARY SELECTIVE SERVICE ACT.—Section 14 of the Military Selective Service Act (50 U.S.C. App. 464) is repealed.

(b) TITLE 5, UNITED STATES CODE.—

(1) Section 5520a(k)(2)(A) of title 5, United States Code, is amended by striking ''Soldiers' and Sailors' Civil Relief Act of 1940'' and inserting ''Servicemembers Civil Relief Act''; and

(2) Section 5569(e) of title 5, United States Code, is amended—

(A) in paragraph (1), by striking ''provided by the Soldiers' and Sailors' Civil Relief Act of 1940'' and all that follows through ''of such Act'' and inserting ''provided by the Servicemembers Civil Relief Act, including the benefits provided by section 702 of such Act but excluding the benefits provided by sections 104, 105, and 106, title IV, and title V (other than sections 501 and 510) of such Act''; and

(B) in paragraph (2)(A), by striking ''person in the military service'' and inserting ''servicemember''.

(c) TITLE 10, UNITED STATES CODE.—Section 1408(b)(1)(D) of title 10, United States Code, is amended by striking ''Soldiers' and Sailors' Civil Relief Act of 1940'' and inserting ''Servicemembers Civil Relief Act''.

(d) INTERNAL REVENUE CODE.—Section 7654(d)(1) of the Internal Revenue Code of 1986 is amended by striking ''Soldiers' and Sailors' Civil Relief Act'' and inserting ''Servicemembers Civil Relief Act''.

(e) PUBLIC HEALTH SERVICE ACT.—Section 212(e) of the Public Health Service Act (42 U.S.C. 213(e)) is amended by striking ''Soldiers' and Sailors' Civil Relief Act of 1940'' and inserting ''Servicemembers Civil Relief Act''.

(f) ELEMENTARY AND SECONDARY EDUCATION ACT OF 1965.—Section 8001 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7701) is amended by striking ''section 514 of the Soldiers' and Sailors' Civil Relief Act of 1940 (50 U.S.C. App. 574)'' in the matter preceding paragraph (1) and inserting ''section 511 of the Servicemembers Civil Relief Act''.

(g) NOAA COMMISSIONED OFFICER CORPS ACT OF 2002.—Section 262(a)(2) of National Oceanic and Atmospheric Administration Commissioned Officer Corps Act of 2002 (33 U.S.C. 3072(a)(2)) is amended to read as follows:

''(2) The Servicemembers Civil Relief Act.''.

SEC. 3. EFFECTIVE DATE.

The amendment made by section 1 shall apply to any case that is not final before the date of the enactment of this Act.

Mr. GRAHAM of Florida. Mr. President, as ranking member of the Committee on Veterans' Affairs, I ask my colleagues to join me today in passing S. 1136, the Servicemembers' Civil Relief Act. This important bill would restate and update the Soldiers' and Sailors' Civil Relief Act of 1940, a law that protects servicemembers from worrying about civil lawsuits and pre-existing debts while they are in uniform defending the United States. The bill reasserts our commitment to protect and care for those servicemen and women who often make tremendous sacrifices to serve our nation.

Civil protections have been afforded to servicemembers in the United States since the War of 1812. The first modern version of the SSCRA was enacted after the U.S. entered World War I. In 1940, Congress reenacted many of the WWI provisions, but raised the protection on rent evictions by $30 to reflect the rise in the cost of living. Congress continued to update and supplement provisions over the years to adapt the protections to the changing needs and circumstances of servicemembers. In 2002, responding to the lengthy mobilization of National Guard members to safeguard the nation's airports after the attacks of September 11, Congress extended SSCRA protections to Guard members called up by the President to respond to national emergencies who remain under the authority of the State Governors.

This legislation would restate, clarify, and revise the Soldiers' and Sailors' Civil Relief Act of 1940, SSCRA, and its subsequent amendments. The SSCRA's main purpose has been to suspend some of the legal obligations incurred by military personnel prior to entry into the service or mobilization for active service in the Reserves or the National Guard. The core protections provided by the SSCRA are: stays of civil legal proceedings during a person's period of military service; an interest rate cap of 6 percent on debts incurred before active duty; protection from eviction and termination of preservice residential leases; and legal residency protection. Also, servicemembers are able to terminate a lease on a home if given orders to move. Because of the SSCRA, servicemembers have not had to worry about being sued or being evicted from their homes while deployed. Instead, the legislation has allowed them to properly keep their focus on military duties.

The legislation before us, S. 1136, would update the SSCRA to better address the obligations servicemembers incur today. For example, due to the escalating costs of rental housing over

the past few decades, this act will provide greater protection for servicemembers and their families from being evicted during times of military service. Currently, servicemembers are protected from eviction if they have a monthly rent of $1200 or less. This legislation will raise the bar to $2,400, to be adjusted annually based on the annual increase in the Consumer Price Index, thus avoiding the future need for frequent amendments to the law.

Continuing the effort to make the SSCRA applicable to today's servicemembers' lifestyles, this legislation would allow servicemembers to be released from a lease for an automobile if they are deployed for an extended period of time or moved overseas. It was necessary to add this protection because auto leasing has become such a popular alternative to purchasing in recent times, yet many leases prohibit the removal of cars from the United States.

This bill would also look after the needs of small business owners who serve, particularly those in the Reserves and National Guard. If passed, the bill would preserve the assets of small business owners during military service if the servicemember is personally liable for trade or business debts.

I thank the leadership of my colleagues who serve on the House Committee on Veterans' Affairs, the Chairman of the Senate Committee on Veterans' Affairs, Senator SPECTER, and Senators BEN NELSON and ZELL MILLER, who have all worked together to provide a comprehensive and necessary set of benefits which will relieve many of the personal burdens some of our servicemembers face when they are called into duty. The benefits will allow them to continue focusing their efforts on their heroic duties for our Nation.

I urge my colleagues to support this critical measure and restore the fundamental justice due our veterans.

Mr. FRIST. I ask unanimous consent the committee substitute amendment be agreed to; the bill, as amended, be read a third time, and the Veterans' Affairs Committee then be discharged from further consideration of H.R. 100, and the Senate proceed to its consideration. I further ask all after the enacting clause be stricken, the text of S. 1136, as amended, be inserted in lieu thereof, the bill as amended be read a third time and passed, the motions to reconsider be laid on the table en bloc, S. 1136 then be returned to the calendar, and any statements relating to the bill be printed in the RECORD.

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

The committee amendment in the nature of a substitute was agreed to.

The bill was ordered to be engrossed for a third reading and was read the third time.

The bill (H.R. 100), as amended, was read the third time and passed.

DEPARTMENT OF HOMELAND SECURITY FINANCIAL ACCOUNTABILITY ACT

Mr. FRIST. I ask unanimous consent the Senate now proceed to consideration of Calendar No. 405, S. 1567.

The PRESIDING OFFICER. The clerk will report the bill by title.

The legislative clerk read as follows:

A bill (S. 1567) to amend title 31, United States Code, to improve financial accountability requirements applicable to the Department of Homeland Security 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. 1567

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 ''Department of Homeland Security Financial Accountability Act''.

[SEC. 2. CHIEF FINANCIAL OFFICER OF THE DEPARTMENT OF HOMELAND SECURITY.

[(a) IN GENERAL.—Section 901(b)(1) of title 31, United States Code, is amended—

[(1) by redesignating subparagraphs (G) through (P) as subparagraphs (H) through (Q), respectively; and

[(2) by inserting after subparagraph (F) the following:

[''(G) The Department of Homeland Security.''.

[(b) APPOINTMENT OR DESIGNATION OF CFO.—The President shall appoint or designate a Chief Financial Officer of the Department of Homeland Security under the amendment made by subsection (a) by not later than 180 days after the date of the enactment of this Act.

[(c) CONTINUED SERVICE OF CURRENT OFFICIAL.—The individual serving as Chief Financial Officer of the Department of Homeland Security immediately before the enactment of this Act may continue to serve in that position until the date of the confirmation or designation, as applicable (under section 901(a)(1)(B) of title 31, United States Code), of a successor under the amendment made by subsection (a).

[(d) CONFORMING AMENDMENTS.—

[(1) HOMELAND SECURITY ACT OF 2002.—The Homeland Security Act of 2002 (Public Law 107–296) is amended—

[(A) in section 103 (6 U.S.C. 113)—

[(i) in subsection (d) by striking paragraph (4), and redesignating paragraph (5) as paragraph (4);

[(ii) by redesignating subsection (e) as subsection (f); and

[(iii) by inserting after subsection (d) the following:

[''(e) CHIEF FINANCIAL OFFICER.—There shall be in the Department a Chief Financial Officer, as provided in chapter 9 of title 31, United States Code.''; and

[(B) in section 702 (6 U.S.C. 342) by striking ''shall report'' and all that follows through the period and inserting ''shall perform functions as specified in chapter 9 of title 31, United States Code.''.

[(2) FEMA.—Section 901(b)(2) of title 31, United States Code, is amended by striking subparagraph (B), and by redesignating subparagraphs (D) through (H) as subparagraphs (C) through (G), respectively.

[SEC. 3. FUNCTIONS OF CHIEF FINANCIAL OFFICER OF THE DEPARTMENT OF HOMELAND SECURITY.

[Section 3516 of title 31, United States Code, is amended by adding at the end the following:

[''(f) The Secretary of Homeland Security—

[''(1) shall submit for fiscal year 2004, and for each subsequent fiscal year, a performance and accountability report under subsection (a) that incorporates the program performance report under section 1116 of this title for the Department of Homeland Security; and

[''(2) shall include in each performance and accountability report an audit opinion of the Department's internal controls over its financial reporting.''.]

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Department of Homeland Security Financial Accountability Act''.

SEC. 2. CHIEF FINANCIAL OFFICER OF THE DEPARTMENT OF HOMELAND SECURITY.

(a) IN GENERAL.—Section 901(b)(1) of title 31, United States Code, is amended—

(1) by redesignating subparagraphs (G) through (P) as subparagraphs (H) through (Q), respectively; and

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

''(G) The Department of Homeland Security.''.

(b) APPOINTMENT OR DESIGNATION OF CFO.—The President shall appoint or designate a Chief Financial Officer of the Department of Homeland Security under the amendment made by subsection (a) by not later than 180 days after the date of the enactment of this Act.

(c) CONTINUED SERVICE OF CURRENT OFFICIAL.—The individual serving as Chief Financial Officer of the Department of Homeland Security immediately before the enactment of this Act may continue to serve in that position until the date of the confirmation or designation, as applicable (under section 901(a)(1)(B) of title 31, United States Code), of a successor under the amendment made by subsection (a).

(d) CONFORMING AMENDMENTS.—

(1) HOMELAND SECURITY ACT OF 2002.—The Homeland Security Act of 2002 (Public Law 107–296) is amended—

(A) in section 103 (6 U.S.C. 113)—

(i) in subsection (d) by striking paragraph (4), and redesignating paragraph (5) as paragraph (4);

(ii) by redesignating subsection (e) as subsection (f); and

(iii) by inserting after subsection (d) the following:

''(e) CHIEF FINANCIAL OFFICER.—There shall be in the Department a Chief Financial Officer, as provided in chapter 9 of title 31, United States Code.''; and

(B) in section 702 (6 U.S.C. 342) by striking ''shall report'' and all that follows through the period and inserting ''shall perform functions as specified in chapter 9 of title 31, United States Code.''.

(2) FEMA.—Section 901(b)(2) of title 31, United States Code, is amended by striking subparagraph (B), and by redesignating subparagraphs (C) through (H) as subparagraphs (B) through (G), respectively.

SEC. 3. FUNCTIONS OF CHIEF FINANCIAL OFFICER OF THE DEPARTMENT OF HOMELAND SECURITY.

(a) PERFORMANCE AND ACCOUNTABILITY REPORTS.—Section 3516 of title 31, United States Code, is amended by adding at the end the following:

''(f) The Secretary of Homeland Security—

''(1) shall for each fiscal year submit a performance and accountability report under subsection (a) that incorporates the program performance report under section 1116 of this title for the Department of Homeland Security; and

''(2) shall include in each performance and accountability report an audit opinion of the Department's internal controls over its financial reporting.''.

(b) IMPLEMENTATION OF AUDIT OPINION REQUIREMENT.—The Secretary of Homeland Security shall include audit opinions in performance and accountability reports under section 3516(f) of title 31, United States Code, as amended by subsection (a), only for fiscal years after fiscal year 2004.

(c) ASSERTION OF INTERNAL CONTROLS.—The Secretary of Homeland Security shall include in the performance and accountability report for fiscal year 2004 submitted by the Secretary under section 3516(f) of title 31, United States Code, an assertion of the internal controls that apply to financial reporting by the Department of Homeland Security.

SEC. 4. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated to the Secretary of Homeland Security such sums as are necessary to carry out this Act.

Mr. FRIST. I ask unanimous consent the committee substitute be agreed to, the bill, as amended, be read a third time and passed, the motion to reconsider be laid on the table, and any statements relating to the bill be printed in the RECORD.

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

The committee amendment in the nature of a substitute was agreed to.

The bill (S. 1567), as amended, was read the third time and passed.

UNANIMOUS CONSENT AGREEMENT—S. 1248

Mr. FRIST. I ask unanimous consent that at a time to be determined by the majority leader in consultation with the minority leader, the Senate proceed to consideration of Calendar No. 362, S. 1248, the IDEA Act Reauthorization bill, and that it be considered under the following limitations: That the following amendments be the only first-degree amendments in order, other than the committee-reported substitute amendment, and that any second-degree amendments be relevant to the first-degree amendment to which they are offered: Gregg or his designee, IDEA attorney's fees; Gregg or his designee, IDEA funding; Gregg or his designee, IDEA paperwork reduction; Gregg or his designee, IDEA relevant; Harkin, IDEA funding; Murray, IDEA for the homeless; Clinton, coordinating data on developmental disabilities; Kennedy or his designee, IDEA relevant; Gregg-Kennedy, managers' amendment.

