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Senate

The Senate met at 10:00 a.m. and was called to order by the Honorable SUSAN M. COLLINS, a Senator from the State of Maine.

PRAYER

The Chaplain, Dr. Lloyd John Ogilvie, offered the following prayer:

The Lord bless you and keep you; the Lord make His face to shine upon you, and be gracious to you; the Lord lift up His countenance upon you, and give you peace.—Numbers 6:24–26.

Father, we begin this day by claiming this magnificent fivefold assurance. We ask You to make this a blessed day, filled with the assurance of Your blessings. May we live today with the godly esteem of knowing You have chosen us and called us to receive Your love and to serve You. Keep us safe from danger and the forces of evil. Give us the helmet of salvation to protect our thinking brains from any intrusion of temptation to pride, resistance to Your guidance, or negative attitudes. Smile on us as Your face, Your presence, lifts us from fear and frustration.

Thank You for Your grace to overcome the grimness that sometimes pervades our countenance. Instead, may our faces reflect Your joy. May Your peace flow into us, calming our agitated spirits, conditioning our dispositions, and controlling all we say and do. Help us to say to one another, ''Have a blessed day,'' and expect nothing less for ourselves. For 22 years, Arthur ''Tinker'' St. Clair, Senior Democratic Doorkeeper, has helped this Senate have great days. On the eve of his retirement, we want to thank You for his faithfulness, kindness, and loyalty. Through our Lord and Saviour. Amen.

PLEDGE OF ALLEGIANCE

The Honorable SUSAN M. COLLINS 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.

APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

The PRESIDING OFFICER. The clerk will please read a communication to the Senate from the President pro tempore [Mr. THURMOND].

The legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, DC, February 7, 2001.

To the Senate:

Under the provisions of rule I, paragraph 3, of the Standing Rules of the Senate, I hereby appoint the Honorable SUSAN M. COLLINS, a Senator from the State of Maine, to perform the duties of the Chair.

STROM THURMOND,
President pro tempore.

Ms. COLLINS thereupon assumed the chair as Acting President pro tempore.

RECOGNITION OF THE ACTING MAJORITY LEADER

The ACTING PRESIDENT pro tempore. The acting majority leader is recognized.

SCHEDULE

Mr. NICKLES. Madam President, today the Senate will begin a period of morning business until 1 p.m. Following morning business, the Senate will begin consideration of S. 248, the United Nations debt reduction legislation. Senators should be prepared to vote on the legislation at approximately 2 p.m. today. Therefore, those Senators who intend to debate the bill should work with the bill managers to schedule floor time as soon as possible. Senators will be notified as soon as the vote time has been locked in.

I wish to thank my colleagues for their cooperation.

The ACTING PRESIDENT pro tempore. The assistant Democratic leader.

Mr. REID. Madam President, the Senate is getting a lot of important work done. The more we can work without having a lot of quorums, the better off we are. The time for morning business has been used well. I think we had even the beginnings of a good debate on the tax issue. That is important. The American people are looking to Members to come up with something that is important to them and important to the country with the tax issue before the Senate.

With the bipartisan tone that has been set in the early stages of this Congress, I hope the debate will continue to be civil and constructive, and I hope we can come up with something constructive that is the best for the American people.

RESERVATION OF LEADER TIME

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

MORNING BUSINESS

The ACTING PRESIDENT pro tempore. Under the previous order, there will now be a period for the transaction of morning business not to exceed the hour of 1 p.m.

Mr. NICKLES. I suggest the absence of a quorum.

The ACTING PRESIDENT pro tempore. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

The PRESIDING OFFICER. (Mr. BUNNING). Without objection, it is so ordered.

ARTHUR LEVITT: THE INVESTORS' ADVOCATE

Ms. COLLINS. Mr. President, I rise today to recognize the remarkable public service of the Honorable Arthur M. Levitt, Chairman of the Securities and Exchange Commission, the longest-

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

serving chairman in the history of the SEC. Mr. Levitt will be departing the Commission soon with a proud legacy of accomplishment—a legacy that has made his tenure as Chairman one of extraordinary distinction as well as one of unusual duration.

Correctly seeing his position as a stewardship for the public good, Chairman Levitt has consistently set aside partisan concerns to advocate tirelessly on behalf of the individual investor. He has also implemented changes that have strengthened the public's trust in U.S. securities markets.

Chairman Levitt was first appointed to a five-year term in 1993, and was reappointed in 1998. No stranger to economic issues and the American securities market, he previously had served as Chairman of the New York City Economic Development Corporation, as well as Chairman of the American Stock Exchange. In addition, Mr. Levitt owned a newspaper that is very familiar to those of us who work on Capital Hill: Roll Call.

During his eight-year tenure, Chairman Levitt has consistently worked to deliver the important message that investors must use the increasing amounts of information available to them to do more research before investing. He traveled extensively across the country to spread this message, holding 43 Investors' Town Meetings. At these events, Chairman Levitt took pains personally to educate investors about their rights and their obligations, while giving them the tools they need to invest wisely and to protect themselves from securities scams.

On one particularly memorable occasion in 1998, Chairman Levitt was scheduled to speak at an Investor's Town Meeting in Bangor, Maine. When bad weather thwarted his efforts to reach Bangor and the nearly 600 Maine citizens awaiting him, Chairman Levitt improvised, answering all of the questions from the audience by phone in what may have been the biggest conference call in the history of the State. In Maine, we truly appreciate a person's ability to overcome the elements.

Chairman Levitt also brought his expertise to Capitol Hill, testifying in 1997 before the Permanent Subcommittee on Investigations, which I chair, about problems in the micro-cap markets—including penny stock fraud—and providing investors valuable insights on how to avoid falling victims to the predators who lie in wait for the unwary. Chairman Levitt testified before my Subcommittee again in 1999, this time on the risks associated with day trading. Investor alertness and diligence have been his watchwords, and his advice in this regard has been consistently sound.

A strong proponent of technological advances, Chairman Levitt worked to promote the use of technology not only in securities transactions, but also in helping inform and educate investors through the Internet. Under his guidance, the SEC's first Web site went online in 1995. Today, it provides valuable information and services—including access to the Electronic Data Gathering Analysis and Retrieval database (also known as ''EDGAR''), which contains a large volume of information about public companies, including corporate annual reports filed with the SEC and disclosures of purchases and sales by corporate insiders. The SEC's Web site also has an Investor Education and Assistance service, which advises investors on how to invest wisely and avoid fraud, answers the public's questions, and reviews investors' complaints.

Chairman Levitt has truly been a man for his time. With Americans flocking to take part in what has been the longest bull market in U.S. history, he championed the right of the small investor to a level playing field with the big institutions. Last year, for example, the SEC approved the adoption of a regulation on Fair Disclosure, which requires companies to disclose material, nonpublic information—such as earnings results and projections—simultaneously to Wall Street analysts and the public. This new regulation makes significant strides toward bringing individual investors into the information ''loop'' on a timely basis.

In addition, Chairman Levitt oversaw the SEC's adoption in 1998 of the Plain English Rule, which requires that public companies and mutual funds prepare the cover page, summary, and risk factor portions of their prospectuses in clear, concise, and understandable English. The Plain English Rule finally makes prospectuses accessible to those outside the small circle of securities lawyers and market professionals accustomed to reading them.

Chairman Levitt has worked to ensure that the small investor gets the best available price. In 1997, the SEC adopted its Order Handling Rule, which places individual investors' bids on an equal footing with those of professional traders on the NASDAQ. This Rule is designed to prevent collusion among dealer and to promote competition in the market. At the same time, Chairman Levitt has overseen the SEC's vigorous efforts to root out Internet securities fraud and bring the perpetrators to justice.

Protecting investors' rights and rooting out securities fraud have long been among my primary interests, and I have been both delighted and very fortunate to be able to work toward these ends with an SEC Chairman who shares a powerful commitment to these goals. Mr. President, while small investors are losing a true friend at the SEC, I am confident that the benefits he brought them will endure for many years to come.

Mr. President, I wish to thank Chairman Levitt for shepherding the securities market into the 21st Century, and ensuring that America's thriving markets are open to all investors, big and small, and are worthy of the public's confidence. I offer him my very best wishes for his future undertakings.

The PRESIDING OFFICER. The Senator from Oklahoma is recognized.

TAX CUTS INCREASE REVENUE

Mr. INHOFE. Mr. President, as a lot of people have been doing, I have been watching and listening with a great deal of interest to the debate and the brilliant things that have been said about the proposed tax cut.

I think there are three significant things that have not come across in this debate, and I think we need to talk about that and concentrate on it.

One is the myth that if we cut rates, somehow that is going to have the result of cutting revenues. I do not know what we have to do in history to show that is not correct.

The first time that the whole idea—some call it supply side—came out was way back, following the First World War. At that time, it was the Harding administration and the Coolidge administration. They raised money in order to fight the war. And, of course, that was successful. But after the war, they decided that with the war effort gone, they could reduce the taxes. They reduced the top rate from 73 percent to 25 percent. They thought that would have a dramatic reduction in the revenues that were produced around our country. But they were willing to do it. To their surprise—this is the first time they had learned this—the economy, as a result of that reduction from the top rate of 73 percent down to 25 percent, actually grew the economy 59 percent between 1921 and 1929. And the revenues during that time grew from $719 million in 1921 to $1.16 billion in 1928.

Then along came the Kennedy administration. This is the one where I don't understand how liberal Democrats can stand here and ignore the lesson that we learned during the Kennedy administration. Yes. Kennedy wanted more money spent on social programs. And he said on this floor that we needed more money to raise more revenues to pay for all the domestic programs we were getting into, and the best way to increase revenue was to reduce taxes. At that time, the top tax rate was 91 percent.

So he reduced the taxes with the help of Congress from 91 percent down to 70 percent, and exactly the same thing with exactly the same percentages that took place after World War I took place. Tax revenues grew during that period of time, 1961 through 1968, by 62 percent.

I know there are a lot of people who don't want to believe this. I don't want to unfairly attribute a quote to Laura Tyson, but I remember in 1993 she made a statement I interpreted to be: There is no relationship between the taxes that a country pays and its economic performance. Theoretically, if that is true, you could tax Americans 100 percent and they would have the same motivation to stimulate the economy as if they were taxed 50 percent. We knew that is not right.

We had gone through that during the 1960s. For some reason, Democrats today will not acknowledge that. This is a lesson we learned from Democrats. Of course, the 1980s came. In 1980, the total amount of revenue raised to run the United States of America was $517 billion. In 1990, that was $1 trillion. It almost doubled in that 10-year-period. Those are the 10 years we had the most dramatic marginal rate reductions in the history of America. If you take just the marginal rates, it was $244 billion raised in 1980 and $446 billion raised in 1990. In that 10-year period it almost doubled, and that was dropping the rate from the 70-percent top bracket we inherited from President Kennedy when he brought it from 91 percent to 28 percent.

History has shown it will happen. Never once in the debate do we talk at all about the fact that it will not reduce revenues; it will increase revenues. I have watched this happen over my short lifespan in politics and have been surprised to find this is true. If the money is there, the politicians will spend it.

One of the best political speeches I heard in my life was the first one that Ronald Reagan made, ''A Rendezvous With Destiny.'' I bet some don't remember it at all. In the speech he said, the closest thing to immortality on the face of this Earth is a government program once started. That means if there is a problem, form a government program to take care of it; the problem goes away but the program remains there. This is a fact of life. It has repeated itself over and over again.

The second item—a lot of the liberals say this because it sounds good to conservatives—let's go ahead and not have tax cuts until we pay down the debt.

The Wall Street Journal had an article entitled, ''Where Do We Put the Surplus?'' A couple of professors say we have a serious problem because if we wanted to take the surpluses projected, which is $5.5 trillion in the next 10 years—upgraded by OMB to $6 trillion in that same timeframe we would have to find someplace to put the money. If you don't return it to the taxpayers, it will get spent. There aren't enough places you can put money like that because you can't pay down the debt immediately. Some things have not matured. You can't force a debt repayment in the publicly held portion, and the debt is $3 trillion. You have to find a place to put it.

You can go into the equity market. If you go into the equity market, that will create a problem. According to Greenspan, by the year 2020, if we take this course, the Government will own one-fifth of all domestic equities. If there is anything we don't want to happen, it is to have Government owning 50 percent of the private equities in this country.

The last point is how modest this cut is. I would like to have it much greater than $1.6 trillion because I believe we can afford to do that. During the Reagan administration, it was $1.6 trillion, but in today's dollars that would equal $6 trillion that we would actually have as tax cuts. If you look at it another way, taking it as a percentage of the gross domestic product, what we are suggesting is somewhere between a 0.9 and 1.2 percent cut in the gross domestic product. In the Kennedy years, it was 2.2 percent; during Reagan it was 3.3 percent. This is far less than those tax cuts would have been.

I conclude by saying we have a decision to make—and it is a very difficult decision—as to what to do with that amount of surplus.

I ask unanimous consent the Wall Street Journal article I referred to be printed in the RECORD at the conclusion of my remarks.

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

(See Exhibit 1)

Mr. INHOFE. I don't think there is any question, if we are honest, we would deny that if we leave this money, it will be spent. Parkinson's law is: Government expands to consume the resources allocated to it, plus 10 percent. This has proven to be true over and over again.

I can argue as to the fairness of where this cut takes place. I could talk about the fact that the top 5 percent of the income makers in this country actually pay 54 percent of the taxes; the bottom 50 percent only pay 4.2 percent of the taxes. That begs the question. There is no reason to talk about the fairness of this because it is too logical. Obviously, what we are going through now is an overpayment. We have taxed the American people, and anyone out there right now—and there are millions of people who have paid any type of taxes—is entitled to a refund. To redistribute that wealth would be as unfair as it would be if you went down to an auto dealership, bought a new car, paid the sticker price, got home and said: Wait, I paid $2,000 too much. And you get in the car and drive to the auto dealer and say: You overcharged me $2,000, and he says: I just gave it to my mother-in-law.

This is an overpayment of taxes we have made and I think people are entitled to have the overpayment back. If you do that, it will have the effect of increasing revenue, and stimulating the economy, which we desperately need. We are on the brink right now of a recession.

I yield the floor.

EXHIBIT 1

[From the Wall Street Journal, Jan. 29, 2001]

WHERE DO WE PUT THE SURPLUS?

(By Kevin A. Hassett and R. Glenn Hubbard)

When historians look back on Alan Greenspan's tenure as chairman of the Federal Reserve and attempt to identify the source of his enormous success, last Thursday's Congressional testimony—in which he advanced the course of tax reform—will likely provide one answer. Mr. Greenspan raised a pressing public-policy question that has been overlooked by most, a question that will likely become the focal point of political and economic debate during President Bush's first four-year term.

If the U.S. government starts accumulating big surpluses, where should it put the money?

That might not seem so tricky. After all, the government already occasionally places deposits in private banks. But this time we aren't talking nickels and dimes. Current surplus estimates are so large that the government's passbook savings account, if nothing changes, will soon become the Mount Everest of cash hoards.

Let's look at the numbers. The latest Office of Management and Budget forecast is for the surplus to reach about $5.5 trillion over the next 10 years. Rumor has it that the soon-to-be-released Congressional Budget Office forecast will peg it at $6 trillion, with almost $1 trillion arriving in 2011 alone. (Note: actual CBO numbers are $5.61 trillion, of which $3.12 trillion will be the non-Social Security surplus)

Why not just pay down the debt? Put simply, there's not that much debt to pay. According to the Treasury Department, total government debt held by the public is only about $3 trillion. With no change in tax policy, projected surpluses would pay down the debt by around 2008. Government will subsequently have to decide in what it will invest the massive surpluses.

But that is far in the future. Many opponents of tax reduction have suggested that we wait until the uncertain surpluses arrive, and the $3 trillion of existing government debt is retired, before considering tax cuts. Mr. Greenspan had an answer for that as well: ''Private asset accumulation may be forced upon us well short of reaching zero debt.''

Indeed, by some estimates, as much as half of existing government debt will be almost impossible to retire, since savings bonds and state and local government series bonds often aren't redeemed until maturity, and because many holders of long-term treasury bills will be unwilling to sell them back to the government. Factor in that surplus estimates keep getting revised upward, and government may well be forced to invest in private assets in just three or four years.

How big could the hoard get? Investing that much public money would likely mean the government purchase of stocks, because only equity markets are large enough to absorb such inflows and still remain liquid. Assuming the Treasury begins to invest surpluses in the stock market as soon as it has retired all the debt that it can, and that these investments earn a 10 percent annual return, our government will be sitting on a stock-market portfolio worth $20 trillion by 2020. To put that in perspective, the current market value of all equities in the U.S. is about $17 trillion, according to the Federal Reserve. Projecting forward, the U.S. government could own about one-fifth of all domestic equities by 2020.

Allowing the government to own that much of the private economy is an invitation to unbounded mischief. Firms will lobby to be put on the list of acceptable investments; those firms or assets left off will suffer hardship. Calls to sell firms that aren't ''green'' or that fail to pass litmus tests will become the latest in political lobbying. Which is why Mr. Greenspan stated flatly: ''The federal government should eschew private asset accumulation because it would be exceptionally difficult to insulate the government's investment decisions from political pressures.'' The risks are just too great.

His argument on Thursday caught Democrats flat-footed. Sen. ERNEST HOLLINGS of South Carolina told Mr. Greenspan that ''in all candor, you shock me with your statement.'' An apoplectic Sen. CHARLES SCHUMER

of New York dubbed Mr. Greenspan's analysis a mistake.'' Such venom is reserved for truly decisive arguments. Indeed, word is out that economists at President Clinton's Council of Economic Advisers prepared an analysis of this issue that wasn't allowed to see the light of day.

Perhaps the Democratic senators had not previously recognized that their opposition to tax cuts would require the government to buy a massive share of private America. Mr. HOLLINGS later warned Mr. Greenspan that he was ''going to start a stampede.'' It is not a stampede we will observe, but a wholesale retreat by poll-conscious opponents of tax reform, who will have little stomach to defend such a massive government intrusion into private life. A large tax cut is virtually a sure thing.

Which doesn't mean we've seen the last of this important question. First, if supply-side arguments are correct, then the marginal-rate reductions proposed by Mr. Bush will eventually increase tax revenues and surpluses, presenting us once again with the quandary of what to buy. Second, Social Security continues to be on very weak footing in the long run, and something must be done to stave off fiscal disaster. This puts Democrats in a tough position. For if they reject the option of allowing the government to hoard private assets in anticipation of retiring baby boomers, there is—as Mr. Greenspan highlighted elsewhere in his remarks—one inevitable alternative: individual accounts.

In taking a stand on such important issues in such a public forum, Mr. Greenspan has fundamentally altered the debate on the surplus, taxes and government investment. From now on, opponents of privatization will have to reveal just where it is they intend to put our money, and convince us that those investments will be economically benign.

The PRESIDING OFFICER. The Senator from Kansas.

Mr. BROWNBACK. Mr. President, I rise to speak about the tax cuts proposed this week by President Bush and to join my colleagues in this discussion. As I listened to my colleague from Oklahoma, Senator INHOFE, a number of the points he was making are the ones that I think are most germane to this discussion. He spoke eloquently; I have some charts that support what he said.

He was talking about the one law that Government spending expands to reach the amount of Government resources we have available, plus 10 percent. I had not heard of that law, but it sounds as if it is fairly accurate.

I have a chart that shows that the surpluses lead to higher spending. We can see that is what has taken place as we have had surpluses coming on line in 1995 through the year 2002. We had an enormous growth in discretionary spending during the same period of time. This is a time period when we had a Democrat President and a Republican Congress. There were supposed to be some restraints in spending, but the ironclad rule of Government is if there is a dollar left on the table anywhere, it will be spent. We now see that is, indeed, what has taken place where the discretionary spending has increased. If you leave the money on the table, it will get spent.

I want to talk about another thing that my colleague addressed, as have others, and that is tax freedom day, the day we finally start working for ourselves and stop working for the Government. This day, unfortunately, has continued to grow longer in the career. We have less freedom from taxation in this country right now than at any time since World War II.

I will first show the size of the overall tax cuts President Bush has put forward. They are pretty modest. My colleague from Oklahoma was discussing the relatively small size of the tax cuts in proportion to the economy. This is the percentage of Gross Domestic Product. The Bush tax cut is 1.2 percent of GDP which is quite small, in my estimation. We should be talking about a larger tax cut given the difficulty our economy is starting to show. We are seeing some slowness in the economy. We need to stimulate it both in fiscal and in monetary policy. The Fed is coming forward with monetary policy, and we need to come forward with fiscal policy.

You can see Ronald Reagan had a 3.3-percent cut in percentage of GDP, and President Kennedy had a 2-percent cut. I think we ought to be getting up to this 2-percent category and talking more along the lines of a $2 trillion tax cut. This will stimulate the economy, keeping it from going into recession. That is the best thing to do to ensure that we maintain a surplus; with people doing well in this country, we can avoid an economic recession. That is what we are starting to face.

This is a modest tax cut, particularly given the times and situation. We need to do so to help stimulate the overall economy. I think a 2-percent cut overall, a $2 trillion tax cut, would be more in keeping with traditional sizes of major tax cuts and would keep our economy from slipping into an actual recession.

You can see what has happened to tax freedom day. This is the day you stop working for the Government and start working for yourself. It extended until May 3 in the year 2000. People are working for government at all levels of the government until May 3.

I just bought a used car from an individual. He asked me what I did, and I told him I worked in the Senate. He said: If you guys can, do anything to cut taxes, I have a paycheck that comes in, and I never look at the gross number because it just depresses me. I just basically cut my gross wage in half, and that is how much I get to take home. Just cut it in half, was his statement.

We ask people why they are having difficulties with the situation at home, with their families. They don't have enough money to take care of their kids, buy braces, pay for education, and take care of the normal expenses. They need to have at least two jobs in this family, maybe more.

Why is that? We look at this chart and see one of the big cost drivers in that situation. It is the tax burden.

Look at what happened in the 1990s. In this time period, it has gone up precipitously. That shows how much people work for the Government rather than working for themselves. Is it any wonder people experience stress or have difficulty in their family situation, when they are working for somebody else, who gets close to half the year?

How does this break down? I want to break down this tax freedom day issue. These are the minutes in an 8-hour day that you are working for government, or other taxes that you are paying. Look at how many minutes of an 8-hour day you are working for Federal taxes: 112 minutes. It is getting close to 2 hours a day that you are working for the Federal Government. I appreciate you working for us that much. I am glad people are doing that.

My point in highlighting this is that it is too much. It is too long. You should not be working for the Government that amount of time.

Look at the Federal Government, but also look at State and local taxes. You add another 50 minutes to that. We are getting close to 3 hours of your workday to pay for Federal taxes and State and local taxes. That is before you ever pay for housing, health care, food, recreation, transportation, clothing, and put money away in savings. What happens to savings when you take this big of a bite out of it?

This chart puts a graphic on it, and it shows that if you start working at 9 a.m., you are basically working in the morning for the Government, and then the rest of the day you are working for other things. The morning is basically given to the Government.

It is nice that people are willing to do that, but my point is that it is too long, it is too much, it is taking too much from them, and it is hurting our families and individuals. This is just to point out how much it is, how it breaks down. This is from the Tax Foundation.

How much per dollar of a median family income goes to taxes, comparing 1955 to 1998? In 1955—Federal income tax was 9 cents. Federal payroll tax, other Federal tax, State and local taxes, were 3 cents. In 1955, we had a pretty good size Government. In 1998, after-tax income was 61 cents; we are nearly at 40 percent today.

Look at the size of this Federal payroll tax. When I go to high school senior classes, two-thirds of the groups with which I speak are paying taxes. The tax that they are paying is Federal payroll tax, which for most people in this country is larger than any other single tax they pay. This is one tax about which we are going to have a lot of discussion.

This chart shows other Federal taxes and State and local taxes, which have increased a great deal as well. This breaks it down on the dollar.

Finally, this is tax freedom day by type of tax. Many people don't realize all of the taxes that they pay. Basically, on anything you do, you are paying a tax. If you turn on a water faucet

in the morning, there is going to be a tax on the water that comes through. If you use the phone, there is a phone tax. If you die, there is going to be a death tax, and if you get married, there is a marriage penalty tax—both of which I think we need to address and eliminate.

We have a system where we have figured out how to tax virtually everything you do or that happens to you. It creates these type of burdens.

To pay individual income taxes, we are working 50 days a year. You can look at the others. Business taxes, corporate taxes, property taxes, estate and excise taxes, social insurance taxes are also on this chart. It is a big overall burden.

One person has suggested, instead of having payroll taxes, that we require a person to each month write a check out to the Government for their level of taxes rather than taking it out of the account. If we really wanted to cut taxes, we should do that so people could see that each month when they wrote that check out. It is a heavy burden.

I wanted to put that forward to put some context on this. When we talk about a $1.6 trillion tax cut—which I think actually should be at the $2 trillion category—we are overburdening people on taxes now. This is clear. We need help in stimulating the economy. This is clear. We should not be taxing things such as marriage when it is the foundational unit for the family. We need to get rid of the marriage penalty tax.

I want my colleagues, particularly from Texas and Georgia, who put this tax plan forward, to know I am going to be aggressively pushing to get rid of the full marriage penalty tax rather than a portion of it, which is in this current bill. I think we have to do much better towards our working families, particularly getting rid of the marriage penalty tax. I also hope that we can make these tax cuts retroactive to stimulate the economy.

I point out to my colleagues as well about the surplus—we have been paying down the debt, and we will continue to do so. We have paid down the debt by about $360 billion over the last 3 years. We will continue to pay the debt down. However, those surpluses have led to increased government spending as well. So we need to get some of the tax dollars out of the system and back into people's individual pockets.

Finally, we have the wherewithal to do this and to protect Social Security. We can do a $2 trillion tax cut and we can still pay the debt down at the current rate (if not more than what we are currently doing) and provide for substantial Federal Government needs that we have identified. That is all doable because the projection on our own receipts is substantial enough that we can get that accommodated—roughly in the $5.6 trillion surplus over the next 10 years.

We need to do this. American working families need this to take place. It is the right thing to do. It is the right time to do it. I hope we do not waste much more time before we actually get these tax cuts in place.

Mr. President, I thank my colleague from Wyoming for hosting this dialog and I yield the floor.

The PRESIDING OFFICER. The Senator from Wyoming.

Mr. THOMAS. Mr. President, this, obviously, is the week and the time to be talking about taxes, tax relief, and tax reductions.

It is an appropriate time to deal with all of the involved issues. Certainly, the President has talked a great deal about his tax plan not only in the campaign but certainly now as he is prepared to reveal and unveil this plan of relieving the tax burden on all taxpayers.

The plan, of course, is oriented toward stimulating economic growth, reducing family tax burdens, and saving family estates from the auction block, and hopefully making this Tax Code simpler and more fair. That is an important aspect of it. We talk all the time about the Tax Code being so detailed and complex, and yet we do not do much about it.

I hope we do not start seeking to have directed tax reductions here, there, and other places, aimed more at behavior than at tax reductions. This is designed to make it simpler, and that is important.

The case for the President's relief package is strong. First, there is a record surplus of taxes coming in. It is really a tax overpayment. That makes possible a policy of paying down the debt and reducing taxes on working families.

Second, the slowing down of the economy has many people concerned and properly so. Absent some kind of fiscal stimulus, our record economic expansion may turn downward and into a recession.

The third argument is the one my friends have talked about this morning, but I think it is really the issue for most of us, and that is the burgeoning tax burden on American families.

No matter how one looks at it as a proportion of national income, the burden persists as compared to other family expenses. Actual time spent working just to fund the Federal Government is taking more of a typical family's income than at any other time in history. Isn't that interesting? Almost any time in history.

Federal revenues for fiscal year 2000 pulled more than $2 trillion out of the economy for the first time in American history. Along with that being the highest level ever, the Federal tax burden is also the highest rate of gross domestic product since World War II. In 1944, revenues reached 20.9 percent of GDP. Today, revenues have returned to that extraordinary level. They are at 20.6 percent, well above the historical norm.

Interestingly enough, since 1935, the average tax burden has been 17.2 percent. Never during the Korean war, the Vietnam war, or the cold war did it ever reach 20 percent. Yet the Federal tax burden continues to take more financial power out of the economy without a particular cause.