I further ask that upon disposition of all amendments, the committee substitute as amended be agreed to, the bill as amended be read a third time, and the HELP Committee be discharged from further consideration of H.R. 1350, the House companion bill, and the Senate then proceed to its immediate consideration; provided further that all after the enacting clause be stricken, and the text of S. 1248, as amended, be inserted in lieu thereafter, the bill, as amended, be read a third time and the Senate proceed to a vote on passage, without any intervening action or debate, and following the vote the motion to reconsider be laid upon the table. I further ask that after the vote on passage, S. 1248 be returned to the calendar.

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

CHIEF JUSTICE JOHN MARSHALL COMMEMORATIVE COIN ACT

Mr. FRIST. Mr. President, I ask unanimous consent that the Banking Committee be discharged from further consideration of S. 1531 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. 1531) to require the Secretary of the Treasury to mint coins in commemoration of Chief Justice John Marshall.

There being no objection, the Senate proceeded to consider the bill.

Mr. HATCH. Mr. President, I rise today in strong support of S. 1531, the Chief Justice John Marshall Commemorative Coin Act. I am the sponsor of this significant legislation and I believe its passage is indeed a tribute to the most important Chief Justice to serve on the Supreme Court of the United States since our nation's founding.

John Marshall served as the fourth Chief Justice of the Supreme Court for over 34 years. He is the longest serving Chief Justice in our Nation's history. Throughout his years on the Supreme Court, he authored over 500 opinions, many of which significantly impacted the operations and interpretations of the Constitution. He was a distinguished leader who made a lasting impression on the Supreme Court.

For example, probably Marshall's most famous opinion, Marbury v. Madison, instilled in the Supreme Court the authority to review the constitutionality of congressional acts and instituted the doctrine of judicial review. Without judicial review, the Supreme Court and the lower courts of our great nation would not have the ability to uphold and sustain the Constitution and stop any unauthorized intrusion into the sacred freedoms that great document protects.

The Marshall Court decided numerous landmark and historically significant cases that have forever fashioned the Nation's constitutional law and history—including McCullough v. Maryland, Cohens v. Virginia, Stuart v. Laird, Dartmouth College v. Woodward, and Gibbons v. Ogden, just to name a few. These cases are still cited today by our Federal courts and State courts as impressive precedents important to recognize that establish significant legal doctrines and relevant constitutional interpretations.

Chief Justice Marshall is not only the longest serving Chief Justice in the history of the United States, but he has authored more opinions for the Court than any other Chief Justice in the Supreme Court's history. That impressive record remains in place today.

It is noteworthy to recognize that Chief Justice Marshall also introduced and implemented the practice of allowing one justice to speak for the Court while having the remaining justices either sign on to that opinion or issue their own concurring or dissenting opinion. Prior to Chief Justice Marshall's tenure, Justices usually wrote their own opinions and a party in a case had to thoroughly study the particular nuances in each individual Justice's opinion in order to discover which side prevailed.

Chief Justice Marshall was also a Revolutionary War veteran, Envoy Extraordinary and Minister Plenipotentiary to France, Member of the United States House of Representatives, and Secretary of State under President John Adams.

I believe minting a coin is a fitting honor for the Great Chief Justice. This coin will commemorate the 250th anniversary of the birth of Chief Justice Marshall, which will take place in the year 2005.

This legislation will allow the Supreme Court Historical Society to receive the necessary revenue it needs for worthwhile endeavors. The Supreme Court Historical Society is an established national organization whose programs and endeavors benefit Americans in every State in the Union. The Supreme Court Historical Society operates a Summer Institute for Teachers, with brings teachers from across the nation to Washington to study the Supreme Court and the Constitution first hand. This particular program helps to improve public school education about the role and importance of the Court in our Government.

The Supreme Court Historical Society collects antiques and historical artifacts for the use of the Court Curator's educational displays at the Supreme Court Building. There are still many artifacts and antiques that would preserve the precious history of the Court that the Society lacks the funds to acquire.

The Supreme Court Historical Society also holds public lectures at the Supreme Court Building and around the country which usually feature current Justices on the Supreme Court and other important leaders in constitutional and legal scholarship.

The Chief Justice John Marshall Commemorative Coin Act will allow for 400,000 coins bearing the likeness of the Great Chief Justice, John Marshall, in 2005, with a surcharge of $10 per coin. The sale of these coins has the capability to produce nearly $4,000,000 in direct support of the Supreme Court Historical Society's programs and functions.

Furthermore, I put a provision in this bill to ensure that there is no net

cost to the Federal Government in minting this coin. This provision is important, especially in a time when many are concerned about controlling deficit spending and making sure Congress does not unduly burden the American people with unnecessary debt.

Never in the history of this country has a coin been minted focusing on the history of the Supreme Court or on its profound influence on our constitutional form of government. Unless citizens have some form of legal training or a scholarly interest, the Supreme Court and our Federal courts are usually the least understood of the three branches of the government. Yet what it does has an impact, both direct and indirect, on the rights of every citizen.

The Chief Justice John Marshall Commemorative Coin Act has the support of every sitting Justice on the Supreme Court of the United States. It is likewise supported by the Citizens Commemorative Coin Advisory Committee and the former Solicitors General across party lines.

I encourage my colleagues to support this bill, as many have. I am confident this bill will benefit the entire country and as it will help preserve and protect the history of the Supreme Court of the United States.

Mr. LEAHY. Mr. President, I am pleased that the Senate has passed the John Marshall Commemorative Coin Act, S. 1531.

As an original cosponsor of the John Marshall Commemorative Coin Act, I have worked closely with Senator HATCH to do all that we possibly can to speedily pass it into law.

This bill authorizes the Treasury Department to mint and issue coins in honor of Chief Justice John Marshall in the year 2005. Funds raised by sale of the coin will support the Supreme Court Historical Society. Sales of the coin also cover all of the costs of minting and issuing these coins, so that the American taxpayer is not bearing any cost whatsoever of this commemoration.

That sales of a coin that bears the likeness of Chief Justice Marshall will be used to the support of the Supreme Court Historical Society is fitting. The society is a nonprofit organization whose purpose is to preserve and disseminate the history of the Supreme Court of the United States. Founded by Chief Justice Warren Burger, the society's mission is to provide information and historical research on our Nation's highest court. The society accomplishes this mission by conducting programs, publishing books, supporting historical research and collecting antiques and artifacts related to the Court's history. John Marshall is known as ''the great Chief Justice'' of the Supreme Court. Marshall served on the bench for 34 years and established many of the constitutional doctrines we revere today. He is best known and respected for the fundamental principles of checks and balance of our democratic government.

In our successful efforts to gender support for the bill, we gained over 75 cosponsors in the U.S. Senate. Given the noble cause, it was not a hard sell. Yet, the sheer numbers of bipartisan supporters are a fitting tribute to the Great Chief Justice John Marshall. We are happy to assist a worthwhile organization like the Supreme Court Historical Society.

I thank all the Senators who supported this bill—too numerous to name. I also thank the Supreme Court Historical Society for its dedication to this important cause.

Mr. FRIST. Mr. President, I ask unanimous consent that the bill be read a third time and passed, the motion to reconsider be laid upon the table, and that any statements relating to the bill be printed in the RECORD.

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

The bill (S. 1531) was read the third time and passed, as follows:

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 ''Chief Justice John Marshall Commemorative Coin Act''.

SEC. 2. FINDINGS.

Congress finds that—

(1) John Marshall served as the Chief Justice of the Supreme Court of the United States from 1801 to 1835, the longest tenure of any Chief Justice in the Nation's history;

(2) Under Marshall's leadership, the Supreme Court expounded the fundamental principles of constitutional interpretation, including judicial review, and affirmed national supremacy, both of which served to secure the newly founded United States against dissolution; and

(3) John Marshall's service to the nascent United States, not only as Chief Justice, but also as a soldier in the Revolutionary War, as a member of the Virginia Congress and the United States Congress, and as Secretary of State, makes him one of the most important figures in our Nation's history.

SEC. 3. COIN SPECIFICATIONS.

(a) DENOMINATION.—In commemoration of the 250th anniversary of the birth of Chief Justice John Marshall, the Secretary of the Treasury (in this Act referred to as the ''Secretary'') shall mint and issue not more than 400,000 $1 coins, each of which shall—

(1) weigh 26.73 grams;

(2) have a diameter of 1.500 inches; and

(3) contain 90 percent silver and 10 percent copper.

(b) LEGAL TENDER.—The coins minted under this Act shall be legal tender, as provided in section 5103 of title 31, United States Code.

(c) NUMISMATIC ITEMS.—For purposes of sections 5134 and 5136 of title 31, United States Code, all coins minted under this Act shall be considered to be numismatic items.

SEC. 4. DESIGN OF COINS.

(a) DESIGN REQUIREMENTS.—

(1) IN GENERAL.—The design of the coins minted under this Act shall be emblematic of Chief Justice John Marshall and his contributions to the United States.

(2) DESIGNATION AND INSCRIPTIONS.—On each coin minted under this Act, there shall be—

(A) a designation of the value of the coin;

(B) an inscription of the year ''2005''; and

(C) inscriptions of the words ''Liberty'', ''In God We Trust'', ''United States of America'', and ''E Pluribus Unum''.

(b) SELECTION.—The design for the coins minted under this Act shall be—

(1) selected by the Secretary, after consultation with the Commission of Fine Arts, and the Supreme Court Historical Society; and

(2) reviewed by the Citizens Coinage Advisory Committee.

SEC. 5. ISSUANCE OF COINS.

(a) QUALITY OF COINS.—Coins minted under this Act shall be issued in uncirculated and proof qualities.

(b) MINT FACILITY.—Only one facility of the United States Mint may be used to strike any particular quality of the coins minted under this Act.

(c) COMMENCEMENT OF ISSUANCE.—The Secretary may issue coins minted under this Act beginning on January 1, 2005.

(d) TERMINATION OF MINTING AUTHORITY.—No coins may be minted under this Act after December 31, 2005.

SEC. 6. SALE OF COINS.

(a) SALE PRICE.—The coins minted under this Act shall be sold by the Secretary at a price equal to the sum of—

(1) the face value of the coins;

(2) the surcharge provided in section 7 with respect to such coins; and

(3) the cost of designing and issuing the coins (including labor, materials, dies, use of machinery, overhead expenses, marketing, and shipping).

(b) BULK SALES.—The Secretary shall make bulk sales of the coins minted under this Act at a reasonable discount.

(c) PREPAID ORDERS.—

(1) IN GENERAL.—The Secretary shall accept prepaid orders for the coins minted under this Act before the issuance of such coins.

(2) DISCOUNT.—Sale prices with respect to pre-paid orders under paragraph (1) shall be at a reasonable discount.

SEC. 7. SURCHARGES.

(a) IN GENERAL.—All sales of coins minted under this Act shall include a surcharge of $10 per coin.

(b) DISTRIBUTION.—Subject to section 5134(f) of title 31, United States Code, all surcharges received by the Secretary from the sale of coins issued under this Act shall be promptly paid by the Secretary to the Supreme Court Historical Society for the purposes of—

(1) historical research about the Supreme Court and the Constitution of the United States and related topics;

(2) supporting fellowship programs, internships, and docents at the Supreme Court; and

(3) collecting and preserving antiques, artifacts, and other historical items related to the Supreme Court and the Constitution of the United States and related topics.

(c) AUDITS.—The Supreme Court Historical Society shall be subject to the audit requirements of section 5134(f)(2) of title 31, United States Code, with regard to the amounts received by the Society under subsection (b).

SEC. 8. FINANCIAL ASSURANCES.

(a) NO NET COST TO THE GOVERNMENT.—The Secretary shall take such actions as may be necessary to ensure that the minting and issuance of the coins referred to in section 3(a) shall result in no net cost to the Federal Government.

(b) PAYMENT FOR THE COINS.—The Secretary may not sell a coin referred to in section 3(a) unless the Secretary has received—

(1) full payment for the coin;

(2) security satisfactory to the Secretary to indemnify the Federal Government for full payment; or

(3) a guarantee of full payment satisfactory to the Secretary from a depository institution, the deposits of which are insured

by the Federal Deposit Insurance Corporation, the Federal Savings and Loan Insurance Corporation, or the National Credit Union Administration Board.

AWARDING A CONGRESSIONAL GOLD MEDAL TO DR. DOROTHY HEIGHT

Mr. FRIST. Mr. President, I ask unanimous consent that the Banking Committee be discharged from further consideration of H.R. 1821, and 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 (H.R. 1821) to award a Congressional Gold Medal to Dr. Dorothy Height in recognition of her many contributions to the Nation.

There being no objection, the Senate proceeded to consider the bill.

Mr. FRIST. Mr. President, I ask unanimous consent that the bill be read a third time and passed, the motion to reconsider be laid upon the table, and that any statements relating to the bill be printed in the RECORD.

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

The bill (H.R. 1821) was read the third time and passed.

ENVIRONMENTAL POLICY AND CONFLICT RESOLUTION ADVANCEMENT ACT OF 2003

Mr. FRIST. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of H.R. 421, 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. 421) to reauthorize the United States Institute for Environmental Conflict Resolution, and for other purposes.

There being no objection, the Senate proceeded to consider the bill.

Mr. FRIST. Mr. President, I ask unanimous consent that the bill be read the third time and passed, the motion to reconsider be laid upon the table, and that any statements relating to the bill be printed in the RECORD.

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

The bill (H.R. 421) was read the third time and passed.

SOUTHERN UTE AND COLORADO INTERGOVERNMENTAL AGREEMENT IMPLEMENTATION ACT OF 2003

Mr. FRIST. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar No. 401, S. 551.