In the last few years, the American people have had to pay 20 percent of what they earned. The impact on the economy, on families, and the taxpayers has been extraordinary. We have an opportunity to do some things differently, and I hope we do that.

The current tax system, I believe, is a mess. Just think how difficult it is for all of us as we prepare our tax returns. We often say if anyone cannot make out their own return, it must be too complex. Seldom are people able to make out their own.

After 80 years of lawmakers, lobbyists, and special interests working on it—which will continue—it is unfair; it is complex; it is costly. Those are the kinds of things of which I hope, as we move forward, we can take advantage. Someone suggested taxpayers devote almost 5.5 billion hours a year to the preparation of tax returns. The other thing—and it depends, I suppose, on your point of view and philosophy with respect to Government; if one believes Government ought to be contained in its growth, that there are limits to in what the Government ought to be involved—the Federal Government in particular—why, this has something to do with that.

When there is a surplus, it is more difficult to maintain limits on the growth of Government than it is when there is not a surplus. Obviously, we want to fund the essentials such as health care, education, and Social Security. There also ought to be a limit on the growth of Government, the involvement of Government.

We are saying all the time that the Federal Government is involved in too many things; we ought to give more emphasis to State and local governments; we ought to evaluate what is the legitimate role of the Federal Government. I believe that is true, but that depends on your philosophy of government.

We are going to hear arguments during the course of this discussion that there needs to be more Government, more Government spending. If one believes that is the direction we ought to go, there is no end to the programs. It is very difficult, once a Federal Government program is in place and builds a constituency around it, to change it, to eliminate it, to reduce it.

It comes down to a philosophy of government. When you have, as in this case, a surplus of dollars, what do you do with it? You can spend it and increase the size of Government. That is a philosophy we hear quite often in this Chamber. Another is we ought to limit the role of the Federal Government; we ought to use our best judgment to determine which of those

things are most important, which of those things are essential, which of those things can only be done by the Federal Government as opposed to local and State governments, which of those things should be done in the private sector as opposed to the Federal Government. All those things have a play in what you do in the future.

I happen to believe we ought to be paying down the debt. It is unfair for us to have gone into debt over the last number of years to finance programs young people will have to pay for. We can do that.

I am persuaded that under the President's program we can pay down the debt over this period of time. I am persuaded that we will have adequate money to spend on essential programs.

At the same time, we can substantially reduce the tax burden on American families, and that is very much what we want to do.

I do believe one of the elements of taxes ought to be fairness. One of the issues we have talked about for some time and passed last year, only to be vetoed by the President, was the marriage tax penalty. It really does not make sense from a fairness standpoint that a single man and woman earning this amount of money pays x amount of dollars; if they are married, making the same amount of money, they pay more. That is a fairness issue and one that needs to be decided.

Of course, the estate tax also is one that many argue is a fairness issue. People, particularly on farms, ranches, and in small businesses, work their whole lives to create some capital and assets, and if they own property, as many ranchers and farmers do, they have to pay this 55-percent estate tax. They have to dispose of the property to do that and that seems unfair. There are some legislative ideas, and I do not know which one will prevail. There can be expansion of exemptions, and there can be elimination, which I favor. There can also be some efforts made to pass these on without taxes and allow then for a tax to be placed on their growth.

There are many things we can do. The President has put forth a package that is very useful, one that deals with the issues as we see them, one which will bring fairness, one which will bring a reduction in costs, one which will pay down the debt, one which will allow us to go ahead and fund those programs that we deem to be essential and of a high priority.

We have an opportunity to do that now. I am hopeful we will move forward and do it quickly, to the benefit of this country, its economy, its taxpayers, and all of its families.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Texas.

Mrs. HUTCHISON. Mr. President, I am very pleased to be working with my colleague, Senator THOMAS, today, and all of this week, to talk about the tax cuts we have tried to provide for hard-working American families.

We have been trying to give tax relief to working Americans for the last 3 years, but we had a President who did not agree with us. Every time we sent him a tax relief bill, it got vetoed.

But today we have a President who agrees with us that hard-working Americans deserve to keep more of the money they earn. Because we believe it is their money, not ours, we want them to have the choices.

So we do have a proposal that Congress and the President are going to work together, hopefully, on a very bipartisan basis, to produce for the American people something they can realize, not something that is so complicated and minuscule and fractionated that nobody is ever going to know they got a tax cut. What we want is real tax relief for hard-working Americans.

It is pretty simple. The basic part of this tax relief plan would replace the current five-rate tax structure—which is 15 percent, 28 percent, 31 percent, 36 percent, and 39.6 percent—with four lower tax brackets: 10 percent, not 15 percent, would be the lower bracket; then 15 percent; then 25 percent; and then 33 percent.

That is the bulk of the tax relief plan that we will send to President Bush if we can get the support of our colleagues on the other side of the aisle.

For a couple with two children, making $35,000 they will have their taxes eliminated. For a couple with two children, making $50,000, their taxes will be cut by 50 percent. For a couple with two children, making $75,000 their taxes will be cut by 25 percent.

This is tax relief that people will be able to experience. We also hope that people will feel so good that they will buy the car they have been waiting to buy or that they will know then that they will be able to make the downpayment on the house they have been saving for—something that will spur the economy because there is no question our economy is not growing right now. It is stagnant.

But we think it can be revived if there is consumer confidence. Consumer confidence would come if people feel good about their jobs and their prospects and if they have more money in their pockets. So this is a very important staple of the tax cut plan.

The part that I have been working on personally for so many years is the marriage penalty tax cut. Why, in America, would we have to ask people to choose between love and money? The fact is, most couples in America, indeed, have to pay an average of $1,400 more in taxes just because they got married.

Who does this hit the hardest? It hits the policeman and the schoolteacher who get married and all of a sudden find they have $1,000 more that they owe to Uncle Sam—$1,000 they could certainly use. So we want to help married couples not have to pay any penalty whatsoever.

Why should you pay a penalty just because you got married? It does not make sense. So we want to eliminate the marriage tax penalty. In fact, I am going to be working with others to make the marriage penalty tax cut part of our tax plan significant. We believe we should double the standard deduction, that you should not have to pay more in a standard deduction because you are married than you would if you had two single income-earning people. So we are going to try to change that.

We are going to encourage charitable contributions by allowing people who have saved and put money in their IRAs through the years—if they find out they do not need that money because they are doing OK, and their kids are doing OK—to give some of that money to charity if they want. But there is a big bar to doing that today, and that is the tax consequence. You cannot just take the money out and give it to the charity; You have to pay the taxes.

So we want to eliminate that tax, if it is going to go straight to charity. This will encourage people to do things that will enhance our communities, and that is to give to the charity of their choice.

We want to try to help parents by doubling the child tax credit. President Bush has made this a priority. He wants to make sure that we have a $1,000 per child tax credit rather than the $500 per child tax credit that we are working toward today because we know it costs a lot of money to raise a family. Children grow. They grow out of their clothes; they eat a lot; they need to be healthy; and they need to be well fed and well dressed.

The occupant of the Chair is smiling because he has nine children. He knows. He has been there. He has fed and clothed them. He knows this is something that parents need the help to do.

Mr. President, I am very pleased to be here and be a part of the group that is talking about the Bush tax cuts. We are talking about the Bush tax cuts for hard-working American families. We are talking about Congress working with the President on a bipartisan basis for a lot of reasons to let people keep more of the money they earn. That is the bottom line.

We want people to be able to keep the money they earn because we believe it belongs to them, not to us. We believe families, especially, should get the break they so badly need.

We are being taxed at a higher rate today than ever in peacetime. I am very pleased that we have this tax relief plan. We know it is going to pass. That is what pleases me. Before, when we had been working on tax cuts, we had a President who would threaten to veto them every time we sent them to him. Today, we have a tax cut plan with a President who says he is going to sign it.

So we feel very good about that. We are going to be talking about it and hope the people of this country realize

we are going to do something significant for every taxpaying American. Those in the lowest brackets will get the most relief; those in the upper brackets will get the least relief, but they will get some relief. We think it is fair to target it to middle-income and low-income people. We want them to get the most benefit. They are the ones who pay the most per capita, per income dollar. We want to relieve that, but we want every working American who pays taxes to get relief.

Mr. President, I am very proud to be here with my colleague, Senator PETE DOMENICI. Senator DOMENICI is, of course, the person who heads our Budget Committee. He knows, in the final analysis, it is his committee that is going to give us a budget that is balanced, that pays down the debt, that takes care of the increases in spending that we know we are going to need in places such as education, national defense, Medicare reform, prescription drug benefits and options, and give back to hard-working Americans some of their tax money.

I cannot think of anyone that I would trust to be able to do that than my colleague from New Mexico. I will now turn the floor over to him.

The PRESIDING OFFICER. The Senator from New Mexico.

Mr. DOMENICI. I thank my good friend from Texas.

Mr. President, I know that by some strange coincidence the occupant of the Chair seems to occupy the Chair quite frequently when the Senator from New Mexico speaks. I do not know what that bodes for the distinguished Senator, but I will try to make it interesting today, again, perhaps.

First, I am here because I want to share with the American people, and my constituents in New Mexico, the fact that this fiscal situation of our Nation is about as good as any generation could expect. This is a good situation. I have been here during times when we were going into debt almost as fast as we were gaining surpluses each year.

We had accumulated enormous annual debts that we called the ''deficit,'' and the first good news is that by the time this year ends, we will have reduced the debt of our Nation by $600 billion. That is for real. That is not a graph. That is not a projection. We have already paid it down substantially. Unless something very dramatic happens in the next few months, that total number will be $600 billion in reduction.

Interestingly enough, a few weeks ago, probably the most distinguished American on matters economic, and probably the most distinguished American in terms of impact for the positive on the American economy, Dr. Alan Greenspan, appeared before the Budget Committee of the Senate. For some people, it was a bombshell when he said in the course of his discussion, just as deficits can get too big and hurt the economy, so can surpluses get too big and, if not handled right, can hurt the economy. He came to that conclusion on the basis of his own assessment of where we are going. And without saying it, he certainly lent great credence to a big fact: surpluses are generating on the inside of the American budget at rates and levels never expected or understood in America.

He at least implicitly acknowledged that the Congressional Budget Office was on the right track in estimating that the surpluses were growing and growing, and we were told a few days later by the Congressional Budget Office—and when we say that, we mean the whole paraphernalia that goes with estimating the American economy groups of economists, economists within the Congressional Budget Office, comparing their results with all kinds of outside estimators whose job it is, because of the businesses they work for or the funds they control, to be as right as they can—that the Congressional Budget Office which Dr. Greenspan was looking at was giving us their best estimate.

There are some who say it is only an estimate. They could give us an estimate that is not their best estimate that would say the surplus is going to be $9 trillion. They could give us another estimate which would not be their best estimate that the surplus in the next decade is going to be $1 trillion. But when they were asked, which one should we build our policy on, the answer was, the modest growth path, the modest path in terms of increases in productivity, nonetheless sustained productivity increases and sustained and very large over the next decade. Use the one we gave you, they said.

There are some people down here talking about all the possibilities and all the probabilities. When we are told about Social Security 40 years from now, Medicare 30, 40, or 50 years from now, we are using the best we can in giving those notions of costs and liabilities.

We have $5.6 trillion. Let's just start right off and say, it is our responsibility to take a good look, with our fellow Senators, at what we ought to do with it. Let me start by saying, we want to pay the debt down as soon as practicable. It is no longer as soon as possible because we have been told now by both the Congressional Budget Office, our experts, and Dr. Alan Greenspan, that there is a limit as to how fast we pay it down.

First, there is a limit because there is certain of our indebtedness that we cannot buy up; it is just not viable, such as savings bonds and the like; they are going to be there.

There is other long-term debt that is too expensive to try to persuade the holders of those debts to cash them in now; it costs too much money. So close to $1 trillion cannot be paid off as soon as we have the surplus.

We were told by Dr. Greenspan to use a glidepath for the reduction of the debt, and we will use one in whatever proposals we make to the committee—I will as chairman—and whatever we make to the Senate and to the people. The debt will be coming down rather fast, but not as fast as the money is accruing in the surplus because we are being told it won't work. We are also being told that is probably not good for the future of the American economy.

Let me talk about the future of the American economy. There is a lot being discussed today about Social Security 20, 30, 40 years from now, and Medicare during the same time interval. Those who work very hard at demographics, telling us how many people are going to be collecting from these two major beneficiaries programs, how many are going to be paying in, and how much money we are going to have sitting around, are all suggesting, from what I hear, that the very best thing that can happen is that the American economy has very prolonged intervals of sustained growth with high productivity, much like the last 9 or 10 years. If we want the best outcome for the seniors of America, the baby boom population, in terms of their health care that we can pay for and their Social Security being payable, just have, during the next 40 years, three 9-year growth patterns, or four, like the immediate past ones we have had. That will put us closer to being able to meet our obligations than any other policy we can undertake in the Congress.

In fact, another thing that has been discussed is a rainy day fund. The best rainy day fund is sustained economic growth over a prolonged period of time. That is the best rainy day fund.

Why do I raise this right in the middle of a discussion about surpluses and what should we do with them? Because we are in a slowdown right now. We have different versions of how severe this slowdown is in the economy. Again, he has been correct most of the time. Dr. Greenspan says it is short lived and it is not too deep, and he is correcting it in terms of the short term by substantially lowering the interest, which is within the Federal Reserve Board's power. They have done that in a rather dramatic fashion the last couple months, and I surmise they will do some more.

The question becomes, what policy could we adopt up here that would fit in with these interest reductions and produce long-term growth at sustained rates with low rates of inflation and probably high productivity?

The best thing we can do is, one, pay down the debt on a glide path which says we will get it down but not abruptly. We will get it down within 2 or 3 years of the time that we would get it down if we put all of it on there, or tried to. Then we would take all of the Social Security trust fund money, put it in a lockbox; Medicare. And then we could still provide for very high priority items, both in appropriations and elsewhere. And what is left could, indeed, be $1.6 trillion that we ought to

give back to the American people rather than keep up here to be spent.

If we do not give some of this back to the American people, and start soon giving it back a little bit each year, I think the highest probability is that the pressure that will be responded to will be to spend it. There is already some evidence that in the last 6 months we have spent over the baseline, over the amount that would have been expected, $561 billion over the next decade. That is what we have done in appropriations. That is what we have done in entitlements. That is what we have done for veterans and a whole list of them. Surplus was here in abundance. Spending occurred in abundance, and I believe the American people would not like to see a much larger Government because of these surpluses. I think they would like to see Government at the most efficient level possible.