The PRESIDING OFFICER. The clerk will report the bill by title.

The legislative clerk read as follows:

A bill (S. 551) to provide for the implementation of air quality programs developed in accordance with an Intergovernmental Agreement between the Southern Ute Indian Tribe and the State of Colorado concerning Air Quality Control on the Southern Ute Indian Reservation, and for other purposes.

There being no objection, the Senate proceeded to consider the bill which had been reported from the Committee on Environment and Public Works with an amendment.

[Strike the part shown in black brackets and insert the part shown in italic.]

S. 551

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 ''Southern Ute and Colorado Intergovernmental Agreement Implementation Act of 2003''.

SEC. 2. FINDINGS AND PURPOSE.

(a) FINDINGS.—Congress, after review and in recognition of the purposes and uniqueness of the Intergovernmental Agreement between the Southern Ute Indian Tribe and the State of Colorado, finds that—

(1) the Intergovernmental Agreement is consistent with the special legal relationship between Federal Government and the Tribe; and

(2) air quality programs developed in accordance with the Intergovernmental Agreement and submitted by the Tribe for approval by the Administrator may be implemented in a manner that is consistent with the Clean Air Act (42 U.S.C. 7401 et seq.).

(b) PURPOSE.—The purpose of this Act is to provide for the implementation and enforcement of air quality control programs under the Clean Air Act (42 U.S.C. 7401 et seq.) and other air quality programs developed in accordance with the Intergovernmental Agreement that provide for—

(1) the regulation of air quality within the exterior boundaries of the Reservation; and

(2) the establishment of a Southern Ute Indian Tribe/State of Colorado Environmental Commission.

SEC. 3. DEFINITIONS.

In this Act:

(1) ADMINISTRATOR.—The term ''Administrator'' means the Administrator of the Environmental Protection Agency.

(2) COMMISSION.—The term ''Commission'' means the Southern Ute Indian Tribe/State of Colorado Environmental Commission established by the State and the Tribe in accordance with the Intergovernmental Agreement.

(3) INTERGOVERNMENTAL AGREEMENT.—The term ''Intergovernmental Agreement'' means the agreement entered into by the Tribe and the State on December 13, 1999.

(4) RESERVATION.—The term ''Reservation'' means the Southern Ute Indian Reservation.

(5) STATE.—The term ''State'' means the State of Colorado.

(6) TRIBE.—The term ''Tribe'' means the Southern Ute Indian Tribe.

SEC. 4. TRIBAL AUTHORITY.

(a) AIR PROGRAM APPLICATIONS.—

(1) IN GENERAL.—The Administrator is authorized to treat the Tribe as a State for the purpose of any air program applications submitted to the Administrator by the Tribe under section 301(d) of the Clean Air Act (42 U.S.C. 7601(d)) to carry out, in a manner consistent with the Clean Air Act (42 U.S.C. 7401 et seq.), the Intergovernmental Agreement.

(2) APPLICABILITY.—If the Administrator approves an air program application of the Tribe, the approved program shall be applicable to all air resources within the exterior boundaries of the Reservation.

(b) TERMINATION.—If the Tribe or the State terminates the Intergovernmental Agreement, the Administrator shall promptly take appropriate administrative action to withdraw treatment of the Tribe as a State for the purpose described in subsection (a)(1).

[SEC. 5. CIVIL ENFORCEMENT.

[If any person fails to comply with a final civil order of the Tribe or the Commission made in accordance with a program under the Clean Air Act (42 U.S.C. 7401 et seq.) or any other air quality program established under the Intergovernmental Agreement, the Tribe or the Commission, as appropriate, may bring a civil action for declaratory or injunctive relief, or for other orders in aid of enforcement, in the United States District Court for the District of Colorado.]

SEC. 5. CIVIL ENFORCEMENT.

(a) IN GENERAL.—If any person fails to comply with a final civil order of the Tribe or the Commission made in accordance with the Clean Air Act (42 U.S.C. 7401 et seq.) or any other air quality program established under the Intergovernmental Agreement, the Tribe or the Commission, as appropriate, may bring a civil action for declaratory or injunctive relief, or for other orders in aid of enforcement, in the United States District Court for the District of Colorado.

(b) NO EFFECT ON RIGHTS OR AUTHORITY.—Nothing in this Act alters, amends, or modifies any right or authority of any person (as defined in section 302(e) of the Clean Air Act (42 U.S.C. 7601(e)) to bring a civil action under section 304 of the Clean Air Act (42 U.S.C. 7603).

SEC. 6. JUDICIAL REVIEW.

Any decision by the Commission that would be subject to appellate review if it were made by the Administrator—

(1) shall be subject to appellate review by the United States Court of Appeals for the Tenth Circuit; and

(2) may be reviewed by the Court of Appeals applying the same standard that would be applicable to a decision of the Administrator.

SEC. 7. DISCLAIMER.

Nothing in this Act—

(1) modifies any provision of—

(A) the Clean Air Act (42 U.S.C. 7401 et seq.);

(B) Public Law 98–290 (25 U.S.C. 668 note); or

(C) any lawful administrative rule promulgated in accordance with those statutes; or

(2) affects or influences in any manner any past or prospective judicial interpretation or application of those statutes by the United States, the Tribe, the State, or any Federal, tribal, or State court.

Mr. FRIST. Mr. President, I ask unanimous consent that the committee amendment be agreed to, the bill, as amended, be read a third time and passed, the motions to reconsider be laid upon the table en bloc, and that any statements relating to the bill be printed in the RECORD.

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

The committee amendment was agreed to.

The bill (S. 551), as amended, was read the third time and passed, as follows:

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 ''Southern Ute and Colorado Intergovernmental Agreement Implementation Act of 2003''.

SEC. 2. FINDINGS AND PURPOSE.

(a) FINDINGS.—Congress, after review and in recognition of the purposes and uniqueness of the Intergovernmental Agreement between the Southern Ute Indian Tribe and the State of Colorado, finds that—

(1) the Intergovernmental Agreement is consistent with the special legal relationship between Federal Government and the Tribe; and

(2) air quality programs developed in accordance with the Intergovernmental Agreement and submitted by the Tribe for approval by the Administrator may be implemented in a manner that is consistent with the Clean Air Act (42 U.S.C. 7401 et seq.).

(b) PURPOSE.—The purpose of this Act is to provide for the implementation and enforcement of air quality control programs under the Clean Air Act (42 U.S.C. 7401 et seq.) and other air quality programs developed in accordance with the Intergovernmental Agreement that provide for—

(1) the regulation of air quality within the exterior boundaries of the Reservation; and

(2) the establishment of a Southern Ute Indian Tribe/State of Colorado Environmental Commission.

SEC. 3. DEFINITIONS.

In this Act:

(1) ADMINISTRATOR.—The term ''Administrator'' means the Administrator of the Environmental Protection Agency.

(2) COMMISSION.—The term ''Commission'' means the Southern Ute Indian Tribe/State of Colorado Environmental Commission established by the State and the Tribe in accordance with the Intergovernmental Agreement.

(3) INTERGOVERNMENTAL AGREEMENT.—The term ''Intergovernmental Agreement'' means the agreement entered into by the Tribe and the State on December 13, 1999.

(4) RESERVATION.—The term ''Reservation'' means the Southern Ute Indian Reservation.

(5) STATE.—The term ''State'' means the State of Colorado.

(6) TRIBE.—The term ''Tribe'' means the Southern Ute Indian Tribe.

SEC. 4. TRIBAL AUTHORITY.

(a) AIR PROGRAM APPLICATIONS.—

(1) IN GENERAL.—The Administrator is authorized to treat the Tribe as a State for the purpose of any air program applications submitted to the Administrator by the Tribe under section 301(d) of the Clean Air Act (42 U.S.C. 7601(d)) to carry out, in a manner consistent with the Clean Air Act (42 U.S.C. 7401 et seq.), the Intergovernmental Agreement.

(2) APPLICABILITY.—If the Administrator approves an air program application of the Tribe, the approved program shall be applicable to all air resources within the exterior boundaries of the Reservation.

(b) TERMINATION.—If the Tribe or the State terminates the Intergovernmental Agreement, the Administrator shall promptly take appropriate administrative action to withdraw treatment of the Tribe as a State for the purpose described in subsection (a)(1).

SEC. 5. CIVIL ENFORCEMENT.

(a) IN GENERAL.—If any person fails to comply with a final civil order of the Tribe or the Commission made in accordance with the Clean Air Act (42 U.S.C. 7401 et seq.) or any other air quality program established under the Intergovernmental Agreement, the Tribe or the Commission, as appropriate, may bring a civil action for declaratory or injunctive relief, or for other orders in aid of enforcement, in the United States District Court for the District of Colorado.

(b) NO EFFECT ON RIGHTS OR AUTHORITY.—Nothing in this Act alters, amends, or modifies any right or authority of any person (as defined in section 302(e) of the Clean Air Act (42 U.S.C. 7601(e)) to bring a civil action under section 304 of the Clean Air Act (42 U.S.C. 7603).

SEC. 6. JUDICIAL REVIEW.

Any decision by the Commission that would be subject to appellate review if it were made by the Administrator—

(1) shall be subject to appellate review by the United States Court of Appeals for the Tenth Circuit; and

(2) may be reviewed by the Court of Appeals applying the same standard that would be applicable to a decision of the Administrator.

SEC. 7. DISCLAIMER.

Nothing in this Act—

(1) modifies any provision of—

(A) the Clean Air Act (42 U.S.C. 7401 et seq.);

(B) Public Law 98–290 (25 U.S.C. 668 note); or

(C) any lawful administrative rule promulgated in accordance with those statutes; or

(2) affects or influences in any manner any past or prospective judicial interpretation or application of those statutes by the United States, the Tribe, the State, or any Federal, tribal, or State court.

DISASTER AREA HEALTH AND ENVIRONMENTAL MONITORING ACT OF 2003

Mr. FRIST. I ask unanimous consent that the Senate now proceed to consideration of Calendar 360, S. 1279.

The PRESIDING OFFICER. The clerk will report the bill by title.

The legislative clerk read as follows:

A bill (S. 1279) to amend the Robert T. Stafford Disaster Relief and Emergency Assistance Act to authorize the President to carry out a program for the protection of the health and safety of residents, workers, volunteers, and others in a disaster area.

There being no objection, the Senate proceeded to consider the bill which had been reported from the Committee on Environment and Public Works, 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. 1279

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

[SECTION 1. SHORT TITLE.

[This Act may be cited as the ''Disaster Area Health and Environmental Monitoring Act of 2003''.

[SEC. 2. PROTECTION OF HEALTH AND SAFETY OF INDIVIDUALS IN A DISASTER AREA.

[Title IV of the Robert T. Stafford Disaster Relief and Emergency Assistance Act is amended by inserting after section 408 (42 U.S.C. 5174) the following:

[''SEC. 409. PROTECTION OF HEALTH AND SAFETY OF INDIVIDUALS IN A DISASTER AREA.

[''(a) DEFINITIONS.—In this section:

[''(1) INDIVIDUAL.—The term 'individual' includes—

[''(A) a worker or volunteer who responds to a disaster, including—

[''(i) a police officer;

[''(ii) a firefighter;

[''(iii) an emergency medical technician;

[''(iv) any participating member of an urban search and rescue team; and

[''(v) any other relief or rescue worker or volunteer that the President determines to be appropriate;

[''(B) a worker who responds to a disaster by assisting in the cleanup or restoration of critical infrastructure in and around a disaster area;

[''(C) a person whose place of residence is in a disaster area;

[''(D) a person who is employed in or attends school, child care, or adult day care in a building located in a disaster area; and

[''(E) any other person that the President determines to be appropriate.

[''(2) PROGRAM.—The term 'program' means a program described in subsection (b) that is carried out for a disaster area.

[''(3) SUBSTANCE OF CONCERN.—The term 'substance of concern' means any chemical or substance associated with potential acute or chronic human health effects, the risk of exposure to which could potentially be increased as the result of a disaster.

[''(b) PROGRAM.—

[''(1) IN GENERAL.—If the President determines that 1 or more substances of concern are being, or have been, released in an area declared to be a disaster area under this Act, the President may carry out a program for the protection, assessment, monitoring, and study of the health and safety of individuals to ensure that—

[''(A) the individuals are adequately informed about and protected against potential health impacts of the substance of concern and potential mental health impacts in a timely manner;

[''(B) the individuals are monitored and studied over time, including through baseline and follow-up clinical health examinations, for—

[''(i) any short- and long-term health impacts of any substance of concern; and

[''(ii) any mental health impacts;

[''(C) the individuals receive health care referrals as needed and appropriate; and

[''(D) information from any such monitoring and studies is used to prevent or protect against similar health impacts from future disasters.

[''(2) ACTIVITIES.—A program under paragraph (1) may include such activities as—

[''(A) collecting and analyzing environmental exposure data;

[''(B) developing and disseminating information and educational materials;

[''(C) performing baseline and follow-up clinical health and mental health examinations and taking biological samples;

[''(D) establishing and maintaining an exposure registry;

[''(E) studying the long-term human health impacts of any exposures through epidemiological and other health studies; and

[''(F) providing assistance to individuals in determining eligibility for health coverage and identifying appropriate health services.

[''(3) TIMING.—To the maximum extent practicable, a program under paragraph (1) shall be established, and activities under the program shall be commenced (including baseline health examinations), in a timely manner that will ensure the highest level of public health protection and effective monitoring.

[''(4) PARTICIPATION IN REGISTRIES AND STUDIES.—

[''(A) IN GENERAL.—Participation in any registry or study that is part of a program under paragraph (1) shall be voluntary.

[''(B) PROTECTION OF PRIVACY.—The President shall take appropriate measures to protect the privacy of any participant in a registry or study described in subparagraph (A).