They would clearly like us to give some of this money back to them. I will leave for others on another day whose tax plan is best. I already hear Democrats saying they want a tax cut but not as large as the President does, and they want different shapes and models of it. So, from my standpoint, I am not going to discuss the details of the plan, other than to say one thing: That same Dr. Alan Greenspan who came upon these facts and suggested to us that if we didn't give some of this money back to the people, there would be an accumulation of money in the hands of the Federal Government—and he saw no alternative other than the Federal Government would start investing it in assets of America—contends that would be a negative factor on the growth, prosperity, and efficiency of the American economy, which is what we need for the future of Social Security and Medicare and for our people to have sustained, increasing paychecks.

When you add all this together, you would then say if you are going to give part of it back to the American people—and I want everybody to understand that after you take all the Social Security money and put it where it belongs, you have $3.1 trillion that is sitting there over the next decade if you believe, or at least have sufficient trust in the estimating, as I do, to act upon it. It is $3.1 trillion. That is almost unfathomable to people listening, and probably to most Senators and their staffs and my staff and me—$3.1 trillion. I could give you a number. Our whole budget for everything, including entitlements, appropriations, and the like is somewhere around $1.6 trillion to $1.8 trillion per year. So here we have a surplus that is almost twice as big as the total outlays of the Federal Government for a full year. That is at least a comparable.

That same Dr. Greenspan has consistently told us, if you have a surplus, the best thing you can do is pay down the debt. He has qualified that now and said, yes, pay it down under a glidepath that is best for America. Don't pay it down abruptly because you are apt to create money in the pockets and drawers of the American Government that will invest it in less efficient Government by acquiring assets, owning things.

Having said that, what else has he said repeatedly and reconfirmed? If you are going to have a positive impact on the prosperity level of Americans and have the economy grow, the best tax medicine is marginal rate reductions. Cut everybody's marginal taxes some. He says it will increase savings, it will increase investment, and it is the best way to use tax dollars. He says the third and worst way to have a positive impact on our future is to spend the surplus.

I believe we are moving in the right direction. Debate is good and the President is leading well. I think before we are finished, we will have a significant tax cut of the right kind and still do the marriage penalty and death taxes, and we will have a very formidable expenditure budget. Everything can grow substantially, especially priority items. I think if we work together and work with the President, we can give the American people something very good by the end of this year.

I yield the floor.

The PRESIDING OFFICER (Mr. BURNS). Under the previous order, the time from 12 noon to 1 p.m. is under the control of the Senator from West Virginia, Mr. BYRD.

PROJECTED SURPLUSES

Mr. BYRD. Mr. President, I have listened to my distinguished friend from New Mexico with great interest. May I compliment him on the broad range of testimony that his Budget Committee has been acquiring through expert witnesses. I am a new member of the committee. I am very impressed with the well-organized, well-focused hearings that are being conducted in that committee.

Mr. President, our Nation is facing a fork in the road. The Congressional Budget Office is projecting a 10-year surplus of $2.7 trillion, excluding the Social Security and Medicare surpluses. These surpluses provide us with the opportunity to invest in our future and to deal with the long-term threats to the budget, such as the retirement of the baby boom generation.

The administration is proposing large and ballooning tax cuts which, if enacted, would have a significant impact on the Federal budget for decades to come. It falls to the Congress to decide how much to allocate to tax cuts, how much to spending increases, and how much to reserve for debt reduction.

Before we make these decisions, we must first decide whether we have sufficient confidence in the surplus estimates to use them to make long-term budget decisions. In his recent testimony before the Senate Budget Committee, Federal Reserve Board Chairman Alan Greenspan—and his name has been referred to already by my dear colleague, Mr. DOMENICI—expressed his hope that we use caution. He said:

> In recognition of the uncertainties in the economic and budget outlook, it is important that any long-term tax plan or spending initiative, for that matter, be phased in. Conceivably, (the long-term tax plan) could include provisions that, in some way, would limit surplus-reducing actions if specified targets for the budget surplus and federal debt were not satisfied.

Now, while we all rely on the professional estimates provided by the Congressional Budget Office, we must recognize that long-term budget projections often have proved to be wrong. In its own report, entitled ''The Budget and Economic Outlook: Fiscal Years 2002–2011,'' released last week, CBO characterizes its estimates as uncertain. On page 95 of that report, CBO States that the estimated surplus could be off in one direction or the other, on average, by about $52 billion in fiscal year 2001, by $120 billion in fiscal year 2002, and by $412 billion in fiscal year 2006. CBO confirmed in testimony before the Senate Budget Committee last week that this uncertainty would grow even larger for fiscal year 2007 through fiscal year 2011.

Further evidence of the volatility of these estimates can be found on page XV of the summary of the CBO report. In summary table 2, entitled ''Changes in CBO's Projections of the Surplus Since July 2000,'' CBO changes its 10-year revenue estimate by $919 billion. In just 6 months, therefore, from July of 2000 to January of 2001, CBO changed its revenue estimate, I repeat, by $919 billion and its 10-year estimate of the surplus by over $1 trillion for economic and technical reasons alone.

In its report, CBO concludes that there is ''some significant probability'' that the surpluses will be quite different from the CBO baseline projections.

Let me now use this chart, entitled ''Uncertainty in CBO's Projections of the Surplus Under Current Policies, in Trillions of Dollars.'' In fact, CBO indicates that, ''there is some probability, albeit small, that the budget might fall into deficit in the year 2006, even without policy changes.'' So on page xviii of the report, CBO indicates that the probability that actual surpluses will fall—we can see that in the darkest area on the chart—is only 10 percent.

The probability that the surplus will fall in the shaded area is 90 percent. Imagine that after some 15 years of crawling and scratching to get out of the deficit hole, the ''d'' word just might reappear in our national vocabulary in a scant 5 years even if we stay the course. The ''d'' word of course, is ''deficit.''

Yet we are now being asked by President Bush and the Republican leadership to use these extremely tenuous 10-year budget estimates as the baseline for considering a tax cut that could

cost $2 trillion or more over the next 10 years. We have been down this road before, and sadly I went along for the ride. In 1981, as my good friend, the senior Senator from Maryland, Mr. SARBANES, well knows, President Reagan proposed a large tax cut over 5 years. There are not many in this town who remember that his 5-year budget plan projected a surplus for fiscal year 1984 of $1 billion; for fiscal year 1985, a surplus of $6 billion; and for fiscal year 1986, a surplus of $28 billion.

Congress passed the tax cut bill that reduced revenues by over $1 trillion from fiscal year 1982 to fiscal year 1987. Did the Reagan administration's projected surpluses come to pass? No. In fact, precisely the opposite occurred. The fiscal year 1984 deficit was not a surplus of $1 billion as projected. The fiscal year 1984 deficit was $185 billion—using the ''d'' word, ''deficit.'' The fiscal year 1985 deficit was $212 billion. The fiscal year 1986 deficit was $221 billion.

Mr. SARBANES. Mr. President, will the Senator yield?

Mr. BYRD. Yes. I yield.

Mr. SARBANES. These figures are the actual deficit figures the Senator is talking about.

Mr. BYRD. Yes, indeed.

Mr. SARBANES. They should be contrasted with the projections which were made only a few years before—projections which projected surpluses. Am I correct?

Mr. BYRD. Precisely.

Mr. SARBANES. I think this is an extraordinarily important point. We have these projections now. We are talking about having a surplus of trillions over 10 years, and yet two-thirds of the surplus being projected now is in the last 5 years of the 10-year period.

Mr. BYRD. Yes.

Mr. SARBANES. Everyone has underscored that you can't really base a policy on these projections, they are so uncertain. As the Senator pointed out earlier in his statement, in just 6 months the Congressional Budget Office changed its projections to raise the surplus estimate by about $1 trillion between last summer and last month.

Mr. BYRD. Yes. That is remarkable.

Mr. SARBANES. I want to bring one other fact to your attention, and then I will certainly yield back to the Senator.

Just to show you how fragile these budget surplus estimates are, in 1995 CBO estimated that in the year 2000 we would have a deficit of $342 billion. Five years out they were making that projection. Instead, we had a surplus of $236 billion, because we restrained ourselves on spending. We recouped taxes in order to balance the budget. That is a swing of $578 billion from the projections to the actuality. That was only projecting 5 years. Now we are talking about projections that go for 10 years.

I think the Senator is absolutely right to underscore the fragile nature, which would be the best way to put it, of budget projections. These projections have almost an evaporating dimension to them. I think we have to be extremely careful, cautious, and prudent in planning our policy if we are using these kinds of projections.

Of course, the Senator just underscored it, by outlining the projections that were made in the Reagan years to support the tax cut and how far from the mark they were, only a few years later—not quite immediately, but only a few years later.

Mr. BYRD. Yes.

Mr. SARBANES. I thank the Senator for yielding.

Mr. BYRD. I thank the distinguished Senator. He served with me as we sought to have the President postpone the third year of that 3-year tax cut until such time as we could see what the impact of the 2 previous years' tax cuts was going to be on the budget and on the economy.

I remember going down to the White House. I was the minority leader at that time. As I say, there in the Oval Office I said to the President: Mr. President, you are proposing a tax cut over 3 years—I believe it was 3 years—5 percent, then 10 percent, and then 10 percent? It may not be the exact sequence, but those are the correct numbers. Why not wait until we see what the results are and the impact is for the first 2 years? Why go ahead now and add a third year of tax cuts? Why do it now? Why not wait?

President Reagan responded. After he responded, I said: Mr. President, that doesn't answer my question. So he turned to Mr. Regan, who was the Secretary of the Treasury, and asked Mr. Regan to explain to me why we had to have 3 consecutive years all at once. Mr. Regan sought to explain it. When he finished, I said: Well, Mr. Regan, you still haven't answered my question.

President Reagan then turned to Mr. Meese and asked Mr. Meese to explain it. This was all down in the Oval Office. Mr. Meese explained it somewhat like this: Senator, in order to give to the business people of this country certainty that there will be 3 years of tax cuts and in these amounts, in order that they might plan ahead with certainty, we need to package the three tax cuts in one bill.

That was a reasonable explanation. I didn't buy it. But there were some people who might buy it. And there was something to it.

I came back to the Hill, and on the Senate floor I, with Mr. SARBANES and others on this side—we were in the minority then as we are now—offered an amendment to postpone that third year until after the first 2 years of tax cuts had been implemented. We lost, of course. As we see, the projections did not pan out.

Lord Byron said, ''History, with all thy volumes vast, hath but one page.'' Well, the one page of history that we see today tells us very clearly that we cannot depend upon these projections.

I know of no one who can better testify to this fact than the distinguished Senator from Maryland, Mr. SARBANES. He has served on the Joint Economic Committee for several years.

Regarding the administration's 3-year across-the-board tax cut, we tried. We lost. In order to help give President Reagan's economic program a chance, I voted for the final bill because my people in West Virginia who send me here said: Give him a chance. Give this new President a chance.

''Give him a chance.'' So I did, I gave him a chance. I voted for the Reagan tax cut. It was a mistake on my part.

On October 1, 1981, I went out on the floor as minority leader to take a look forward to the new fiscal year. On that day I said: ''Today is the beginning of the new fiscal year. Yesterday, there was a kind of New Year's Eve celebration. The trouble with New Year's Eve celebrations, we all have to wake up the next day and face reality.''

I quoted Arthur Schlesinger who wrote: ''This supply side fantasy is voodoo economics. The witch doctors have had their day. Reality is awaiting.''

On that October day, I noted: ''. . . The administration's brave words and rosy predictions began to wilt.''

The reality was that deficits as far as the human eye could see were out there. Deficits peaked in fiscal year 1992 at $290 billion. Not until fiscal year 1998, 17 years after the 1981 Reagan tax cuts, were we able to achieve a budget surplus. Having passed the Reagan tax cuts in 1981, which in large part created these unprecedented triple-digit, billion-dollar deficits, the Congress had no choice but to pass, and Presidents Reagan, Bush, and Clinton signed, numerous bills to correct our mistake and increase taxes in hopes of stemming the unprecedented tide of red ink.

The Budget anachronisms of those tax increase measures are painful to recall: TEFRA, DeFRA, OBRA of 1987, OBRA of 1990, OBRA of 1993, and so on.

Despite all of these efforts to stem the red ink during the 12 years of Presidents Reagan and Bush, the national debt rose from $932 billion, the day Mr. Reagan took office on January 20, 1981, to $2.683 trillion the day Mr. Reagan left office; to $4.097 trillion the day President Bush left office on January 20, 1993. These protracted deficits also resulted in higher interest rates for you and for you and for you, the American taxpayer, to pay. This forced the average American to pay more for his mortgage, more for his car, more for his child's education because of our rush to enact a huge tax cut. Because of our rush to enact a huge tax cut, the benefits of which went mainly to the wealthiest taxpayer, many, many middle-class American taxpayers were left with shrinking paychecks and shriveled dreams.

As a result of the tough votes we took on the deficit reduction bills of 1990, Senator SARBANES, and 1993, do you remember 1990, when we went over to Andrews Air Force Base? And do you remember 1993 when we passed the bill

for which no Republican in the House or in the Senate voted? We are now reducing the debt held by the public, but gross debt continues to grow to this day.

Our current gross debt is $5.6 trillion. Here is the chart: $5.646 trillion. The chart will show that, if these $5 trillion were stacked in $1 bills, the national debt would reach into the stratosphere 382 miles.

May I ask Senator SARBANES if he remembers when Mr. Reagan first came into office, Mr. Reagan made a presentation to the American public on television, and in that presentation Mr. Reagan talked about the debt he had inherited. It was $932 billion at that time. Mr. Reagan very graphically presented it by saying: If this $932 billion were in $1 bills, that stack of $1 bills representing the national debt of $932 billion which I inherited would reach into the stratosphere 63 miles.

When Mr. Reagan left office, that same stack of $1 bills would have reached into the stratosphere 182 miles, three times what it was when Mr. Reagan took office.

Our current gross debt worldwide is $929 for every man, woman, and child. Get that: Our current gross debt comes to $929 for every man, woman, and child around the globe! That is not pocket change. It represents $20,062 per man, woman, and child in the United States.

Some may argue that increased Federal spending is responsible for the deficit. That is not so, not totally so. Looking at the chart entitled ''Total Federal Spending Lowest Level Since 1966,'' I have heard my ranking member on the Budget Committee, Mr. CONRAD, refer to this chart and to this total of Federal spending. He has said it is the lowest level since 1966.

Federal spending this year is only 1.2 percent of GDP, the lowest since 1966, and almost 5 percentage points less than in 1982 during the Reagan administration, and 4 percentage points less than in 1992 during the Bush Administration.

Once again, we face the fork in the road. We have faced it before. We took the wrong path. We voted for that tax cut. But this time, we have a signpost. It is easy to vote for a tax cut. I love to cast easy votes. The easiest vote I have ever cast in my 55 years in politics has been a vote to cut taxes. Oh how easy. It doesn't take much courage to do that.

Mr. SARBANES. Will the Senator yield?

Mr. BYRD. I yield.

Mr. SARBANES. I want to underscore what the Senator is saying. Some make the argument that somehow it takes great political courage to advocate a sweeping tax cut. I have never encountered that in the course of my public career; a tax cut is always welcome. If it is possible, if the fiscal circumstances are such, I think we should consider doing tax cuts. But the real problem is always how to act in a responsible manner and how to think about the future and not rush. The paper this morning has an article entitled ''Congressional Republicans Seek Bush's Big Tax Cut and Think Bigger.''

Another headline says, ''Business Vows to Seek Its Share of Tax Relief.''

Once you take the lid off the punch bowl, everyone wants to come to the punch bowl and gorge themselves. The real challenge, the difficult political challenge, is not to do the tax cut. The difficult political challenge is to restrain yourself so whatever you do is done in a responsible manner, in a manner that takes into account the future of the country—by ''the future'' I don't just mean next year, but the next generation and the generation after that—and in a manner that will build the strength of the Nation over time. That is the difficult challenge. I agree completely with the Senator in his observation.

Mr. BYRD. I thank my friend.

Does the Senator from Maryland have grandchildren?

Mr. SARBANES. I do, indeed.

Mr. BYRD. Does he have great grandchildren?

Mr. SARBANES. Not yet.

Mr. BYRD. One day we will leave this Chamber for the last time. And, if I am able to do so, I will look in a mirror. I will say to myself: How did you serve? Did you think mostly of yourself? Did you think in terms of only your generation? Did you think in terms of your children's future? Did you think about your great grandchildren? What about that little great granddaughter? She is going to be in school one day.

When I look into that mirror, what will I say as to my stewardship during these years when I have served the people in the Congress? If I haven't served well, I shall have cheated that great granddaughter. I shall have cheated my daughters and my grandchildren.

I would say as I look in that mirror:

When you get all you want in your struggle for pelf,
And the world makes you King for a day,
Then go to the mirror and look at yourself,
And see what that guy has to say.
For it isn't your Father, or Mother, or Wife,
Who judgment upon you must pass.
The fellow whose verdict counts most in your life
Is the man staring back from the glass.
He's the fellow to please, never mind all the rest,
For he's with you clear down to the end,
And you've passed your most dangerous, most difficult test
If the man in the glass is your friend.
You may be like Jack Horner and ''chisel'' a plum,
And think you're a wonderful guy,
But the man in the glass will just say you're a bum
If you can't look him straight in the eye.
You may fool the whole world down the pathway of years,
And get pats on the back as you pass,
But your final reward will be heartaches and tears,
If you've cheated the man in the glass.

If I have cheated the people who sent me here, if I have cheated my grandchildren, my children, your children, then I shall have cheated myself most of all.

Senator SARBANES and Senator CONRAD, we will have to look in that glass one day. And right here coming up, this year is one of the tests as to how we are going to react to the challenge before us.

Mr. CONRAD. Will the Senator yield for a question?

Mr. BYRD. Yes.

Mr. CONRAD. The Senator attended the Budget Committee yesterday in which we heard from the Comptroller General of the United States, the head of the General Accounting Office. He warned us of precisely what you are talking about. He warned us that this near-term outlook has improved, but the long-term outlook has gotten worse. Does the Senator remember that testimony?

Mr. BYRD. Yes. I do. I do. And I was very much impressed by that. We were talking about 10 years. What was the testimony, just beyond the 10 years?

Mr. CONRAD. The Comptroller General of the United States alerted us that just beyond the 10 years lie massive deficits. We are talking about short-term surpluses, but there are massive deficits to come and we ought to take this window of opportunity to strengthen ourselves for the future.

We had four demographers today before the Senate Budget Committee with this same message, telling us that if we would set aside some of these acorns, instead of using them all, consuming them all in a tax cut or spending—but, instead use some of it to pay down this long-term debt and address this long-term demographic time bomb, the retirement of the baby boom generation—that we will have a much stronger economy in the future.

It is really a message that Senator SARBANES has delivered so powerfully in the past to the members of the committee. If we are really thinking ahead, we will realize we ought to take some of these funds and invest them for the future to reduce our long-term indebtedness, to expand the pool of savings, to expand the pool of investment, to take pressure off of interest rates, and to have a much bigger economy when the baby boomers start to retire.

That is really the lesson that Senator SARBANES has provided to us day after day in the committee as well.

Mr. BYRD. Yes. Yes. I thank the distinguished ranking member of the Budget committee, on which Senator SARBANES and I serve.

Mr. President, once again we face the fork in the road. We have faced it before and we took the wrong path—but this time we have a signpost. The lesson of recent history is very clear, and we have only to review it to see which way to go.

The choices are these: Do we rely on uncertain, 10-year budget forecasts to pass a colossal tax cut, or do we exercise a little caution in case the forecasts prove to be only a mirage, as they have so often proved to be before?

If we pass such a tax cut and the surpluses do not materialize, what needs of our citizens may have to be left behind?

Let's take Social Security. Currently, 44.8 million older Americans receive Social Security. That is projected to grow to 82.7 million in the year 2030 when the baby boom generation has retired. The ratio of workers to beneficiaries was 42 to 1 in 1945, at the end of World War II. Today, that ratio is 3.4 to 1, and it is projected to fall to 2.1 to 1 in the year 2040. The Social Security trust fund is projected to be exhausted in the year 2037. If we go along with the Bush administration's tax cut, what about our pledge to protect Social Security?

Let's take Medicare—33.4 million Americans rely on Medicare for their health care costs. This is projected to grow to 77 million in 2030. The Medicare—hospital insurance—trust fund is projected to have benefits exceed receipts in 2015 and to run out of money in 2023. If we go along with the Bush administration's tax cuts, shall we just pretend that the Medicare problem will solve itself?

How about prescription drugs? Since Medicare was created in 1965, the practice of medicine has changed dramatically. Prescription drugs allow patients to avoid more expensive and invasive procedures, such as surgery. Since 1990, national spending on prescription drugs has tripled. The current Medicare program does not provide a prescription drug benefit. How can we pay for a prescription drug benefit if we have emptied the kitty with tax cuts?

Just go up to your local drugstore. Get yourself a comfortable place somewhere over in the corner if you can, and watch that line as it progresses along that counter. Listen to some of the people who come there. They get their drugs, and they pay $100, $150. I sometimes wonder, how can they do it? Drugs are so terribly expensive, and they are becoming more expensive. And yet these people rake and scrape and save to try to have a little money with which to buy drugs. We have heard many stories about how some of them have to make a choice between food on the table or drugs to keep down pain, and the problem is getting worse. We are at a crossroads. What are we going to do about it?

Discretionary spending—let's talk about it for a moment. I am an appropriator. The population of this Nation grew by 33 million, or 13.2 percent, from 1990 to 2000, and according to the U.S. Census is expected to grow by another 8.9 percent by 2010. Congress should make sure that we allow for the future growth of our population.

There are those who argue that discretionary spending is too high. Let me refer to this chart entitled ''Total Discretionary Outlays, Fiscal Years 1962 to 2000.'' The distinguished ranking member of our Budget Committee has referred to this subject matter as we have discussed the budget surplus from day to day.

In fiscal year 2000, discretionary spending as a share of our economy was just 6.3 percent. There it is. This share of spending has been shrinking for decades and is less than half of the share in 1962. When I came to this Senate, I say to Senator CONRAD—I came to this Senate 43 years ago—the line on the graph would have been up between 12.7 and 14 percent. That was for discretionary spending. I was on the Appropriations Committee. I went on it the first month I came here.

What is it today? At that time, the estimates—the latest estimates that were available were 1962. I came here in 1959. But in that year, 68 percent of all Federal spending was discretionary. On the pie chart, one can see how much of that chart was for discretionary spending: $72 billion; 68 percent was for discretionary spending. That was the amount of money that went through the hands of the Appropriations Committee.

Today, only 34 percent of the Federal budget is discretionary. Entitlement spending has grown. We heard a witness before the Budget Committee just the other day talk about entitlement spending. Let's look at this chart entitled ''Entitlement Spending as a Share of the Economy.'' We see that entitlement spending has grown from 5.7 percent of GDP, gross domestic product—the source is CBO—in 1966 to 10.5 percent today. So America continues to have real needs that are not being met in the areas of infrastructure, education, health care, national security, and the list goes on and on.

For example, the number of vehicle miles traveled on our Nation's highways has grown—from 1983 to 1999—from 1.65 trillion miles per year to over 2.69 trillion miles per year. Of the road miles in rural America, 56.5 percent are in fair to poor condition, according to the Federal Highway Administration; 56.9 percent are in fair to poor condition. One does not have to go very far to see that. Just travel along the streets in this Capital city and see the potholes, and what is happening to traffic congestion. I came to this city 49 years ago.

Conditions are even worse in urban America, where 64.6 percent of the road miles are considered to be in some state of disrepair.

The situation is no better when we turn our attention to the Nation's highway bridges. According to the most recent data from the Federal Highway Administration, 28.8 percent of our Nation's bridges are either functionally obsolete—they can no longer handle the kind of traffic for which they were built—or they are structurally deficient.

We all should remember the Silver Bridge disaster that took place a few days before Christmas at Point Pleasant, WV, a few years ago. That bridge collapsed, sending many people to their watery graves, on the Ohio River. Do we just cross our fingers and hope that these bridges do not collapse?

The EPA has estimated $200 billion in unmet needs for sewer, wastewater, and safe drinking water systems construction and maintenance, just to maintain the current systems and to allow for necessary expansion. Clean and safe drinking water should be a basic right of every man, woman, and child in America. We simply must address these needs, and it will take dollars—billions of dollars—to do it.

According to the Department of Housing and Urban Development, there are 5.4 million families, representing 12.3 million individuals, who are in need of affordable housing. Do we sacrifice these needs on the altar of tax-cut fever?

We are all familiar with the myriad problems confronting our military forces today: Recruitment and retention problems, crushing deployment burdens, aging ships and tanks and aircraft, a scarcity of spare parts, a scarcity of ammunition—just read it in today's Washington Post, a scarcity of ammunition—substandard housing, outdated facilities. All of these factors affect readiness.

Beyond the current budget, we are bracing for the likelihood of requests of major leaps in defense spending, perhaps as much as $50 billion a year just over the horizon.

When we allocate the surplus, it would be totally irresponsible—totally irresponsible—to fail to provide enough discretionary resources to allow us to invest in our future. Ask the mayors of the big cities throughout this country. Ask the mayors of the little cities, the towns throughout this country.

Debt reduction—let's talk about it for a moment. Our debt held by the public peaked in fiscal year 1997 at $3.8 trillion. In recent years, we have paid about $200 billion per year in interest—interest—on that debt. As we approach the retirement of the baby boom generation, we could do no greater favor for my granddaughter, for my great granddaughter, for your children, for all of our people, no greater favor than to eliminate that debt and to eliminate those interest payments.

I know we have received testimony in the committee that we can only eliminate it to a certain point as of a year that is not too far away. By the end of fiscal year 2001, we expect to have reduced the publicly held debt to $600 billion from the level in fiscal year 1997.

We should make sure that we can stay on that course. If we enact large tax cuts that siphon away—that suck away, that draw away—the on-budget surpluses, we could return to the days when we had to use the Social Security surplus to help finance Federal operations rather than using it for reducing debt.

In July of 1999, when the Republican leaders were pushing large tax cuts, I suggested that Congress take five steps:

One, watch our investments carefully and manage them prudently. Manage the economy and watch out for inflation.

Two, pay our debt. Pay down the national debt.

Three, cover the necessities. Do not shortchange our Nation's core programs, such as education, health care, and the like.

Four, put aside what we need to put aside for a rainy day. Reserve the Social Security and Medicare surpluses exclusively for future costs of those programs.

Five, take prosperity in measured doses. Ease up on taxes without pulling the rug out from under projected surpluses.

Mr. President, our present conundrum regarding budget surpluses reminds me of that old Aesop's fable about the ant and the grasshopper. It seems, as Aesop told it, that a commonwealth of ants, busily employed in preserving their corn, was approached by a grasshopper which had chanced to outlive the summer. The grasshopper was ready to starve from the cold and hunger and begged the ants for a grain of the corn, much like the 10 virgins in the Scripture; 5 who were wise and who had oil in their lamps, and 5 who were foolish who had no oil in their lamps.

In this case, one of the ant colony asked the grasshopper why he had not anticipated the winter and put aside food, as the ants had so wisely done. The grasshopper answered that he had so enjoyed the abundance of summer that he had never once thought of the possibility of winter.

So we are going to have a big tax cut. Ah, we will enjoy that. How enjoyable. How sweet. How sweet it would be.

If that be the case, the ant replied, then all I can say is, those who spend all day reveling in summer may have to starve in the winter. The moral is, of course, do not fail to provide for the future.

So a prudent course would demand, Mr. President, that we anticipate a cold and chilly downturn in our economic fortunes and forecasts and put back something for the winter. After all, it is only a very few years after the 10-year budget window that even these rosy estimates return to deficits as we cope with the retirement of the baby boom generation.

Given the pressing needs of our Nation in the coming decades and the uncertainty of the budget projections, I believe it is critical we establish a mechanism that would put a cautionary curve on tax cuts and new spending. In response to my question at a recent Senate Budget Committee hearing, Mr. Barry Anderson of the Congressional Budget Office responded that it would be prudent to establish such a mechanism.