[''(5) COOPERATIVE AGREEMENTS.—The President may carry out a program under paragraph (1) through a cooperative agreement with a medical institution, or a consortium of medical institutions, that is—

[''(A) located near the disaster area, and near groups of individuals that worked or volunteered in response to the disaster in the disaster area, with respect to which the program is carried out; and

[''(B) experienced in the area of environmental or occupational health, toxicology, and safety, including experience in—

[''(i) developing clinical protocols and conducting clinical health examinations, including mental health assessments;

[''(ii) conducting long-term health monitoring and epidemiological studies;

[''(iii) conducting long-term mental health studies; and

[''(iv) establishing and maintaining medical surveillance programs and environmental exposure or disease registries.

[''(6) INVOLVEMENT.—

[''(A) IN GENERAL.—In establishing and maintaining a program under paragraph (1), the President shall ensure the involvement of interested and affected parties, as appropriate, including representatives of—

[''(i) Federal, State, and local government agencies;

[''(ii) labor organizations;

[''(iii) local residents, businesses, and schools (including parents and teachers);

[''(iv) health care providers; and

[''(v) other organizations and persons.

[''(B) COMMITTEES.—Involvement under subparagraph (A) may be provided through the establishment of an advisory or oversight committee or board.

[''(c) REPORTS.—Not later than 1 year after the establishment of a program under subsection (b)(1), and every 5 years thereafter, the President, or the medical institution or consortium of such institutions having entered into a cooperative agreement under subsection (b)(5), shall submit to the Secretary of Homeland Security, the Secretary of Health and Human Services, the Secretary of Labor, the Administrator of the Environmental Protection Agency, and appropriate committees of Congress a report on programs and studies carried out under the program.''.

[SEC. 3. BLUE RIBBON PANEL ON DISASTER AREA HEALTH PROTECTION AND MONITORING.

[(a) ESTABLISHMENT.—Not later than 60 days after the date of enactment of this section, the Secretary of Homeland Security, the Secretary of Health and Human Services, and the Administrator of the Environmental Protection Agency shall jointly establish a Blue Ribbon Panel on Disaster Area Health Protection and Monitoring (referred to in this section as the ''Panel'').

[(b) MEMBERSHIP.—

[(1) IN GENERAL.—The Panel shall be composed of—

[(A) 15 voting members, to be appointed by the Secretary of Homeland Security, the Secretary of Health and Human Services, and the Administrator of the Environmental Protection Agency in accordance with paragraph (2); and

[(B) officers or employees of the Department of Health and Human Services, the Department of Homeland Security, the Environmental Protection Agency, and other Federal agencies, as appropriate, to be appointed by the Secretary of Health and Human Services, the Secretary of Homeland Security, and the Administrator of the Environmental Protection Agency as nonvoting, ex officio members of the Panel.

[(2) BACKGROUND AND EXPERTISE.—The voting members of the Panel shall be individuals who—

[(A) are not officers or employees of the Federal Government; and

[(B) have expertise in—

[(i) environmental health, safety, and medicine;

[(ii) occupational health, safety, and medicine;

[(iii) clinical medicine, including pediatrics;

[(iv) toxicology;

[(v) epidemiology;

[(vi) mental health;

[(vii) medical monitoring and surveillance;

[(viii) environmental monitoring and surveillance;

[(ix) environmental and industrial hygiene;

[(x) emergency planning and preparedness;

[(xi) public outreach and education;

[(xii) State and local health departments;

[(xiii) State and local environmental protection departments;

[(xiv) functions of workers that respond to disasters, including first responders; and

[(xv) public health and family services.

[(c) DUTIES.—

[(1) IN GENERAL.—The Panel shall provide advice and recommendations regarding protecting and monitoring the health and safety of individuals potentially exposed to any chemical or substance associated with potential acute or chronic human health effects as the result of a disaster, including advice and recommendations regarding—

[(A) the implementation of programs under section 409 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (as added by section 2); and

[(B) the establishment of protocols for the monitoring of and response to releases of substances of concern (as defined in section 409(a) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (as added by section 2)) in a disaster area for the purpose of protecting public health and safety, including—

[(i) those substances of concern for which samples should be collected in the event of a disaster, including a terrorist attack;

[(ii) chemical-specific methods of sample collection, including sampling methodologies and locations;

[(iii) chemical-specific methods of sample analysis;

[(iv) health-based threshold levels to be used and response actions to be taken in the event that thresholds are exceeded for individual chemicals or substances;

[(v) procedures for providing monitoring results to—

[(I) appropriate Federal, State, and local government agencies;

[(II) appropriate response personnel; and

[(III) the public;

[(vi) responsibilities of Federal, State and local agencies for—

[(I) collecting and analyzing samples;

[(II) reporting results; and

[(III) taking appropriate response actions; and

[(vii) capabilities and capacity within the Federal Government to conduct appropriate environmental monitoring and response in the event of a disaster, including a terrorist attack; and

[(C) other issues as specified by the Secretary of Homeland Security, the Secretary of Health and Human Services, and the Administrator of the Environmental Protection Agency.

[(2) REPORT.—Not later than 1 year after the date of establishment of the Panel, the Panel shall submit to the Secretary of Homeland Security, the Secretary of Health and Human Services, and the Administrator of the Environmental Protection Agency a report of the findings and recommendations of the Panel under this section, including recommendations for such legislative and administrative actions as the Panel considers to be appropriate.

[(d) POWERS.—

[(1) HEARINGS.—The Panel may hold such hearings, sit and act at such times and places, take such testimony, and receive such evidence as the Panel considers necessary to carry out this section.

[(2) INFORMATION FROM FEDERAL AGENCIES.—

[(A) IN GENERAL.—The Panel may secure directly from any Federal department or agency such information as the Panel considers necessary to carry out this section.

[(B) FURNISHING OF INFORMATION.—On request of the Panel, the head of the department or agency shall furnish the information to the Panel.

[(3) POSTAL SERVICES.—The Panel may use the United States mails in the same manner and under the same conditions as other departments and agencies of the Federal Government.

[(e) PERSONNEL.—

[(1) TRAVEL EXPENSES.—The members of the Panel shall not receive compensation for the performance of services for the Panel, but shall be allowed travel expenses, including per diem in lieu of subsistence, at rates authorized for employees of agencies under subchapter I of chapter 57 of title 5, United States Code, while away from their homes or regular places of business in the performance of services for the Panel.

[(2) VOLUNTARY AND UNCOMPENSATED SERVICES.—Notwithstanding section 1342 of title 31, United States Code, the Secretary may accept the voluntary and uncompensated services of members of the Panel.

[(3) DETAIL OF GOVERNMENT EMPLOYEES.—Any Federal Government employee may be detailed to the Panel without reimbursement, and such detail shall be without interruption or loss of civil service status or privilege.

[(4) STAFF, INFORMATION, AND OTHER ASSISTANCE.—The Secretary of Homeland Security, the Secretary of Health and Human Services, and the Administrator of the Environmental Protection Agency shall provide to the Panel such staff, information, and other assistance as may be necessary to carry out the duties of the Panel.

[(f) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as are necessary to carry out this section.

[(g) TERMINATION OF AUTHORITY.—This section, the authority provided under this section, and the Panel shall terminate on the date that is 18 months after the date of enactment of this Act.]

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Disaster Area Health and Environmental Monitoring Act of 2003''.

SEC. 2. PROTECTION OF HEALTH AND SAFETY OF INDIVIDUALS IN A DISASTER AREA.

Title IV of the Robert T. Stafford Disaster Relief and Emergency Assistance Act is amended by inserting after section 408 (42 U.S.C. 5174) the following:

''SEC. 409. PROTECTION OF HEALTH AND SAFETY OF INDIVIDUALS IN A DISASTER AREA.

''(a) DEFINITIONS.—In this section:

''(1) INDIVIDUAL.—The term 'individual' includes—

''(A) a worker or volunteer who responds to a disaster, including—

''(i) a police officer;

''(ii) a firefighter;

''(iii) an emergency medical technician;

''(iv) any participating member of an urban search and rescue team; and

''(v) any other relief or rescue worker or volunteer that the President determines to be appropriate;

''(B) a worker who responds to a disaster by assisting in the cleanup or restoration of critical infrastructure in and around a disaster area;

''(C) a person whose place of residence is in a disaster area;

''(D) a person who is employed in or attends school, child care, or adult day care in a building located in a disaster area; and

''(E) any other person that the President determines to be appropriate.

''(2) PROGRAM.—The term 'program' means a program described in subsection (b) that is carried out for a disaster area.

''(3) SUBSTANCE OF CONCERN.—The term 'substance of concern' means a chemical or other substance that is associated with potential acute or chronic human health effects, the risk of exposure to which could potentially be increased as the result of a disaster, as determined by the President.

''(b) PROGRAM.—

''(1) IN GENERAL.—If the President determines that 1 or more substances of concern are being, or have been, released in an area declared to be a disaster area under this Act, the President may carry out a program for the protection, assessment, monitoring, and study of the health and safety of individuals to ensure that—

''(A) the individuals are adequately informed about and protected against potential health impacts of any substance of concern and potential mental health impacts in a timely manner;

''(B) the individuals are monitored and studied over time, including through baseline and followup clinical health examinations, for—

''(i) any short- and long-term health impacts of any substance of concern; and

''(ii) any mental health impacts;

''(C) the individuals receive health care referrals as needed and appropriate; and

''(D) information from any such monitoring and studies is used to prevent or protect against similar health impacts from future disasters.

''(2) ACTIVITIES.—A program under paragraph (1) may include such activities as—

''(A) collecting and analyzing environmental exposure data;

''(B) developing and disseminating information and educational materials;

''(C) performing baseline and followup clinical health and mental health examinations and taking biological samples;

''(D) establishing and maintaining an exposure registry;

''(E) studying the short- and long-term human health impacts of any exposures through epidemiological and other health studies; and

''(F) providing assistance to individuals in determining eligibility for health coverage and identifying appropriate health services.

''(3) TIMING.—To the maximum extent practicable, activities under any program established under paragraph (1) (including baseline health examinations) shall be commenced in a timely manner that will ensure the highest level of public health protection and effective monitoring.

''(4) PARTICIPATION IN REGISTRIES AND STUDIES.—

''(A) IN GENERAL.—Participation in any registry or study that is part of a program under paragraph (1) shall be voluntary.

''(B) PROTECTION OF PRIVACY.—The President shall take appropriate measures to protect the privacy of any participant in a registry or study described in subparagraph (A).

''(5) COOPERATIVE AGREEMENTS.—

''(A) IN GENERAL.—The President may carry out a program under paragraph (1) through a cooperative agreement with a medical institution or a consortium of medical institutions.

''(B) SELECTION CRITERIA.—To the maximum extent practicable, the President shall select to carry out a program under paragraph (1) a medical institution or a consortium of medical institutions that—

''(i) is located near—

''(I) the disaster area with respect to which the program is carried out; and

''(II) any other area in which there reside groups of individuals that worked or volunteered in response to the disaster; and

''(ii) has appropriate experience in the areas of environmental or occupational health, toxicology, and safety, including experience in—

''(I) developing clinical protocols and conducting clinical health examinations, including mental health assessments;

''(II) conducting long-term health monitoring and epidemiological studies;

''(III) conducting long-term mental health studies; and

''(IV) establishing and maintaining medical surveillance programs and environmental exposure or disease registries.

''(6) INVOLVEMENT.—

''(A) IN GENERAL.—In establishing and maintaining a program under paragraph (1), the President shall involve interested and affected parties, as appropriate, including representatives of—

''(i) Federal, State, and local government agencies;

''(ii) groups of individuals that worked or volunteered in response to the disaster in the disaster area;

''(iii) local residents, businesses, and schools (including parents and teachers);

''(iv) health care providers; and

''(v) other organizations and persons.

''(B) COMMITTEES.—Involvement under subparagraph (A) may be provided through the establishment of an advisory or oversight committee or board.

''(c) REPORTS.—Not later than 1 year after the establishment of a program under subsection (b)(1), and every 5 years thereafter, the President, or the medical institution or consortium of such institutions having entered into a cooperative agreement under subsection (b)(5), shall submit to the Secretary of Homeland Security, the Secretary of Health and Human Services, the Secretary of Labor, the Administrator of the Environmental Protection Agency, and appropriate committees of Congress a report on programs and studies carried out under the program.''.

SEC. 3. NATIONAL ACADEMY OF SCIENCES REPORT ON DISASTER AREA HEALTH AND ENVIRONMENTAL PROTECTION AND MONITORING.

(a) IN GENERAL.—The Secretary of Homeland Security, the Secretary of Health and Human Services, and the Administrator of the Environmental Protection Agency shall jointly enter into a contract with the National Academy of Sciences to conduct a study and prepare a report on disaster area health and environmental protection and monitoring.

(b) EXPERTISE.—The report under subsection (a) shall be prepared with the participation of individuals who have expertise in—

(1) environmental health, safety, and medicine;

(2) occupational health, safety, and medicine;

(3) clinical medicine, including pediatrics;

(4) toxicology;

(5) epidemiology;

(6) mental health;

(7) medical monitoring and surveillance;

(8) environmental monitoring and surveillance;

(9) environmental and industrial hygiene;

(10) emergency planning and preparedness;

(11) public outreach and education;

(12) State and local health departments;

(13) State and local environmental protection departments;

(14) functions of workers that respond to disasters, including first responders; and

(15) public health and family services.