So I intend to work diligently with my colleagues on the committee to craft some way to put a cautionary brake on these huge, foolhardy tax cuts that are being proposed, until we can be more sure that the surpluses will materialize. In my heart of hearts, I would prefer that any tax cuts this year be limited to no more than half a trillion dollars. That is my own viewpoint: $500 billion.

Americans believe in prudence. They would not blow the mortgage money at the race track. Neither should we. Massive tax cuts of the size that is being proposed, based merely on projections, merely on pieces of paper—here they are. These are the projections. These are the projected surpluses. There they are on paper. Can you spend it? What is it worth? It is money not even in our pockets yet. It borders on reckless disregard for the needs of our people and the promises we have made to them to proceed in this manner and spend it based on 10-year forecasts.

Even worse, we risk a return to serious budget deficits. As Mr. CONRAD has said so many times, let's not get back into the ditch which our children would have to address. So, as we approach this fork in the road, we owe it to our children and to our children's children to make the right choice. We should invest in our future. We should set aside funds for problems that we know are lurking just over the horizon. Let us not make a risky U-turn and return to the rocky road of deficits as far as the eye can see.

Mr. President, we will hear this refrain, that: ''It's the people's money. Let's give it back. It's their money. It's their money.'' And it is. But it is also their debt. It is also their deficits. It is also their highway safety. It is also their water and sewage treatment needs. It is also their children's education. It is theirs. It is also their safety in the skies. It is all theirs. And we are the stewards. How do we best serve them?

Mr. SARBANES. Will the Senator yield?

Mr. BYRD. I will yield to Senator SARBANES.

Mr. SARBANES. As always, I think the very able Senator from West Virginia has given us an extremely important message. Moderation in all things is essentially what the Senator is talking about. He is saying: Be cautious. Be prudent. These steps that the Senator set out, if one goes over them carefully, are a balanced package which he is recommending. He says: Watch the investments. Manage the economy. Pay down the debt. Cover the necessities. Do those programs that are essential to our future strength: Education, health care. Put aside what we need for a rainy day, preserve Social Security and Medicare. And then ease up on the taxes.

The Senator is not saying: Don't do a tax cut, in light of these surpluses or projected surpluses. But let's be careful about it. And do not pull the rug out from under the projections in the future.

Now that is a package that makes sense. That is what all the commentators are telling us. The Baltimore Sun just today had an editorial. I ask unanimous consent it be printed in the RECORD.

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

[From the Baltimore Sun, Feb. 7, 2001]

CALMING DOWN FRENZY FOR A BIG FEDERAL TAX CUT

President Bush is a glib salesman for his massive tax-cut program. But a closer look at the numbers should prompt Congress to be careful.

For a conservative Republican, the president is using very rosy revenue forecasts. The numbers he's using understate the cost of ongoing programs. He's ignoring the extra cash needed for his other proposals and congressional initiatives, such as a prescription-drug plan. he hasn't factored in spending to fix the Social Security and Medicare programs.

Mr. Bush is promising more in tax cuts than this country can probably afford. He calls it a $1.6 trillion plan, but other analysts say the true cost is closer to $2.5 trillion. And that amount may not be affordable, even if large surpluses pour in for a decade.

Congressional leaders would be wise to listen to David M. Walker, who heads the General Accounting Office on Capitol Hill. He said this week that ''no one should design tax or spending policy pegged to the precise numbers in any 10-year forecast.''

Yet this is what President Bush is doing. It's a mistake Congress shouldn't duplicate.

Will there be a tax cut this year? Yes, indeed. The momentum is there. But the size of the president's proposal is unrealistic. And, sadly, some Republicans are talking about adding even more to it in this form of capital gains tax cuts and business tax reductions.

If there is to be a tax cut, Congress should see that it is more tilted toward those at the lower and middle ranges of the income scale than the president's proposal. Prudence is essential in handling future surpluses that might never occur. And there must be enough left on the table to deal with other pressing needs, such as modernizing the military and making repairs to old-age programs.

Mr. Bush has raised expectations, but Congress still must carefully examine every aspect of this major proposal. We all want smaller tax bills, but only if they are reasonable and responsible.

Mr. SARBANES. ''Calming down frenzy for a big federal tax cut. Congress should take a close look at Bush's forecast figures and a decidedly cautious approach.''

They quote the Comptroller General from his testimony before our committee where he said that: ''No one should design tax or spending policy pegged to the precise numbers in any 10-year forecast''—exactly the point that the able Senator made at the outset of his statement.

And they conclude: ''Mr. Bush has raised expectations, but Congress still must carefully examine every aspect of this major proposal. We all want smaller tax bills, but only if they are reasonable and responsible.'' Reasonable and responsible—and, as the Senator has pointed out, in the context of dealing with these basic needs: Education, infrastructure, defense.

This administration has already sent the signal that they are going to want a major step up in defense and of course, reserving a significant amount

of the surplus to pay down the debt. When are we going to pay off the debt, if we don't do it when we are running large surpluses and are at a 4.2 percent unemployment rate? We have a strong economy now. We don't want to risk the chance of knocking it off the track.

The Washington Post had an editorial entitled ''Fiscal Souffle.'' They conclude it by saying:

A rush to commit too much of the projected surplus could take the country back to borrow and spend, just as the last big tax cut did 20 years ago.

Mr. BYRD. Right.

Mr. SARBANES. I ask unanimous consent that that editorial be printed in the RECORD.

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

[From the Washington Post, Feb. 1, 2001]

FISCAL SOUFFLE

The Congressional Budget Office has raised by another $1 trillion its estimate of the likely budget surplus over the next 10 years, and Republicans, led by President Bush, say the new figures prove there's plenty of room to enact the president' tax cut and still fulfill the government's other obligations. Democrats, including notably the conservative Blue Dogs in the House, say that's not so, that the true surplus is unlikely to be that large and that Congress, while it can safely grant a tax cut, should exercise caution in doing so.

The people flashing the caution signs are right. CBO itself warns that ''considerable uncertainty surrounds'' the projections, and that once the baby boomers retire, the outlook shifts from sunny to bleak. About 70 percent of the 10-year surplus is projected to occur in the last five years of the period, for which the estimates are least dependable; only 30 percent is projected to occur in the nearer term. The supposed $3 trillion, 10-year surplus consists in part of Medicare funds that both parties in Congress have said should not be counted because Medicare is headed for a deficit. The surplus makes no allowance for the funds that, even with benefit cuts, will be required to avert that deficit, nor the Social Security deficit that likewise lies ahead, nor the increase in defense spending that both parties say is necessary.

Make these and similar, smaller allowances, all of them realistic, and the amount available for tax cuts quickly falls. A realistic estimate, assuming everything goes right, is probably well under $2 trillion, and in the past, members of both parties have said they want to use some of that for debt reduction. The true 10-year cost of the Bush tax cut, meanwhile, is well in excess of the $1.3 trillion estimate used in the campaign. In part that's because important provisions would not take effect until toward the end of the 10-year estimating period. The 10-year cost of the Bush proposals fully fledged would be more than $2 trillion.

''It doesn't leave room for much of anything else,'' Rep. John Spratt, the ranking Democrat on the House Budget Committee, said the other day. And it may grow; such Republicans as House Majority Leader Dick Armey have begun to say that the Bush proposal may be too small. The Blue Dogs issued a statement yesterday warning that ''budget projections can deteriorate just as rapidly as they have improved in the last few years,'' and that a ''rush to commit'' too much of the projected surplus could take the country back to borrow-and-spend, just as the last big tax cut did 20 years ago. That risk is real.

Mr. SARBANES. I thank the Senator. He has set out for us what, really, is a historic decision we will be confronting. We must recognize it as such.

Mr. BYRD. Yes.

Mr. SARBANES. It will affect generations to come. We must make a wise and prudent decision. I thank the Senator from West Virginia for his extraordinary leadership in this effort.

Mr. BYRD. I thank the distinguished Senator from Maryland.

Mr. CONRAD. Will the Senator yield for a question?

Mr. BYRD. Yes.

Mr. CONRAD. The Senator may recall when we had the Congressional Budget Office personnel before us, they were the ones who made this forecast of the surplus, and yet they themselves warned us of the uncertainty of their projections.

Mr. BYRD. They did.

Mr. CONRAD. The Senator may recall that Mr. Anderson put up a chart and the chart showed that in the fifth year of this 10-year forecast, based on the previous variances in their projections, we could have a budget that was anywhere from a $50 billion deficit to more than a $1 trillion surplus.

Mr. BYRD. Yes; here is the chart.

Mr. CONRAD. I see the Senator has that chart that shows in the year 2006, which is 5 years into this 10-year forecast, we could have anywhere from a $50 billion deficit to over a $1 trillion surplus. That is the uncertainty of their forecast, according to them.

Mr. BYRD. Yes, that is just 5 years out.

Mr. CONRAD. That is just 5 years out in a 10-year forecast. They are warning, I take it—I would be interested in the Senator's reaction——

Mr. BYRD. That is my reaction.

Mr. CONRAD. That we should not bet the farm on a specific number with a 10-year forecast because of the failure of previous forecasts to be accurate over such an extended period.

Mr. BYRD. Exactly.

Mr. CONRAD. Isn't that the upshot of their testimony?

Mr. BYRD. That is the point we should take home with us.

Mr. SARBANES. In addition to the Post editorial from which I quoted, I have a column that appeared in the Post written by Newsweek's Wall Street Editor entitled ''Iffy Long-Term Numbers are Poor Excuse for Huge Tax Cuts and Wild Spending.'' The discipline has to be on both sides, on the tax cut and on the spending side.

No one is saying we should not do some tax cuts. Obviously, we need to make some investments on the expenditure side if we are going to meet the needs of our country. But they have to be responsible, they have to be reasonable. And, as this says, iffy long-term numbers are a poor excuse for huge tax cuts and wild spending. We need to keep that admonition in mind as we proceed to engage in this debate.

I ask unanimous consent that this editorial be printed in the RECORD.

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

[From the Washington Post, Feb. 6, 2001.]

IFFY LONG-TERM NUMBERS ARE POOR EXCUSE FOR HUGE TAX CUTS AND WILD SPENDING

(By Allan Sloan)

There are weeks when you have to wonder whether the American economic attention span is longer than a sand flea's. Consider last week's two big economic stories: The Congressional Budget Office increased the projected 10-year budget surplus by $1 trillion, and the Federal Reserve Board cut short-term interest rates another half-percentage point to try to keep the economy from tanking.

To me, the real story isn't either of these events; it's their connection. The Fed is cutting rates like a doctor trying to revive a cardiac patient because as recently as last fall, Fed Chairman Alan Greenspan didn't forsee what today's economy would be like. Meanwhile, although it's now clear that even the smart, savvy, data-inhaling Greenspan couldn't see four months ahead, people are treating the 10-year numbers from the Congressional Budget Office as holy writ.

Hello? If Greenspan missed a four-month forecast, how can you treat 10-year numbers as anything other than educated guesswork? Especially when the CBO has for years devoted a chapter in its reports to ''The Uncertainly of Budget Projections''?

Both the Fed's rate cuts and the CBO's projection are being cited to justify a huge tax cut. Basing economic policy on long-term projections is nuts, and I'd be saying the same thing about Al Gore's campaign spending proposals if he had become president. I sure wouldn't base my personal financial decisions on ultra-iffy long-term numbers. I hope you wouldn't run your life or business that way.

A stroll through the numbers would be helpful here, as would a little history. Remember that through the mid-1990s, experts were forecasting huge federal deficits as far as the eye could see. Now they are projecting huge surpluses. When you're dealing with a $10 trillion economy and looking 10 years out, relatively small changes make a huge difference—if they come to pass.

The fact that the projected 10-year surplus grew to $5.6 trillion from $4.6 trillion a mere six months ago is an obvious sign that these aren't the most reliable numbers in the world.

Here's the math: The surplus grew about $1 trillion because the CBO increased the projected average 10-year national growth rate to about 3 percent (adjusted for inflation) from the previous 2.8 percent or so. Another $600 billion comes from dropping fiscal 2001 (the current year) from the 10-year numbers and adding fiscal 2011. The 2011 number, being the furthest out, is the shakiest one in the projection.

Those two changes add up to $1.6 trillion of higher surpluses. But the total increased by only $1 trillion. That's because last year's late-session congressional spending spree knocked $600 billion off the 10-year number. So, even though these numbers are huge, you see how vulnerable they are to moving dramatically as taxes, spending and economic projections change.

Now, let's subtract the $2.5 trillion Social Security surplus, which is supposedly going to be ''saved,'' and you have $3.1 trillion to play with. (I treat the Social Security number as reliable because it's based on demographics rather than on economic guesstimates.) Substract another $500 billion for

the Medicare surplus, because we're supposedly saving that money, too. That leaves $2.6 trillion—provided the projections are accurate, which they won't be.

The CBO hasn't put a cost on President Bush's proposed tax cut package. The package supposedly costs $1.6 trillion, but I'll bet that's way understated, which is typical of such things. And it doesn't include the impact of the feeding frenzy that will undoubtedly result with a big tax cut on the table. Remember what happened when the Reagan tax cuts were enacted in the early 1980s? In addition, Bush's campaign proposals are ''back-loaded''—they cost far more in the later years than in the earlier years.

The reason we used to have projected budget deficits as far as the eye could see and now have seemingly endless surpluses lies in the nature of projections—even those as sophisticated and intellectually honest as the CBO's. The CBO takes what's going on now, projects it forward and adjusts for things such as higher or lower interest rates or debt levels, or for programs such as Social Security. It assumes that discretionary spending rises at a fixed rate, which never happens, and that no major new changes in taxes will be enacted. If things are going well in budgetland, as they are now, projections will get better the further out you go. If things are going badly, the projections will get worse.

Now we come to Social Security, which contributes hugely to today's happy surplus situation but is projected to start causing trouble, big time, around 2015. That's not all that long after 2011, when the CBO's 10-year projection ends. In 2015, Social Security is predicted to start taking in less cash than it pays out, so it will have to start cashing in the Treasury securities in its trust fund. In remarkably short order, Social Security will start running 12-figure cash deficits unless something is done.

Until last year, the Social Security problem was projected to start in 2013, but it's been put off because the economy has been doing better than expected. That, combined with now-slipping fiscal discipline, is why the federal budget numbers turned around a few years ago. But if we go on a big tax-cut-and-spend spree, which seems increasingly likely, and the economy performs worse than now projected, we'll be back in the fiscal soup quicker than you can say ''fiscal responsibility.''