(c) CONTENTS.—The report under subsection (a) shall provide advice and recommendations regarding protecting and monitoring the health and safety of individuals potentially exposed to any chemical or other substance associated with potential acute or chronic human health effects as the result of a disaster, including advice and recommendations regarding—

(1) the establishment of protocols for the monitoring of and response to chemical or substance releases in a disaster area for the purpose of protecting public health and safety, including—

(A) chemicals or other substances for which samples should be collected in the event of a disaster, including a terrorist attack;

(B) chemical- or substance-specific methods of sample collection, including sampling methodologies and locations;

(C) chemical- or substance-specific methods of sample analysis;

(D) health-based threshold levels to be used and response actions to be taken in the event that thresholds are exceeded for individual chemicals or other substances;

(E) procedures for providing monitoring results to—

(i) appropriate Federal, State, and local government agencies;

(ii) appropriate response personnel; and

(iii) the public;

(F) responsibilities of Federal, State and local agencies for—

(i) collecting and analyzing samples;

(ii) reporting results; and

(iii) taking appropriate response actions; and

(G) capabilities and capacity within the Federal Government to conduct appropriate environmental monitoring and response in the event of a disaster, including a terrorist attack; and

(2) other issues as specified by the Secretary of Homeland Security, the Secretary of Health and Human Services, and the Administrator of the Environmental Protection Agency.

(d) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as are necessary to carry out this section.

Mr. FRIST. I ask unanimous consent that the Inhofe amendment at the desk be agreed to; the committee substitute 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 any statements be printed in the RECORD.

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

The amendment (No. 2210) was agreed to, as follows:

(Purpose: To require that health and safety programs be carried out in accordance with certain privacy regulations)

On page 19, line 16, insert '', including a local health department,'' after ''institution''.

On page 21, between lines 18 and 19, insert the following:

''(7) PRIVACY.—The President shall carry out each program under paragraph (1) in accordance with regulations relating to privacy promulgated under section 264(c) of the Health Insurance Portability and Accountability Act of 1996 (42 U.S.C. 1320d–2 note; Public Law 104–191).

At the end, add the following:

SEC. 4. PREDISASTER HAZARD MITIGATION.

Section 203(m) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5133(m)) is amended by striking ''December 31, 2003'' and inserting ''September 30, 2006''.

The committee amendment in the nature of a substitute, as amended, was agreed to.

The bill (S. 1279), as amended, was read the third time and passed, as follows:

S. 1279

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

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Disaster Area Health and Environmental Monitoring Act of 2003''.

SEC. 2. PROTECTION OF HEALTH AND SAFETY OF INDIVIDUALS IN A DISASTER AREA.

Title IV of the Robert T. Stafford Disaster Relief and Emergency Assistance Act is

amended by inserting after section 408 (42 U.S.C. 5174) the following:

"SEC. 409. PROTECTION OF HEALTH AND SAFETY OF INDIVIDUALS IN A DISASTER AREA.

''(a) DEFINITIONS.—In this section:

''(1) INDIVIDUAL.—The term 'individual' includes—

''(A) a worker or volunteer who responds to a disaster, including—

''(i) a police officer;

''(ii) a firefighter;

''(iii) an emergency medical technician;

''(iv) any participating member of an urban search and rescue team; and

''(v) any other relief or rescue worker or volunteer that the President determines to be appropriate;

''(B) a worker who responds to a disaster by assisting in the cleanup or restoration of critical infrastructure in and around a disaster area;

''(C) a person whose place of residence is in a disaster area;

''(D) a person who is employed in or attends school, child care, or adult day care in a building located in a disaster area; and

''(E) any other person that the President determines to be appropriate.

''(2) PROGRAM.—The term 'program' means a program described in subsection (b) that is carried out for a disaster area.

''(3) SUBSTANCE OF CONCERN.—The term 'substance of concern' means a chemical or other substance that is associated with potential acute or chronic human health effects, the risk of exposure to which could potentially be increased as the result of a disaster, as determined by the President.

''(b) PROGRAM.—

''(1) IN GENERAL.—If the President determines that 1 or more substances of concern are being, or have been, released in an area declared to be a disaster area under this Act, the President may carry out a program for the protection, assessment, monitoring, and study of the health and safety of individuals to ensure that—

''(A) the individuals are adequately informed about and protected against potential health impacts of any substance of concern and potential mental health impacts in a timely manner;

''(B) the individuals are monitored and studied over time, including through baseline and followup clinical health examinations, for—

''(i) any short- and long-term health impacts of any substance of concern; and

''(ii) any mental health impacts;

''(C) the individuals receive health care referrals as needed and appropriate; and

''(D) information from any such monitoring and studies is used to prevent or protect against similar health impacts from future disasters.

''(2) ACTIVITIES.—A program under paragraph (1) may include such activities as—

''(A) collecting and analyzing environmental exposure data;

''(B) developing and disseminating information and educational materials;

''(C) performing baseline and followup clinical health and mental health examinations and taking biological samples;

''(D) establishing and maintaining an exposure registry;

''(E) studying the short- and long-term human health impacts of any exposures through epidemiological and other health studies; and

''(F) providing assistance to individuals in determining eligibility for health coverage and identifying appropriate health services.

''(3) TIMING.—To the maximum extent practicable, activities under any program established under paragraph (1) (including baseline health examinations) shall be commenced in a timely manner that will ensure the highest level of public health protection and effective monitoring.

''(4) PARTICIPATION IN REGISTRIES AND STUDIES.—

''(A) IN GENERAL.—Participation in any registry or study that is part of a program under paragraph (1) shall be voluntary.

''(B) PROTECTION OF PRIVACY.—The President shall take appropriate measures to protect the privacy of any participant in a registry or study described in subparagraph (A).

''(5) COOPERATIVE AGREEMENTS.—

''(A) IN GENERAL.—The President may carry out a program under paragraph (1) through a cooperative agreement with a medical institution, including a local health department, or a consortium of medical institutions.

''(B) SELECTION CRITERIA.—To the maximum extent practicable, the President shall select to carry out a program under paragraph (1) a medical institution or a consortium of medical institutions that—

''(i) is located near—

''(I) the disaster area with respect to which the program is carried out; and

''(II) any other area in which there reside groups of individuals that worked or volunteered in response to the disaster; and

''(ii) has appropriate experience in the areas of environmental or occupational health, toxicology, and safety, including experience in—

''(I) developing clinical protocols and conducting clinical health examinations, including mental health assessments;

''(II) conducting long-term health monitoring and epidemiological studies;

''(III) conducting long-term mental health studies; and

''(IV) establishing and maintaining medical surveillance programs and environmental exposure or disease registries.

''(6) INVOLVEMENT.—

''(A) IN GENERAL.—In establishing and maintaining a program under paragraph (1), the President shall involve interested and affected parties, as appropriate, including representatives of—

''(i) Federal, State, and local government agencies;

''(ii) groups of individuals that worked or volunteered in response to the disaster in the disaster area;

''(iii) local residents, businesses, and schools (including parents and teachers);

''(iv) health care providers; and

''(v) other organizations and persons.

''(B) COMMITTEES.—Involvement under subparagraph (A) may be provided through the establishment of an advisory or oversight committee or board.

''(7) PRIVACY.—The President shall carry out each program under paragraph (1) in accordance with regulations relating to privacy promulgated under section 264(c) of the Health Insurance Portability and Accountability Act of 1996 (42 U.S.C. 1320d–2 note; Public Law 104–191).

''(c) REPORTS.—Not later than 1 year after the establishment of a program under subsection (b)(1), and every 5 years thereafter, the President, or the medical institution or consortium of such institutions having entered into a cooperative agreement under subsection (b)(5), shall submit to the Secretary of Homeland Security, the Secretary of Health and Human Services, the Secretary of Labor, the Administrator of the Environmental Protection Agency, and appropriate committees of Congress a report on programs and studies carried out under the program.''.

SEC. 3. NATIONAL ACADEMY OF SCIENCES REPORT ON DISASTER AREA HEALTH AND ENVIRONMENTAL PROTECTION AND MONITORING.

(a) IN GENERAL.—The Secretary of Homeland Security, the Secretary of Health and Human Services, and the Administrator of the Environmental Protection Agency shall jointly enter into a contract with the National Academy of Sciences to conduct a study and prepare a report on disaster area health and environmental protection and monitoring.

(b) EXPERTISE.—The report under subsection (a) shall be prepared with the participation of individuals who have expertise in—

(1) environmental health, safety, and medicine;

(2) occupational health, safety, and medicine;

(3) clinical medicine, including pediatrics;

(4) toxicology;

(5) epidemiology;

(6) mental health;

(7) medical monitoring and surveillance;

(8) environmental monitoring and surveillance;

(9) environmental and industrial hygiene;

(10) emergency planning and preparedness;

(11) public outreach and education;

(12) State and local health departments;

(13) State and local environmental protection departments;

(14) functions of workers that respond to disasters, including first responders; and

(15) public health and family services.

(c) CONTENTS.—The report under subsection (a) shall provide advice and recommendations regarding protecting and monitoring the health and safety of individuals potentially exposed to any chemical or other substance associated with potential acute or chronic human health effects as the result of a disaster, including advice and recommendations regarding—

(1) the establishment of protocols for the monitoring of and response to chemical or substance releases in a disaster area for the purpose of protecting public health and safety, including—

(A) chemicals or other substances for which samples should be collected in the event of a disaster, including a terrorist attack;

(B) chemical- or substance-specific methods of sample collection, including sampling methodologies and locations;

(C) chemical- or substance-specific methods of sample analysis;

(D) health-based threshold levels to be used and response actions to be taken in the event that thresholds are exceeded for individual chemicals or other substances;

(E) procedures for providing monitoring results to—

(i) appropriate Federal, State, and local government agencies;

(ii) appropriate response personnel; and

(iii) the public;

(F) responsibilities of Federal, State and local agencies for—

(i) collecting and analyzing samples;

(ii) reporting results; and

(iii) taking appropriate response actions; and

(G) capabilities and capacity within the Federal Government to conduct appropriate environmental monitoring and response in the event of a disaster, including a terrorist attack; and

(2) other issues as specified by the Secretary of Homeland Security, the Secretary of Health and Human Services, and the Administrator of the Environmental Protection Agency.

(d) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as are necessary to carry out this section.

SEC. 4. PREDISASTER HAZARD MITIGATION.

Section 203(m) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5133(m)) is amended by striking ''December 31, 2003'' and inserting ''September 30, 2006''.

NATIONAL TRANSPORTATION SAFETY BOARD REAUTHORIZATION ACT OF 2003

Mr. FRIST. Mr. President, I ask unanimous consent that the Senate now proceed to the immediate consideration of Calendar No. 112, S. 579.

The PRESIDING OFFICER. The clerk will report the bill by title.

The legislative clerk read as follows:

A bill (S. 579) to reauthorize the National Transportation Safety Board, and for other purposes.

There being no objection, the Senate proceeded to consider the bill.

Mr. MCCAIN. Mr. President, I am pleased that the Senate is now considering S. 579, the National Transportation Safety Board Reauthorization Act of 2003. This bill was introduced by Senators HOLLINGS, LOTT, HUTCHISON, ROCKEFELLER and myself, and it was unanimously approved by the Senate Committee on Commerce, Science, and Transportation on March 22, 2003.

Each year, the National Transportation Safety Board, NTSB, investigates more than 2,000 transportation accidents and events, including all fatal aviation accidents, and hundreds of railroad, highway, maritime, and pipeline transportation accidents. The NTSB also conducts safety studies, and evaluates the effectiveness of other government agencies' programs for preventing transportation accidents. Most importantly, the NTSB makes safety recommendations, based on its investigations, to federal, state and local government agencies and to the transportation industry regarding actions that should be taken to prevent accidents.

This legislation would authorize appropriations for the NTSB for fiscal years 2003 through 2006. It also would allow the NTSB to relinquish responsibility for providing assistance to families of victims of accidents to the FBI if it takes over the investigation, and give the NTSB expedited procurement procedures to aid in accident investigations.

The bill is being proposed along with an amendment that incorporates provisions from the House-passed version of its NTSB reauthorization bill, H.R. 1527. The amendment was developed in cooperation with the House Transportation and Infrastructure Committee. Among other things, it includes a provision that would require the Secretary of Transportation to submit annual status reports on the Department's progress in meeting the safety recommendations stemming from the NTSB's ''most wanted list.''

The NTSB's safety investigations and the resulting recommendations play a vital role in ensuring the safe and efficient operation of our nation's transportation system. It is my understanding that the NTSB supports this legislation.

I urge the Senate to pass this important legislation so the House of Representatives can consider it before they adjourn for the year.

Mr. FRIST. I ask unanimous consent that the McCain-Hollings 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 en bloc, and any statements be printed in the RECORD.

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

The amendment (No. 2211) was agreed to, as follows:

(Purpose: To add provisions relating to accident and safety data classification and publication from H.R. 1527, as passed by the House of Representatives, and for other purposes)

On page 2, line 15, strike ''$3,000,000.'' and insert ''$4,000,000.''.

On page 3, line 6, strike ''paragraph'' and insert ''subsection''.

On page 3, line 16, strike the closing quotation marks and the second period.

On page 3, line 17, strike ''(c)'' and insert '' '(d)''.

On page 3, line 21, insert closing quotation marks and a period after the period.

On page 5, strike lines 7 through 21, and insert the following:

SEC. 4. RELIEF FROM CONTRACTING REQUIREMENTS FOR INVESTIGATIONS SERVICES.

(a) IN GENERAL.—From the date of enactment of this Act through September 30, 2006, the National Transportation Safety Board may enter into agreements or con tracts under the authority of section 1113(b)(1)(B) of title 49, United States Code for investigations conducted under section 1131 of that title without regard to any other provision of law requiring competition if necessary to expedite the investigation.

(b) REPORT ON USAGE.—On February 1, 2006, the National Transportation Safety Board shall transmit a report to the House of Representatives Committee on Transportation and Infrastructure, the House of Representatives Committee on Government Reform, the Senate Committee on Commerce, Science, and Transportation, and the Senate Committee on Government Affairs that—

(1) describes each contract for $25,000 or more executed by the Board to which the authority provided by subsection (a) was applied; and

(2) sets forth the rationale for dispensing with competition requirements with respect to such contract.