For now, I'm going to pass on what many people have taken as Greenspan's support for tax cuts. Even if you believe him to be semidivine, you can parse his public utterances as being cautious about tax cuts. (There is occasionally an advantage to having been an English major in college.)

Finally, despite 10 years of projected huge surpluses, the CBO predicts that the total national debt ($6.7 trillion) would be higher on Sept. 30, 2011, than it is now ($5.6 trillion.) That's because, even though publicly held debt shrinks to $800 billion from $3.4 trillion, the debt held in government accounts, primarily Social Security, rises to $5.9 trillion from today's $2.2 trillion.

So if we go on a tax-cutting and spending spree, don't be surprised to find us back in the soup a few years down the road. Don't say that you had no way to know. The Fed and the CBO were telling you the risks last week. You just weren't listening.

Mr. BYRD. I thank the distinguished Senator from Maryland, a very, very fine Senator, knowledgeable. He has had many years of experience. I thank him for his contribution today and for the articles which he has brought to our attention and which will be included in the CONGRESSIONAL RECORD as he has requested. I value my association with the Senator, and I thank him very much.

I yield the floor.

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER (Mr. NELSON of Nebraska). Morning business is now closed.

UNITED NATIONS PEACEKEEPING ASSESSMENT ADJUSTMENT

The PRESIDING OFFICER. Under the previous order, the Senate will now proceed to consideration of S. 248 which the clerk will report.

The assistant legislative clerk read as follows:

A bill (S. 248) to amend the Admiral James W. Nance and Meg Donovan Foreign Relations Authorization Act, Fiscal Years 2000 and 2001, to adjust a condition on the payment of arrearages to the United Nations that sets the maximum share of any United Nations peacekeeping operation's budget that may be assessed of any country.

The PRESIDING OFFICER. The Senator from North Carolina.

Mr. HELMS. Mr. President, I ask unanimous consent that it be in order for me to deliver my remarks seated at my desk.

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

Mr. HELMS. Mr. President, the pending legislation makes a small revision in the United Nations reform legislation approved by Congress in 1999 known as the ''Helms-Biden'' law.

This legislation justifiably used the leverage of the United States to press for reforms, by linking payment of the United States' so-called ''U.N. arrears'' to specific U.N. reforms. And it was the product of bipartisan cooperation in the Congress, cooperation between the Executive Branch and the Congress, and cooperation between the United States and the United Nations. And it worked, thereby producing millions of dollars in savings to the American people.

The Helms-Biden law gave the U.S. Ambassador to the United Nations, Richard Holbrooke, the tools he needed to negotiate much-needed reforms, ranging from restoring the membership of the United States to the U.N.'s administrative and finance committee, known in the rarified language of the U.N. as the ''A-C-A-B-Q'', to the adoption of results-based budgeting.

But the most important reforms restore an equitable burden-sharing for the enormous cost of operating the United Nations.

This was achieved by reducing the U.S. share of the U.N.'s general budget and its peacekeeping budget. In painstaking negotiations, the U.S. faced opposition not merely from increasingly affluent non-Western nations, which were clinging to their cut-rate U.N. assessment rates, but from our rich NATO allies as well.

Ambassador Holbrooke succeeded in persuading the United Nations member countries to reduce the U.S. share of the general U.N. budget to 22 percent, which was specified by Helms-Biden. This was the first reduction, in more than 28 years, in the American taxpayers' bloated share of the U.N.'s budget.

Similarly, Ambassador Holbrooke persuaded U.N. member states to agree to a new scale for assessments for U.N. peacekeeping.

This was an even more complicated undertaking because it required convincing several nations to give up the big discounts they had enjoyed for the better part of thirty years, when they were regarded as so-called ''developing'' countries.

Our friends Israel, South Korea, Hungary, Estonia, and Slovenia were among those who gave up those discounts. We should be grateful to them—I certainly am—for their willingness to do that.

On the other hand, some other nations in the Middle East and East Asia—which have become rich in recent years—dragged their feet—and shame on them.

But when all is said and done, the U.N. put in place a six-year plan to reduce what the U.N. now says the U.S. owes for peacekeeping.

Here's how it will work. The U.S. share of peacekeeping costs will drop: from 31 percent to about 28 percent in the first six months of 2001; and then, Mr. President, to about 27½ percent in the second half of 2001; and then, Mr. President, to about 26½ percent in 2002; and then, Mr. President, down to approximately the 25 percent benchmark specified in the Helms-Biden law.

Now then, Mr. President, when all this is fully implemented it will eliminate at least $170 million each year from the amount that the United Nations had billed the American taxpayers.

While this does not quite meet the Helms-Biden specification of a 25 percent peacekeeping dues rate, not yet, at least, it comes close.

That is why Senator BIDEN, Senator WARNER and I have offered this legislation to propose making a relatively small change in the arithmetic of the original Helms-Biden law.

Based on the clear prospect of U.S. peacekeeping dues moving down to 25 percent in the coming years, we propose to agree to releasing the Year 2 dues payment of $582 million to the United Nations immediately—in recognition of the savings already achieved for the American taxpayers.

This $582 million payment is the largest of the three phases of arrears attached to reform conditions in the Helms-Biden law—and for good reason: the toughest conditions imposed upon the United Nations by the Helms-Biden law were included. These conditions have already been met largely, and I believe, in response, that the Senate should now reward the enormous

progress made in New York last December when the U.N. adopted most of the Helms-Biden benchmarks agreed to when I met with Secretary-General Kofi Annan when we met shortly after he took office at the U.N.

I emphasize that the United States does not owe the United Nations one dime more than 25 percent of the peacekeeping budget.

In fact, in 1994, Senator Bob Dole led a bipartisan effort to institute a cap on how much the U.S. would pay to the U.N. for peacekeeping. That year, a Democrat-controlled Congress passed, and President Clinton signed, a 25 percent cap on the U.S. share of the U.N. peacekeeping assessment.

I see no reason to abandon that bipartisan policy. Some may argue that, in addition to releasing the Year 2 arrears, we should remove that cap as well. I cannot and will not agree to that, though there may be a way that Senator BIDEN and I can work out to do something.

We are already taking an important step by releasing $582 million in arrears.

But we must not (and will not if I have anything to do with it) concede that the United States expects, in the coming years that the U.N. will ultimately reach the 25 percent rate mandated by Congress in two separate pieces of legislation.

In any event, the Helms-Biden reform benchmarks are working, which brings us to the issue of: what next? What are principal remaining agenda items for the Congress regarding the U.N.?

First, the Congress must continue to take public note of the size of the U.N. budget.

There will of course be a major campaign in the U.N., and even by some in the American foreign policy establishment, to allow the U.N. to increase its budget.

Congress must make sure that those seeking another explosion of budgetary growth at the U.N. are stopped dead in their tracks. It is one thing to allow adjustments in the U.N. budget for inflation and currency fluctuations. But Congress must not allow the floodgates for rampant bureaucratic spending to be opened. Fiscal discipline at the U.N. will remain a priority for Congress.

Specifically, we need to focus on the biggest outrage in the U.N.—the bloated public information bureaucracy. The U.N.'s ''PR bureaucracy'' is, quite simply, out of control. I agree completely with Ambassador Holbrooke's assessment made to the Foreign Relations Committee this past January 9, when he declared (and I quote):

> The Office of Public Information must be cut. It still has over 800 people. And I believe that is inappropriate. . . . And that should be one of the next major campaigns. . . . We need to attack the Office of Public Information and its over-padded structure.

I say again, I wholeheartedly agree.

Finally, Congress must keep a vigilant eye on plans to remodel and expand the U.N. headquarters in New York. The so-called ''U.N. Capital Plan'' estimates that it will cost more than $1 billion. The United States—the American taxpayers—will be asked to pay for at least 25 percent of that.

I've asked the General Accounting Office to conduct a thorough study of the U.N.'s plans for the renovation. GAO's initial judgment is that the project will end up with major cost overruns well beyond the billion dollars estimated in the ''U.N. Capital Plan.''

And that U.N. plan calls for interest-free loans from the American taxpayers. New York City will be called upon to transfer even more land to the U.N. as a gift.

Before building plush new offices for U.N. bureaucrats, let's first make sure that all of the reforms called for in the Helms-Biden law are completed first.

For the moment, Mr. President, we are at an encouraging stage in U.S.-U.N. relations. The exchange of visits between the Senate Foreign Relations Committee and ambassadors on the U.N. Security Council last year in New York and Washington had a positive impact.

I believe this exchange gave the U.N. Ambassadors a greater appreciation of the role of the U.S. Congress in shaping our nation's foreign policy. It certainly gave Senators a better understanding of views held at the U.N.

I'm told that the exchange of visits helped bring about the diplomatic achievements of December of 2000 to reform the U.N.'s assessment scales. That kind of cooperation is certainly welcome.

Mr. President, I must conclude. But before I do, I must note that any worthwhile and meaningful cooperation with the U.N. depends upon firm leadership by the United States—and particularly the United States Congress. Almost every reform that has been enacted by the U.N. in recent years was mandated by the Congress of the United States.

Some at the U.N. will always object to so-called Congressional ''micro management'' of the U.N., and will chafe at the United States Government seeking to ''dictate'' reforms. But, Ambassador Holbrooke put it aptly in his final appearance before the Foreign Relations Committee:

> What I discovered was that since people assume the United States is overbearing and arrogant anyway, it is better to say what the U.S. view is. . . . America should be unafraid to say its views. . . . We were persistent. And sometimes to the point of being regarded as a little bit obnoxious, but not arrogant. And we got the job done. And I think that can be a model.

Mr. President, the Foreign Relations Committee and I believe, the American taxpayers, are grateful to Ambassador Holbrooke for a job well done. Needless to say, Mr. President, I hope the Senate will support the pending legislation.

UNANIMOUS CONSENT AGREEMENT

Mr. HELMS. Mr. President, I have been asked to make this unanimous consent request. I ask unanimous consent that at 3 p.m. today the bill be advanced to third reading and final passage occur at 3 p.m., with no intervening action, motion, or debate; the time between now and 3 p.m. be equally divided between the two managers; and paragraph 4 of rule XII be waived.

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

Mr. HELMS. I thank the Chair.

The PRESIDING OFFICER. The Senator from Delaware.

Mr. BIDEN. Mr. President, before I begin, let me, as we say in the Senate, be afforded a personal privilege. I want my colleagues to know and the American people to know that this was accomplished not merely because of the hard, industrious, and imaginative efforts of Ambassador Holbrooke, but this was accomplished primarily because of the Senator from North Carolina. He has been resolute in his commitment to saving the American taxpayers' money. He has been resolute in his commitment to preventing waste, and he has been forthright in his assertion that when U.S. interests are at stake, we should speak up. That is precisely what he did here with regard to the United Nations.

As a consequence of his insistence, although this is called Helms-Biden—and I am proud to be a cosponsor of it and am proud to have worked all along with the Senator from North Carolina—but it was his insistence that we condition our commitment to pay what we agree were the arrears, not what the U.N. asserted was the amount of the arrears, upon some serious and genuine reform at the United Nations. Again, it was his insistence on saving the American taxpayers' money if it didn't have to be spent.

The result that no one anticipated from his efforts—maybe he did; most didn't; and I was not certain it would turn out this way—has been that not only are the very folks upon whom conditions were forced not angry but they are probably happier with U.S. participation in the United Nations today than at any time in the last probably 15 years—at least the last decade.

Senator HELMS demonstrated that there was nothing venal, nor was it an attempt at retribution, nor an ideological assault upon the United Nations when he opened this gambit by introducing the legislation and immediately inviting the members of the United Nations to come to Washington, DC, to speak before and meet with the Foreign Relations Committee. I may be mistaken, but I don't think this was ever done before. I don't think at any time in the existence of the United Nations was there a wholesale invitation to the Security Council to come to the U.S. Foreign Relations Committee.

The amazing thing is, they all came. They came gleefully. They were slightly skeptical. This was as a consequence of the Senator from North Carolina having first spoken to the Security Council.

Again, I don't know how many Senators have addressed the Security Council in the Senate, and I don't know if he was the first, but I know he preceded me, and I can't think of anyone else in my memory who has done that. He went to the United Nations and in his typical southern gentlemanly fashion was bluntly forthright about his objectives.

I remember at the time reading in the press some fairly harsh criticism of his assertions, assertions made in his gentlemanly manner in New York. Again, almost everyone was wrong because they anticipated the response would be a further freezing, rather than thawing, of the relationship between the United States and the United Nations. A vast majority thought the U.N. would deny us the right to vote because we were not paying our dues.

My colleague, although we arrived the same year, arrived with more wisdom than I did. My colleague, once again, demonstrated that he knew what he was doing. A very close friend of his and a man who actually was a former Democratic State senator, I am told, worked with Senator HELMS in years gone by. This man was a public delegate to the United Nations and from North Carolina at the time.

I will never forget, and I don't think anyone ever anticipated they would see, a dinner in New York, organized by our Ambassador, to honor Senator HELMS. If I am not mistaken, originally something on the order of 100 invitations were sent out, and yet close to 140 Ambassadors of the 180 nations showed up in the large ballroom of a large hotel in New York City to honor the man many in the press and other places wanted to vilify.

I never thought I would live to see the day when I saw Senator JESSE HELMS, Henry Kissinger, Ambassador Holbrooke, Mr. Belk, the public delegate from North Carolina, and the U.N. brass have their picture taken in the middle of that ballroom wearing blue U.N. caps. That was a bit of an epiphany for me.

I was sitting at the table with the German Ambassador. My table had at least three members of the Security Council sitting there. I was amazed to watch what happened. Everyone looked somewhat bemused and amused, and then I noticed all these very dignified diplomats, among the highest ranking persons in their governments, lining up very tactfully, as if they really weren't wanting a picture, to have their picture taken with Senator JESSE HELMS.

Now, I don't know if Senator HELMS expected that—I don't think he did, knowing him. I cite it not to be humorous, not to say this was sort of interesting simply because it happened, but to point out that because of Senator HELMS, for the first time in the 28 years I have been here, there is a genuine sense of warmth, there is a degree of trust, there is a greater openness that has occurred between the U.S. and the U.N. as a consequence of his insistence in saving the American taxpayers money.