On page 5, after line 21, add the following:

SEC. 5. ACCIDENT AND SAFETY DATA CLASSIFICATION AND PUBLICATION.

Section 1119 of title 49, United States Code, is amended by adding at the end the following:

''(c) APPEALS.—

''(1) NOTIFICATION OF RIGHTS.—In any case in which an employee of the Board determines that an occurrence associated with the operation of an aircraft constitutes an accident, the employee shall notify the owner or operator of that aircraft of the right to appeal that determination to the Board.

''(2) PROCEDURE.—The Board shall establish and publish the procedures for appeals under this subsection.

''(3) LIMITATION ON APPLICABILITY.—This subsection shall not apply in the case of an accident that results in a loss of life.''.

SEC. 6. SECRETARY OF TRANSPORTATION'S RESPONSES TO SAFETY RECOMMENDATIONS.

Section 1135(d) of title 49, United States Code, is vended to read as follows:

''(d) REPORTING REQUIREMENTS.—

''(1) ANNUAL SECRETARIAL REGULATORY STATUS REPORTS.—On February 1 of each year, the Secretary shall submit a report to Congress and the Board containing the regulatory status of each recommendation made by the Board to the Secretary (or to an Administration within the Department of Transportation) that is on the Board's 'most wanted list'. The Secretary shall continue to report on the regulatory status of each such recommendation in the report due on February 1 of subsequent years until final regulatory action is taken on that recommendation or the Secretary (or an Administration within the Department) determines and states in such a report that no action should be taken.

''(2) FAILURE TO REPORT.—If on March 1 of each year the Board has not received the Secretary's report required by this subsection, the Board shall notify the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate of the Secretary's failure to submit the required report.

''(3) TERMINATION.—This subsection shall cease to be in effect after the report required to be filed on February 1, 2008, is filed.''.

SEC. 7. TECHNICAL AMENDMENTS.

Section 1131(a)(2) of title 49, United States Code, is amended by moving subparagraphs (B) and (C) 4 ems to the left.

SEC. 8. DOT INSPECTOR GENERAL INVESTIGATIVE AUTHORITY.

(a) IN GENERAL.—Section 228 of the Motor Carrier Safety Improvement Act of 1999 (113 Stat. 1773) is transferred to, and added at the end of, subchapter III of chapter 3 of title 49, United States Code, as section 354 of that title.

(b) CONFORMING AMENDMENTS.—

(1) The caption of the section is amended to read as follows:

''§ 354. Investigative authority of Inspector General''.

(2) The chapter analysis for chapter 3 of title 49, United States Code, is amended by adding at the end the following:

''354. Investigative authority of Inspector General''.

SEC. 9. REPORTS ON CERTAIN OPEN SAFETY RECOMMENDATIONS.

(a) INITIAL REPORT.—Within 1 year after the date of enactment of this Act, the Secretary of Transportation shall submit a report to Congress and the National Transportation Safety Board containing the regulatory status of each open safety recommendation made by the Board to the Secretary concerning—

(1) 15-passenger van safety;

(2) railroad grade crossing safety; and

(3) medical certifications for a commercial driver's license.

(b) BIENNIAL UPDATES.—The Secretary shall continue to report on the regulatory status of each such recommendation (and any subsequent recommendation made by the Board to the Secretary concerning a matter described in paragraph (1), (2), or (3) of subsection (a)) at 2-year intervals until—

(1) final regulatory action has been taken on the recommendation;

(2) the Secretary determines, and states in the report, that no action should be taken on that recommendation; or

(3) the report, if any, required to be submitted in 2008 is submitted.

(c) FAILURE TO REPORT.—If the Board has not received a report required to be submitted under subsection (a) or (b) within 30

days after the date on which that report is required to be submitted, the Board shall notify the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate.

The bill (S. 579), as amended, was read the third time and passed, as follows:

S. 579

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 ''National Transportation Safety Board Reauthorization Act of 2003''.

SEC. 2. AUTHORIZATION OF APPROPRIATIONS.

(a) FISCAL YEARS 2003–2006.—Section 1118(a) of title 49, United States Code, is amended—

(1) by striking ''and''; and

(2) by striking ''such sums to'' and inserting the following: ''$73,325,000 for fiscal year 2003, $78,757,000 for fiscal year 2004, $83,011,000 for fiscal year 2005, and $87,539,000 for fiscal year 2006. Such sums shall''.

(b) EMERGENCY FUND.—Section 1118(b) of such title is amended by striking the second sentence and inserting the following: ''In addition, there are authorized to be appropriated such sums as may be necessary to increase the fund to, and maintain the fund at, a level not to exceed $4,000,000.''.

(c) NTSB ACADEMY.—Section 1118 of such title is amended by adding at the end the following:

''(c) ACADEMY.—

''(1) AUTHORIZATION.—There are authorized to be appropriated to the Board for necessary expenses of the National Transportation Safety Board Academy, not otherwise provided for, $3,347,000 for fiscal year 2003, $4,896,000 for fiscal year 2004, $4,995,000 for fiscal year 2005, and $5,200,000 for fiscal year 2006. Such sums shall remain available until expended.

''(2) FEES.—The Board may impose and collect such fees as it determines to be appropriate for services provided by or through the Academy.

''(3) RECEIPTS CREDITED AS OFFSETTING COLLECTIONS.—Notwithstanding section 3302 of title 31, any fee collected under this subsection—

''(A) shall be credited as offsetting collections to the account that finances the activities and services for which the fee is imposed;

''(B) shall be available for expenditure only to pay the costs of activities and services for which the fee is imposed; and

''(C) shall remain available until expended.

''(4) REFUNDS.—The Board may refund any fee paid by mistake or any amount paid in excess of that required.

''(d) REPORT ON ACADEMY OPERATIONS.—The National Transportation Safety Board shall transmit an annual report to the Congress on the activities and operations of the National Transportation Safety Board Academy.''.

SEC. 3. ASSISTANCE TO FAMILIES OF PASSENGERS INVOLVED IN AIRCRAFT ACCIDENTS.

(a) RELINQUISHMENT OF INVESTIGATIVE PRIORITY.—Section 1136 of title 49, United States Code, is amended by adding at the end the following:

''(j) RELINQUISHMENT OF INVESTIGATIVE PRIORITY.—

''(1) GENERAL RULE.—This section (other than subsection (g)) shall not apply to an aircraft accident if the Board has relinquished investigative priority under section 1131(a)(2)(B) and the Federal agency to which the Board relinquished investigative priority is willing and able to provide assistance to the victims and families of the passengers involved in the accident.

''(2) BOARD ASSISTANCE.—If this section does not apply to an aircraft accident because the Board has relinquished investigative priority with respect to the accident, the Board shall assist, to the maximum extent possible, the agency to which the Board has relinquished investigative priority in assisting families with respect to the accident.''.

(b) REVISION OF MOU.—Not later than 1 year after the date of enactment of this Act, the National Transportation Safety Board and the Federal Bureau of Investigation shall revise their 1977 agreement on the investigation of accidents to take into account the amendments made by this section and shall submit a copy of the revised agreement to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate.

SEC. 4. RELIEF FROM CONTRACTING REQUIREMENTS FOR INVESTIGATIONS SERVICES.

(a) IN GENERAL.—From the date of enactment of this Act through September 30, 2006, the National Transportation Safety Board may enter into agreements or contracts under the authority of section 1113(b)(1)(B) of title 49, United States Code for investigations conducted under section 1131 of that title without regard to any other provision of law requiring competition if necessary to expedite the investigation.

(b) REPORT ON USAGE.—On February 1, 2006, the National Transportation Safety Board shall transmit a report to the House of Representatives Committee on Transportation and Infrastructure, the House of Representatives Committee on Government Reform, the Senate Committee on Commerce, Science, and Transportation, and the Senate Committee on Government Affairs that—

(1) describes each contract for $25,000 or more executed by the Board to which the authority provided by subsection (a) was applied; and

(2) sets forth the rationale for dispensing with competition requirements with respect to such contract.

SEC. 5. ACCIDENT AND SAFETY DATA CLASSIFICATION AND PUBLICATION.

Section 1119 of title 49, United States Code, is amended by adding at the end the following:

''(c) APPEALS.—

''(1) NOTIFICATION OF RIGHTS.—In any case in which an employee of the Board determines that an occurrence associated with the operation of an aircraft constitutes an accident, the employee shall notify the owner or operator of that aircraft of the right to appeal that determination to the Board.

''(2) PROCEDURE.—The Board shall establish and publish the procedures for appeals under this subsection.

''(3) LIMITATION ON APPLICABILITY.—This subsection shall not apply in the case of an accident that results in a loss of life.''.

SEC. 6. SECRETARY OF TRANSPORTATION'S RESPONSES TO SAFETY RECOMMENDATIONS.

Section 1135(d) of title 49, United States Code, is amended to read as follows:

''(d) REPORTING REQUIREMENTS.—

''(1) ANNUAL SECRETARIAL REGULATORY STATUS REPORTS.—On February 1 of each year, the Secretary shall submit a report to Congress and the Board containing the regulatory status of each recommendation made by the Board to the Secretary (or to an Administration within the Department of Transportation) that is on the Board's 'most wanted list'. The Secretary shall continue to report on the regulatory status of each such recommendation in the report due on February 1 of subsequent years until final regulatory action is taken on that recommendation or the Secretary (or an Administration within the Department) determines and states in such a report that no action should be taken.

''(2) FAILURE TO REPORT.—If on March 1 of each year the Board has not received the Secretary's report required by this subsection, the Board shall notify the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate of the Secretary's failure to submit the required report.

''(3) TERMINATION.—This subsection shall cease to be in effect after the report required to be filed on February 1, 2008, is filed.''.

SEC. 7. TECHNICAL AMENDMENTS.

Section 1131(a)(2) of title 49, United States Code, is amended by moving subparagraphs (B) and (C) 4 ems to the left.

SEC. 8. DOT INSPECTOR GENERAL INVESTIGATIVE AUTHORITY.

(a) IN GENERAL.—Section 228 of the Motor Carrier Safety Improvement Act of 1999 (113 Stat. 1773) is transferred to, and added at the end of, subchapter III of chapter 3 of title 49, United States Code, as section 354 of that title.

(b) CONFORMING AMENDMENTS.—(1) The caption of the section is amended to read as follows:

''§ 354. Investigative authority of Inspector General''.

(2) The chapter analysis for chapter 3 of title 49, United States Code, is amended by adding at the end the following:

''354. Investigative authority of Inspector General''.

SEC. 9. REPORTS ON CERTAIN OPEN SAFETY RECOMMENDATIONS.

(a) INITIAL REPORT.—Within 1 year after the date of enactment of this Act, the Secretary of Transportation shall submit a report to Congress and the National Transportation Safety Board containing the regulatory status of each open safety recommendation made by the Board to the Secretary concerning—

(1) 15-passenger van safety;

(2) railroad grade crossing safety; and

(3) medical certifications for a commercial driver's license.

(b) BIENNIAL UPDATES.—The Secretary shall continue to report on the regulatory status of each such recommendation (and any subsequent recommendation made by the Board to the Secretary concerning a matter described in paragraph (1), (2), or (3) of subsection (a)) at 2-year intervals until—

(1) final regulatory action has been taken on the recommendation;

(2) the Secretary determines, and states in the report, that no action should be taken on that recommendation; or

(3) the report, if any, required to be submitted in 2008 is submitted.

(c) FAILURE TO REPORT.—If the Board has not received a report required to be submitted under subsection (a) or (b) within 30 days after the date on which that report is required to be submitted, the Board shall notify the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate.

AMERICAN JEWISH HISTORY MONTH

Mr. FRIST. I ask unanimous consent that the Judiciary Committee be discharged and the Senate proceed to the

immediate consideration of H. Con. Res. 106, American Jewish History Month.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will report the resolution by title.

The legislative clerk read as follows:

A resolution (H. Con. Res. 106) recognizing and honoring America's Jewish community on the occasion of its 350th anniversary, supporting the designation of an ''American Jewish History Month,'' and for other purposes.

There being no objection, the Senate proceeded to consider the resolution.

Mr. FRIST. I ask unanimous consent that the concurrent resolution be agreed to, the preamble be agreed to, the motion to reconsider be laid upon the table, and any statements be printed in the RECORD.

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

The concurrent resolution (H. Con. Res. 106) was agreed to.

The preamble was agreed to.

DESIGNATING AMERICAN EDUCATION WEEK

Mr. FRIST. I ask unanimous consent that the Senate now proceed to consideration of S. Res. 272, submitted by Senator SNOWE earlier today.

The PRESIDING OFFICER. The clerk will report the resolution by title.

The legislative clerk read as follows:

A resolution (S. Res. 272) designating the week beginning November 16, 2003, as American Education Week.

There being no objection, the Senate proceeded to consider the resolution.

Mr. FRIST. I ask unanimous consent that the resolution be agreed to, the preamble be agreed to, the motion to reconsider be laid upon the table en bloc, and any statements be printed in the RECORD.

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

The resolution (S. Res. 272) was agreed to.

The preamble was agreed to.

The resolution, with its preamble, reads as follows:

S. RES. 272

Whereas schools are the backbone of democracy in the United States, providing young people with the tools necessary to maintain the precious values of freedom, civility, and equality;

Whereas, by equipping students with both practical skills and broader intellectual abilities, schools give young people in the United States hope for, and access to, a bright and productive future;

Whereas education employees, whether they provide educational, administrative, technical, or custodial services, work tirelessly to serve the children and communities of the United States with care and professionalism;

Whereas schools are the keystones of communities in the United States, bringing together adults and children, educators and volunteers, business leaders, and elected officials in a common enterprise; and

Whereas public school educators first observed American Education Week in 1921 and are now celebrating the 82nd annual observance of American Education Week: Now, therefore, be it

Resolved, That the Senate—

(1) designates the week beginning November 16, 2003, as American Education Week; and

(2) recognizes the importance of public education and the accomplishments of the many education professionals who contribute to the achievement of students across the United States.

AUTHORIZING SALARY ADJUSTMENTS FOR JUSTICES AND JUDGES OF THE UNITED STATES

Mr. FRIST. Mr. President, I ask unanimous consent that the Senate now proceed to the consideration of Calendar No. 371, H.R. 3349.

The PRESIDING OFFICER. The clerk will report the bill by title.

The legislative clerk read as follows:

A bill (H.R. 3349) to authorize salary adjustments for Justices and judges of the United States for fiscal year 2004.

There being no objection, the Senate proceeded to consider the bill.

Mr. LEAHY. Mr. President, I am pleased that the Senate is taking up and passing legislation to authorize salary adjustments for Justices and judges of the United States for fiscal year 2004.

As a member of both the Senate Judiciary Committee and the Appropriations Subcommittee on Commerce, Justice, State and the Judiciary, I have worked hard to help preserve a fair and independent judiciary. I have repeatedly introduced and cosponsored legislation to give our Federal judges meaningful and significant pay raises. I have been disappointed that the Continuing Resolutions approved by Congress fail to give the Federal judiciary even a cost-of-living adjustment, COLA.

In 1975, Congress enacted the Executive Salary Cost-of-Living Adjustment Act, intended to give judges, Members of Congress, and other high ranking executive branch officials automatic COLAs as accorded other Federal employees unless rejected by Congress. In 1981, Congress enacted section 140 of Public Law 97–92, mandating specific congressional action to give COLAs to judges. During the 21 years of section 140's existence, Congress has always accorded to the Federal judiciary coequal respect by suspending section 140 whenever Congress has granted to itself and other Federal employees a COLA. With the end of the last Congress, however, the continuing resolutions providing funding failed to suspend section 140, thus ensuring that no COLA would be provided for Federal judges during the current fiscal year, unless other action is taken.

In April of this year, I introduced legislation to respond to the shortfall in real judicial compensation, to repeal the link of judicial pay to congressional pay, to improve survivorship benefits, and to instill greater public confidence in our courts. This legislation would have obviated the annual need to pass judicial cost of living adjustments. Unfortunately, the Fair and Independent Judiciary Act of 2003 was never put on the agenda in committee for consideration.

I hope we can all agree that the Judiciary deserves a cost of living adjustment. I look forward to Senate passage of this bill to give our federal judges a cost of living adjustment. I hope the President will promptly sign our legislation into law.

Mr. FRIST. Mr. President, I ask unanimous consent that the bill be read a third time and passed, the motion to reconsider be laid upon the table, and that any statements relating to the bill be printed in the RECORD.

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

The bill (H.R. 3349) was read the third time and passed.

MEASURE PLACED ON THE CALENDAR—H.R. 1274

Mr. FRIST. Mr. President, I understand that there is a bill at the desk that is due for a second reading.

The PRESIDING OFFICER. The clerk will read the bill for the second time.

The legislative clerk read as follows:

A bill (H.R. 1274) to direct the Administrator of General Services to convey to Fresno County, California, the existing Federal courthouse in that county.

Mr. FRIST. Mr. President, I would object to further proceedings on the measure at this time.

The PRESIDING OFFICER. The bill will be placed on the calendar.

NOMINATIONS DISCHARGED

Mr. FRIST. Mr. President, as in executive session, I ask unanimous consent that the HELP Committee be discharged from further consideration of a list of nominations that I send to the desk; further, that the nominations be placed on the calendar.

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

The list is as follows:

NATIONAL COMMISSION ON LIBRARIES AND INFORMATION SCIENCE

Jose Aponte
Sandra Ashworth
Edward Bertorelli
Carol Diehl
Allison Druin
Beth Fitzsimmons
Patricia Hines
Colleen Huebner
Stephen Kennedy
Bridget Lamont
Mary Perdue
Herman Totten

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

David Eisner
Carol Kinsley

DEPARTMENT OF EDUCATION

Raymond Simon

NATIONAL MEDIATION BOARD

Read Van de Water

JAMES MADISON FOUNDATION

Drew McCoy

NATIONAL COUNCIL ON THE ARTS

James McBride

DEPARTMENT OF LABOR

Steven J. Law

PUBLIC HEALTH SERVICE

174 nominees

U.S. INSTITUTE OF PEACE

Laurie S. Fulton
John West

DEPARTMENT OF EDUCATION

Susan Sclafani

Mr. FRIST. 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. 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.

RECESS SUBJECT TO THE CALL OF THE CHAIR

Mr. FRIST. Mr. President, I ask unanimous consent that the Senate stand in recess subject to the call of the Chair.

There being no objection, the Senate, at 9:39 p.m., recessed subject to the call of the Chair and reassembled at 10:26 p.m. when called to order by the Presiding Officer (Mr. ENSIGN).

MAKING FURTHER CONTINUING APPROPRIATIONS FOR FISCAL YEAR 2004

Mr. FRIST. Mr. President, I ask unanimous consent that the Senate now proceed to the immediate consideration of H.J. Res. 79; that the resolution be read three times and passed; and that the motion to reconsider be laid upon the table.

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

The joint resolution (H.J. Res. 79) was read the third time and passed.

UNANIMOUS CONSENT AGREEMENT—H.R. 1

Mr. FRIST. Mr. President, I ask unanimous consent that the contingent upon its availability, the Senate proceed to the consideration of the conference report to accompany H.R. 1, the Medicare Prescription Drug Modernization Act, at 10 a.m. tomorrow; provided that for duration of tomorrow's session, consideration of the conference report be for debate only, and the speakers be recognized in an alternating fashion.

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

ORDERS FOR SATURDAY, NOVEMBER 22, 2003

Mr. FRIST. Mr. President, I ask unanimous consent that when the Senate completes its business today, it adjourn until 10 a.m., Saturday, November 22. I further ask unanimous consent that following the prayer and pledge, the morning hour be deemed expired, the Journal of proceedings be approved to date, the time for the two leaders be reserved for their use later in the day, and the Senate then begin consideration of the conference report to accompany H.R. 1, the Medicare Prescription Drug Modernization Act, as provided under the previous order.

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

PROGRAM

Mr. FRIST. Mr. President, tomorrow morning, the Senate will begin debate on the Medicare conference report. Senators who wish to make statements on this historic bill are encouraged to come to the floor during tomorrow's session. In addition, I inform my colleagues that there will be no rollcall votes during tomorrow's session. It is my hope that we will be able to schedule a vote on the conference report for Monday. I will continue to work with the Democratic leadership to reach an agreement for a final vote.

In addition, we will in all likelihood be in session on Sunday as well to continue the debate on Medicare. I will tomorrow make further announcements about Sunday.

ADJOURNMENT UNTIL 10 A.M. TOMORROW

Mr. FRIST. Mr. President, if there is no further business to come before the Senate, I ask unanimous consent that the Senate stand in adjournment under the previous order.

There being no objection, the Senate, at 10:28 p.m., adjourned until Saturday, November 22, 2003, at 10 a.m.

NOMINATIONS

Executive nominations received by the Senate November 21, 2003:

DEPARTMENT OF DEFENSE

LAWRENCE T. DI RITA, OF MICHIGAN, TO BE AN ASSISTANT SECRETARY OF DEFENSE, VICE VICTORIA CLARKE.

JAYMIE ALAN DURNAN, OF NEW HAMPSHIRE, TO BE AN ASSISTANT SECRETARY OF THE ARMY, VICE MARIO P. FIORI.

EXPORT-IMPORT BANK OF THE UNITED STATES

JOSEPH MAX CLELAND, OF GEORGIA, TO BE A MEMBER OF THE BOARD OF DIRECTORS OF THE EXPORT-IMPORT BANK OF THE UNITED STATES FOR A TERM EXPIRING JANUARY 20, 2007, VICE DORIAN VANESSA WEAVER, TERM EXPIRED.

APRIL H. FOLEY, OF NEW YORK, TO BE FIRST VICE PRESIDENT OF THE EXPORT-IMPORT BANK OF THE UNITED STATES FOR THE REMAINDER OF THE TERM EXPIRING JANUARY 20, 2005, VICE EDUARDO AGUIRRE, JR., RESIGNED.

DEPARTMENT OF STATE

ANN M. CORKERY, OF VIRGINIA, TO BE AN ALTERNATE REPRESENTATIVE OF THE UNITED STATES OF AMERICA TO THE FIFTY-EIGHTH SESSION OF THE GENERAL ASSEMBLY OF THE UNITED NATIONS.

BENJAMIN A. GILMAN, OF NEW YORK, TO BE A REPRESENTATIVE OF THE UNITED STATES OF AMERICA TO THE FIFTY-EIGHTH SESSION OF THE GENERAL ASSEMBLY OF THE UNITED NATIONS.

WALID MAALOUF, OF VIRGINIA, TO BE AN ALTERNATE REPRESENTATIVE OF THE UNITED STATES OF AMERICA TO THE FIFTY-EIGHTH SESSION OF THE GENERAL ASSEMBLY OF THE UNITED NATIONS.

OVERSEAS PRIVATE INVESTMENT CORPORATION

SANFORD GOTTESMAN, OF TEXAS, TO BE A MEMBER OF THE BOARD OF DIRECTORS OF THE OVERSEAS PRIVATE INVESTMENT CORPORATION FOR A TERM EXPIRING DECEMBER 17, 2005, VICE GARY A. BARRON, TERM EXPIRED.

DEANE M. RUEBLING, OF CALIFORNIA, TO BE A MEMBER OF THE BOARD OF DIRECTORS OF THE OVERSEAS PRIVATE INVESTMENT CORPORATION FOR A TERM EXPIRING DECEMBER 17, 2005. (REAPPOINTMENT)

C. WILLIAM SWANK, OF OHIO, TO BE A MEMBER OF THE BOARD OF DIRECTORS OF THE OVERSEAS PRIVATE INVESTMENT CORPORATION FOR A TERM EXPIRING DECEMBER 17, 2005. (REAPPOINTMENT)

UNITED STATES ADVISORY COMMISSION ON PUBLIC DIPLOMACY

JAMES M. STROCK, OF CALIFORNIA, TO BE A MEMBER OF THE UNITED STATES ADVISORY COMMISSION ON PUBLIC DIPLOMACY FOR A TERM EXPIRING JULY 1, 2006, VICE PENNY PERCY KORTH, TERM EXPIRED.

EXECUTIVE OFFICE OF THE PRESIDENT

ROBERT HURLEY MCKINNEY, OF INDIANA, TO BE A MEMBER OF THE ADVISORY BOARD FOR CUBA BROADCASTING FOR A TERM EXPIRING OCTOBER 27, 2004, VICE WILLIAM A. GEOGHEGAN, TERM EXPIRED.

THE JUDICIARY

FRANKLIN S. VAN ANTWERPEN, OF PENNSYLVANIA, TO BE UNITED STATES CIRCUIT JUDGE FOR THE THIRD CIRCUIT, VICE EDWARD R. BECKER, RETIRED.

IN THE ARMY

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES ARMY MEDICAL CORPS UNDER TITLE 10, U.S.C., SECTIONS 624 AND 3064:

To be major

MICHAEL K. VAUGHAN, 8463

THE FOLLOWING NAMED OFFICERS FOR APPOINTMENT TO THE GRADE INDICATED IN THE RESERVE OF THE ARMY UNDER TITLE 10, U.S.C., SECTION 12203:

To be colonel

DALE A ADAMS, 0000
DENNIS J ADAMS, 0000
PAUL AHERN, 0000
RONALD L ALBRECHT, 0000
RICHARD K ALFORD, 0000
STEPHEN M ALLEN, 0000
DAVID W ALTIERI, 0000
STEVEN W ALTMAN, 0000
MARCIA C ANDERSON, 0000
THOMAS D ARNHOLD, 0000
ERNEST C AUDINO, 0000
DAVID S BALDWIN, 0000
JULIO R BANEZ, 0000
BRENT C BANKUS, 0000
CRAIG A BARGFREDE, 0000
VANESSA D BARRON, 0000
DAVID R BATES, 0000
JAMES B BAXTER, 0000
MICHAEL E BEASLEY, 0000
PAUL D BELCZAK, 0000
DOUGLAS L BELK, 0000
RICKY L BELTRAN, 0000
THOMAS E BENDERNAGEL, 0000
GIDEON J BENHORIN, 0000
LENOID T BEST, 0000
CYNTHIA J BINGHAM, 0000
MICHAEL D BISH, 0000
DOUGLAS H BIXLER, 0000
DAVID G BODDINGTON, 0000
LINDA C BODE, 0000
BRUCE J BOIVIN, 0000
RALPH J BORKOWSKI, 0000
MICHAEL J BORREL, 0000
DENISE L BOUDREAU, 0000
DAVID L BOWMAN, 0000
LARRY C BOYD, 0000
GLENN A BRAMHALL, 0000
LEON M BRIDGES, 0000
MARCUS A BRINKS, 0000
BEVERLY R BROCKMAN, 0000
DAVID W BROWN, 0000
GERALD E BRUNN, 0000
MARK S BUECHLER, 0000
PAUL A BURKE, 0000
CURTIS R BURNS, 0000
JEROME K BUTLER, 0000
JODY P BUTLER, 0000
ALAN J BUTSON, 0000
STEPHEN E BUYER, 0000
PHILIP D CALAHAN, 0000
KENNETH W CALHOUN, 0000
WILLIAM J CALLAHAN, 0000
DANIEL E CAMERON, 0000
MICHAEL E CAPLES, 0000
COURTNEY P CARR, 0000
CARL J CARTER, 0000
FRANK S CARUSO JR., 0000
ROBERT CATALANOTTI, 0000
SCOTT E CHAMBERS, 0000
STEVEN W CHANDLER, 0000
WILLIAM V CLEMENT, 0000
PAUL D COLEMAN, 0000
DAVID L G COLLINS, 0000
WILFREDO A COLONMARTINEZ, 0000
DONALD R CONOVER, 0000
FREDDIE W COOK, 0000
JAMES T CORRIGAN III, 0000
MARK E CORZINE, 0000
RONNIE R COX, 0000
RICHARD V CRIVELLO, 0000
SYLVIA R CROCKETT, 0000
KENT M CROSSLEY, 0000

GREGG A CUNNINGHAM, 0000
TIMOTHY W CURRAN, 0000
FLOYD T CURRY, 0000
RONALD J CZMOWSKI, 0000
KATHLEEN F DAGGETT, 0000
PATRICK M DARDIS, 0000
JAMES A DAVIS, 0000
WALTER F DAVIS, 0000
REBECCA A DAVISON, 0000
WILLIE DAY JR., 0000
TIMOTHY K DEADY, 0000
ROBERT F DELCAMPO, 0000
EUGENE A DEVER JR., 0000
PAUL DEVINCENZO, 0000
KERRY L DIMINYATZ, 0000
DOUGLAS J DINON, 0000
ALAN S DOHRMANN, 0000
MONTGOMERY P DOLIESLAGER, 0000
STEPHEN M DOYLE, 0000
ALBERT A DREWKE JR., 0000
FRANK L DUCAR, 0000
STEVEN W DUFF, 0000
ROBERT J DUFFY, 0000
THOMAS C DUFFY JR., 0000
WILLIAM F DUFFY, 0000
ROBERT T DURBIN JR., 0000
ANDREW A EDMUNDS, 0000
DALE R ERICKSON, 0000
CATHERINE J ERVITI, 0000
MARK A EXLEY, 0000
ALAN EZZELL, 0000
EDWARD L FAISON, 0000
LYNN D FISHER, 0000
PHILIP R FISHER, 0000
MARK R FOLLETT, 0000
ROBERT S FORBES, 0000
GEORGE M FRIES III, 0000
JOE C GEREN JR., 0000
JOHN A GESSNER, 0000
SHERYL E GORDON, 0000
VINCENT R GRACE, 0000
JEFFREY D GREB, 0000
JAMES S GREEN, 0000
JUAN L GRIEGO, 0000
JAMES C GRIESE, 0000
MANY B GRINDER, 0000
FRANK GUEVARA, 0000
JACK C GUY JR., 0000
TOBY A HALE, 0000
LAWRENCE E HANNAN, 0000
JON D HANSON, 0000
STEVEN G HARDING, 0000
EARNEST L HARRINGTON JR., 0000
RANDY A HART, 0000
LUCRETIA G HEARDTHOMPSON, 0000
BJARNE R HENDERSON, 0000
MARK S HENDRIX, 0000
STEPHEN B HENSEL, 0000
MICHAEL F J HERCHMER, 0000
MICHAEL F HERMAN, 0000
PETER C HINZ, 0000
LOTHAR C HOLBERT, 0000
RICHARD L ILER, 0000
BRUCE H IRWIN, 0000
DAVID F IRWIN, 0000
RUTH A IRWIN, 0000
NATALIE R JACARUSO, 0000
SCOTT J JACOBSON, 0000
GRANT C JAQUITH, 0000
THOMAS R JENKINS, 0000
LEODIS T JENNINGS, 0000
MICHAEL J JENSEN, 0000
CRAIG D JOHNSON, 0000
DARREL L JOHNSON, 0000
STEPHEN J JURINKO, 0000
WILLIAM K KEITH, 0000
BERNARD M KELLY, 0000
TIMOTHY C KELLY, 0000
CHRISTOPHER R KEMP, 0000
SHAWN P KEMPENICH, 0000
JON R KER, 0000
MARK E KERRY, 0000
JAMES C KESTERSON JR., 0000
MARK H KING, 0000
JEFFERY P KOHLITZ, 0000
ALEX R KORZENEWSKI, 0000
FRED W KUBUS, 0000
TERRY A LAMBERT, 0000
DAVID W LARSEN, 0000
FRANCIS S LAUDANO III, 0000
PETER M LAWSON, 0000
PAUL W LAYMON JR., 0000
WING D LEE, 0000
JAMES R LEECH, 0000
F NICHOLAS R LETSON, 0000
MARLIN F LEVENDOSKI, 0000
BETSY A LEWIS, 0000
ELTON LEWIS, 0000
JOHN E LEY, 0000
ERIC D LINDNER, 0000
RUSTY L LINGENFELTER, 0000
ERIC B LINTZ, 0000
PHILIP C LOOTENS, 0000
WALTER T LORD, 0000
KERRY J LOUDENSLAGER, 0000
JOHN C LOWRY, 0000
KENNETH J LULL, 0000
BENSON W LUM, 0000
JOHN O LUTHRINGER, 0000
JUDD H LYONS, 0000
MARK J MACCARLEY, 0000
RANDALL R MARCHI, 0000
JEFFREY P MARLETTE, 0000
BRUCE R MARTIN, 0000
EUGENE L MASCOLO, 0000
JAMES E MASON, 0000
SAMUEL W MASSEY, 0000
WILLIAM R MAY, 0000
GREGORY N MCCALLON, 0000
MARK A MCCARTER, 0000
PATRICK J MCCARVILLE, 0000
ROGER L MCCLELLAN, 0000
THOMAS D MCCLUNG, 0000
DANA L MCDANIEL, 0000
PATRICIA J MCDANIEL, 0000
DANIEL MCELHINNEY, 0000
LARRY G MCLENDON, 0000
CRUZ M MEDINA, 0000
TIMOTHY M MEYER, 0000
HARVEY A MICHLITSCH, 0000
CHARLES W MITCHELL, 0000
STEVEN H MOGAN, 0000
RICHARD W MOLLICA, 0000
JEFFREY W MONTGOMERY, 0000
KENNETH R MORRIS, 0000
MICHAEL J MOS, 0000
JAMES E MOSE, 0000
WILLIAM S MOSER, 0000
WESLEY R MOY, 0000
REID K MRSNY, 0000
NANETTE B MUELLER, 0000
WILLIAM J MULLER, 0000
JOHN B MUNOZATKINSON, 0000
EDWARD A MUTH, 0000
TODD M NEHLS, 0000
MICHAEL J NEILSON, 0000
DARELL L NEPIL, 0000
RONALD A NEUMEISTER, 0000
DANIEL P NIEVINSKI, 0000
BRETT E NILA, 0000
CALVIN H NOMIYAMA, 0000
ROBERT C OCONNOR, 0000
KENT R OELRICH, 0000
CHRISTOPHER OGARA, 0000
JOHN V OHNSTAD, 0000
ROBERT C OLEARY, 0000
BRUCE E OLIVEIRA, 0000
DAEYVID S OLOCHLAYNE, 0000
WESLEY N OSBURN, 0000
CHRISTOPHER T OSCAR, 0000
JEANNE F PALUMBO, 0000
CHARLES L PARINS, 0000
KEVIN M PETER, 0000
MICHAEL A PETRASH, 0000
GEORGE S PETTIGREW, 0000
WILLIAM D PHELPS, 0000
JOHN G PHILLIPPE, 0000
CHARLES W PHILLIPS, 0000
TIMOTHY S PHILLIPS, 0000
WILLIAM J PHILLIPS, 0000
JANET E PHIPPS, 0000
ANDRES H PLOOMPUU, 0000
DANIEL H PRINE, 0000
MATTHEW T QUINN, 0000
WALTER F RANT II, 0000
ELIZABETH M REHWALT, 0000
JOHN D RENAUD, 0000
MARTHA REYES, 0000
ROBERT B RICE, 0000
LINDA I RIEGEL, 0000
JAMES O RIMEL SR, 0000
ANTHONY M RISCICA, 0000
JULIAN R RIVERA, 0000
ROBERT F ROACH, 0000
KENNETH C ROBERTS, 0000
WILLIAM S ROBERTSON, 0000
DANIEL L ROBEY, 0000
DAVID A ROBINSON, 0000
JESSIE R ROBINSON, 0000
RUBEN J RODRIGUEZ, 0000
HARVE T ROMINE, 0000
ISADORE F ROMMES JR., 0000
ROBERT H RONGE, 0000
MARK H ROUSSEAU, 0000
ALICIA C RUCKER, 0000
JUAN A RUIZ, 0000
PAUL S RUSINKO, 0000
MARK A RUSSO, 0000
PETER J SAMMARCO, 0000
MANUEL F SANTIAGO, 0000
MICHAEL J SAWYER, 0000
RONALD L SCARBRO, 0000
MARK SCATOLINI, 0000
WILLIAM C SCHNECK JR., 0000
BARRY A SEARLE, 0000
ROBERT E SEMBOWER JR., 0000
DANIEL S SHEAHAN, 0000
RAYMOND F SHIELDS JR., 0000
BRUCE M SHREWSBERY II, 0000
LAURA L SIEVERT, 0000
MICHAEL J SINNOTT, 0000
JAMES A SMITH JR., 0000
MARK A SMITH, 0000
STEPHEN W SMITH, 0000
WILLIAM A SODERBERG, 0000
ROBERT A SPARING, 0000
ROBERT L SPARKS, 0000
DEBRA A SPEAR, 0000
STEVEN C SPITZE, 0000
DAVID E SPURLING, 0000
ANDREW O STEWART, 0000
WILLIAM H STEWART, 0000
EUGENE H SULLIVAN, 0000
TERENCE P SULLIVAN, 0000
I MARLENE SUMMERS, 0000
MICHAEL A SUTTON, 0000
ALICIA A TATENADEAU, 0000
DONALD M TAYLOR, 0000
HOWARD S THEVENET, 0000
MICHAEL N THOME, 0000
CHARLIE M THORNTON III, 0000
JAMES R TORGLER, 0000
VICTOR J TORRESRODRIGUEZ, 0000
BARBARA E TRENT, 0000
GORDON D TROUNSON, 0000
MICHAEL S TUOMEY, 0000
JOHN H H TURNER III, 0000
WALLACE N TURNER, 0000
WILLIAM J TYNDALL, 0000
FRANCIS J VAHLE JR., 0000
JOHN E VALENTINE, 0000
PETER A VONJESS, 0000
BRADLEY V WAKEFIELD, 0000
LAWRENCE P WALDHART, 0000
M STEVENSON WALLACE, 0000
WILLIAM C WAMPLER JR., 0000
CHRISTOPHER R WARD, 0000
WILLIAM J WARD, 0000
STEPHEN J WARRILOW, 0000
DAVID L WEEKS, 0000
BILLY J WEST, 0000
JEFFREY B WHEELER, 0000
DAVID S WHITE, 0000
TED C WHITE, 0000
ANTHONY A WICKHAM, 0000
DOUGLAS R WILKEN, 0000
RICHARD S WILLIAMS, 0000
TIMOTHY P WILLIAMS, 0000
HENRY W WILSON, 0000
ALLEN R WOLFF, 0000
MARTHA N WONG, 0000
DEHAVEN C WOODCOCK II, 0000
PAUL T WRIGHT, 0000
JAMES G YOUNG JR., 0000
TRACEY L ZANDER, 0000
NICHOLAS E ZOELLER, 0000

IN THE NAVY

THE FOLLOWING NAMED OFFICERS FOR TEMPORARY APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES NAVY UNDER TITLE 10, U.S.C., SECTION 5721:

To be lieutenant commander

ALBERT A. ALARCON, 0000
BARRY W. BARROWS, 0000
CHRISTOPHER G. BOHNER, 0000
MATTHEW R. BOLAND, 0000
BRENT J. BROWN, 0000
DARRELL S. CANADY, 0000
ADAN G. CRUZ, 0000
CHRISTOPHER D. DELINSKI, 0000
THOMAS J. DIXON, 0000
STEVEN G. DUTTER, 0000
DAVID A. DYWER, 0000
MICHAEL D. EBERLEIN, 0000
JOSEPH J. FAUTH, 0000
DAVID E. FOWLER, 0000
JOHN H. GRIMES, 0000
CRAIG A. HACKSTAFF, 0000
DENNIS N. JOHNSON, 0000
JEREMY P. JURKOIC, 0000
DONALD P. LIBBY, 0000
RONALD B. LOTT JR., 0000
EARL F. MCNEIL JR., 0000
STEPHEN E. MONGOLD, 0000
JERRY E. MORTUS, 0000
CHRISTOPHER T. NICHOLS, 0000
ROBERT W. PATERSON, 0000
GEOFFRY W. PATTERSON, 0000
JULIAN E. SALLAS, 0000
THOMAS H. SHUGART III, 0000
JEFFREY W. WINTERS, 0000

WITHDRAWALS

Executive message transmitted by the President to the Senate on November 21, 2003, withdrawing from further Senate consideration the following nominations:

APRIL H. FOLEY, OF NEW YORK, TO BE A MEMBER OF THE BOARD OF DIRECTORS OF THE EXPORT-IMPORT BANK OF THE UNITED STATES FOR A TERM EXPIRING JANUARY 20, 2007, WHICH WAS SENT TO THE SENATE ON APRIL 10, 2003.

APRIL H. FOLEY, OF NEW YORK, TO BE A MEMBER OF THE BOARD OF DIRECTORS OF THE EXPORT-IMPORT BANK OF THE UNITED STATES FOR A TERM EXPIRING JANUARY 20, 2007, WHICH WAS SENT TO THE SENATE ON MAY 14, 2003.