I reluctantly went along with the conditions, as my friend from North Carolina knows. I had no doubt the reforms were needed. I thought we should pay the back dues and then prospectively insist on conditions in the future. It was a distinction with some difference.

However, I expect we will have people come to the floor and say the way we finally went was the wrong way to go about it. I point out when we were debating this, and I ask my friend from North Carolina to correct me if I am wrong, I don't remember anybody else who supported the U.N. that garnered one single penny in back dues.

I remember saying to a very significant former Member of the House who was upset with the Helms-Biden approach: I will withhold pushing this. I will give you a week if you can come back to me and tell me you are able to raise one single cent in the House of Representatives to pay the back dues; I'll withdraw.

The point was, everyone talked about the pure game, the purity of doing it the ''right way,'' which leads to the second point. I have served with my friend too long not to understand he has a very healthy skepticism of international organizations. Not a hostility, skepticism. I have served with him too long not to know that he has a skepticism for international agreements made with people who have histories of not keeping international agreements. And I have served with him too long to underestimate his ability to know how to get things done. He knew better than most of us that even if he thought there should be no conditions—which he thought there should be—that you weren't going to get anything done here. You had to bring along a significant portion of the House and a significant minority in the Senate who didn't even want to pay the back dues; didn't want to pay anything, conditions or not.

So as the old saw goes over the last 30 years, anyway, just as only Nixon could go to China, only HELMS can fix the U.N. That is true. That is absolutely, positively true. I am sure he has taken some heat from his historically loyal and traditional friends on the center right for doing this, I have no doubt he has taken some heat, but, as usual, being a man who sticks to his principles, he took the heat but in the process of doing so he put the argument against U.S. participation in the U.N. in a position where it had no credibility. How could anyone from the center right challenge the Senator from North Carolina? Nobody doubts his convictions and principle. He is too darned conservative for me. I love him, but he is too darned conservative for me. But if JOE BIDEN had come along and done this, if TRENT LOTT had come along and done this, if DICK LUGAR and other respected Members did this, and it had been Lott-Biden, anybody on the Republican side, BIDEN and not HELMS, this would not have gotten done.

I pay tribute not only to the substantive changes he has wrought, but pay tribute to his tactical genius and how to get it done. It would not have gotten done, without him and we would be standing here today in semicrisis about whether or not we stay in the U.N., whether or not our vote had been taken from us, whether or not it was any longer relevant. We would have had some bitter ideological debates on this floor had he not gotten us to this place.

I, for one, think the United Nations is an incredibly valuable institution that, on balance, overwhelmingly benefits the American people. But, I say to my colleagues, don't do what some of us who have served with Senator HELMS sometimes do—don't underestimate what this fellow did and does, and don't underestimate how knowledgeable he is about getting something done. I am just glad we were not only in the same hymnal on this one, but on the same page on this one.

So I want to personally thank him. He did more than save the American taxpayers $170 million and more to come. He did more than set an atmosphere and tone where now in the United Nations, because of what he did, there is open discussion and debate among the members, not including us, about the need to reform. He was sort of the fellow who came along and said: Hey, but the emperor has no clothes.

Everybody sitting there knew the emperor had no clothes on, but Senator HELMS said, ''The emperor has no clothes and until he starts getting dressed I am not playing.'' Now I ask a rhetorical question. Did my friend ever think he would hear a debate with everyone from the Chinese Ambassador to the Russian Ambassador to the German Ambassador to the French Ambassador talking about the need for further reform? And going back to their constituents and saying: We need Reform. They want to save taxpayers money as well.

So that is a big deal. But the bigger deal, in my view, is there is a new sense of legitimacy and vitality in this Chamber, in this Government, in this country, for the United Nations.

I am not Pollyannaish about this. I don't think the United Nations is a one-world government leading to nirvana. That is the farthest from what it is. But it is a practical tool in a number of circumstances, and an increasingly necessary forum for the one superpower in the world to be able to make her views known and garner the support of—or at least prick the conscience of—the rest of the world. We do not want to constantly be put in the position of being that great nation imposing her view on all the rest of the world.

What most of our foreign colleagues do not understand is we Americans are uncomfortable being the sole superpower. I often tell our European

friends—my colleague knows, I am, as is he, deeply involved with NATO and Europe—I often tell them when they complain about us being the only superpower: You don't understand. Americans were not looking or seeking this title. We don't want to be the superpower. If there has to be one it will be us, but that is not our goal. We have no countries to conquer. We have no desire to impose our will. Americans would just as soon tend to their business and be home.

But that is how we are cast today. That is how we are cast by our friends as well as by our foes. I think in that context the United Nations takes on a different and dynamic role with the possibility that we can use it to further our interests.

So what my friend from North Carolina did is make that possible. Whether the U.N. meets those expectations, whether it continues down the road of reform, whether it does what it has the potential to do, remains to be seen. But we would not even be in this position today, February 7, 2001, talking about this possibility were it not for his insistence.

As I said, only Nixon could go to China. Only HELMS could make the U.N. relevant at the end of this century and the beginning of the next.

I know he understands, but knowing how he is, he probably refuses to believe how big a role that he played. It is literally that big. That is the deal. That is why this is so consequential. This legislation before us is, in a sense, inconsequential. We are changing one number in a piece of legislation to accommodate what we believe to be the good-faith serious effort to have embarked upon and stay embarked upon making an institution of the 20th century relevant in the 21st century.

As my friend and I have pointed out, we have both spoken at the Security Council. We have both had private meetings, and jointly, with I think literally almost every single delegate to the United Nations. The luncheon he and I did up there, there were 160-some U.N. ambassadors. I doubt whether there is a single U.N. representative—there may be one; I will be dumbfounded if there are more than 20—who has not personally met Senator HELMS and personally interfaced with him.

You know, it is an interesting phenomenon. When they looked him in the eye, when they heard him talk and saw him, and kind of touched him, they realized this is the real deal. This isn't about bashing the United Nations for hometown political consumption. And it has had a dramatic impact on the attitude that institution has about itself, the attitude of the American people have about it, the attitude of this body has about it, and the potential utility of that institution to work the way we hoped it would work.

As the chairman has explained, this legislation was reported by the Committee on Foreign Relations earlier today by a vote of 18–0.

This bill is neither long nor complicated. Let me explain it briefly.

In late 1999, Congress passed legislation—the so-called ''Helms-Biden'' law—which authorizes payment of $926 million owed to the United Nations in back dues, conditioned on certain reforms in the United Nations.

The bill provided for payment of the funds in three installments. Each installment was linked to a set of reforms in the United Nations.

The first installment of $100 million was paid in December 1999.

The second installment authorized is $582 million.

The key reform linked to this installment is a requirement that the amount of money the United States pays for U.N. operations be reduced.

We believed such reductions were important because the United Nations had become overly dependent on the United States for its funding.

Also, the economies of many other nations had grown considerably since the rates were last reviewed seriously in the early 1970s, and we believed it only fair that a greater share of the budget burden be assumed by those countries.

I am pleased to report that there has been remarkable progress, not only in the reduction of the U.S. assessment rates, but in U.N. institutional reform in general. Let me talk about the budget reductions.

The United Nations has two budgets. The first budget is the so-called regular budget, which pays for the day-to-day operations of the U.N. Secretariat in New York.

The law that Congress enacted in 1999 required that the rate we are charged for this budget be reduced from 25 percent to 22 percent of the total budget.

Our previous Ambassador to the United Nations, Richard Holbrooke, achieved this objective. Effective January 1, our assessment for this budget is 22 percent.

The second budget is for U.N. peacekeeping operations—for the soldiers in blue helmets around the world. The Helms-Biden law required that our assessment be cut from a rate of just over 30 percent to 25 percent.

Here, as some in the new administration who come from Texas might say, we did not get the whole enchilada—Ambassador Holbrooke did not get our rate down to 25 percent, but Ambassador Holbrooke succeeded in reducing our peacekeeping assessment substantially.

Effective January 1, our peacekeeping rate has been cut to just over 28 percent. It will continue to go down gradually to 26.5 percent by 2003, and possibly lower after that.

It is not everything we wanted, but Senator HELMS and I believe that the United Nations has met us more than halfway—and that we should respond.

Accordingly, the bill before the Senate amends the original Helms-Biden legislation to change the one legislative provision that was not completely satisfied.

Taking that step will release the second installment of $582 million .

The bill was approved unanimously by the Committee on Foreign Relations, and I hope the vote in the Senate will also be unanimous.

So let me reiterate. Dick Holbrooke took us a long way.

Mr. HELMS. You bet.

Mr. BIDEN. My grandfather Abrose's name was Abrose Finnigan. He used to say: Remember, God protects two groups of people: well-intended Irishmen who are drunk, and the United States of America. And then he would joke and say: You know, in our history where there are big and large issues, it always seems to be the right person comes along at the right moment to tackle the big issues. Dick Holbrooke, in another generation, maybe would not have been as consequential, but what did we need? We needed a man who was—remember when our friend from Texas won his first Senate race? He beat an incumbent, an appointed Democrat who was a good guy. They asked the Democrat about how he felt the night of the election when he lost. He said: There are two things you should know about PHIL GRAMM: One, he is meaner than a junk yard dog, and, two, he is smarter than you.

There are two things you should know about Dick Holbrooke: One, he is more persistent than STROM THURMOND, which is almost impossible, and he is likely to be smarter than you.

He kept his commitment to Senator HELMS.

Mr. HELMS. He did.

Mr. BIDEN. He kept his commitment. Senator HELMS was wary at the front end of this when he was named, whether or not he really was going to do it. He held up his nomination until he came before the committee to say: I will commit to Helms-Biden. Once he did that, it was home free and he headed to work. But he did a remarkable job.

So I do not, in my praise for Senator HELMS, mean to in any way suggest that at the end of the day this could have been done without the ingenuity, intelligence, and dedication of Ambassador Holbrooke and his staff, who, as the chairman has pointed out, many nights toward the end stayed up close to around the clock getting this locked down.

So I think we are at a good place. I have been with my friend from North Carolina too long not to think I understand what is behind his reluctance to lift a cap that locked into law the amount we would pay for peacekeeping. In 1994, out of frustration with the United Nations and its waste and failure to modernize, the U.S. Congress passed a piece of legislation that said starting October 1, 1996 we will not pay any more than 25 percent of the peacekeeping assessment. Then we were being charged about 31 percent, as the Senator said.

Now this may confuse people. Although the Helms-Biden change we are

making today will allow over half a billion dollars to go to settle our accounts, if we do not do something about that 25 percent cap—because in spite of everything Ambassador Holbrooke, did our peacekeeping rate is not going to go down to 25 percent this year—we will, by the end of the year, accrue another roughly $70 million in debt. We will be behind the 8-ball another $70 million in terms of what we ''owe'' the U.N.

If I did not know better, I would say, as the old saying goes, my friend from North Carolina is from Missouri because he is a show-me guy. I am hopeful I can convince him or he can become convinced—not that I can convince him—but he will become convinced before the legislative year is over hopefully that these changes are real and maybe we should lift that 25-percent cap. Knowing him, he may toy with the idea of either not doing it at all, doing it temporarily, doing it conditionally—I do not know what. I know he will come up with something.

I say to him and my colleagues, I for one feel very strongly—we have gone this far—we should not now undo the good will and circumstance we have created, primarily through his leadership.

Again, not lifting the 25 percent cap now does not do any damage, any injustice, or any harm to the good that has been done, but if we do not by the end of the year deal with this—and he is committed we will deal with it; not how, not what the result will be, what his position will be, but we will deal with it—if we do not deal with it, I fear we will have begun to undo some of the significant good that we did by changing this legislation.

Mr. President, I thank former President Clinton and former Secretary Albright who were also instrumental in lobbying world leaders to have their countries accommodate this change, which is overdue.

I note parenthetically, when we signed on to these commitments, it was a different world. We were the only game in town economically. The combined GDP of Europe eclipses ours. Thank God, through the good works of a lot of people, including the generosity of the American people, the rest of the world is doing pretty well in many places, and they can afford to pay more. But it still took a lot of cajoling, it took a lot of nursing, it took a lot of diplomatic skill to get it done.

I say to my friend from North Carolina, I look forward to, before the summer passes, being back on the floor, hopefully with an agreement on what to do about the 25-percent cap set in 1994, but at least here to ventilate it, debate it, and let the Senate work its will on what we should do about it.

I note parenthetically that Secretary of State Powell supports such an amendment to the 1994 law. I received a letter from him 2 days ago on this subject.

I have no doubt the Senator has thought about it a lot and will think about it, and I have no doubt that whatever decision he comes to on the 25-percent cap, it will be viewed through the prism of making sure the American people are not paying more than they should and that the American taxpayers catch a break.

It has been an honor working with Senator HELMS. As I said, he and I came the same year, 1972. We have both been here 28 years, going on 29. We have, as the old saying goes, been together and we have been agin one another. For me, it is always more comfortable when we are together. It has never, never been anything other than a pleasure, since I shifted my responsibilities as top Democrat on the Judiciary Committee to Foreign Relations, working with Senator HELMS.

I am told there are some of our colleagues who wish to speak to this. I, quite frankly, would be surprised if there is a controversial aspect to this. It passed out of our committee this morning 18–0, unanimously, with very little debate and with some considerable enthusiasm.

I hope there will be bipartisan support for these objectives. I urge my colleagues to support this legislation.

I ask unanimous consent to print in the RECORD the letter from Secretary Powell.

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

THE SECRETARY OF STATE,
Washington, DC, February 5, 2001.

Hon. JOSEPH R. BIDEN, Jr.,
Committee on Foreign Relations,
U.S. Senate.

DEAR SENATOR BIDEN: Thank you for your January 23 letter regarding the Senate Foreign Relations Committee's plans, at next week's business meeting, to take up the question of revising Helms-Biden legislation to allow a second tranche of payments of UN arrears to go forward. I appreciate the Committee's willingness to move forward so quickly with this needed step.

In your letter, you asked for my views as to whether a 1994 State Authorization Bill provision that places a 25 percent cap on our contribution to UN peacekeeping should also be revised, so that we can pay at the new assessment rate we negotiated in December. My staff have informed me that, unless this cap is revised, we will accrue new arrears of around $77 million in this fiscal year alone. Clearly, this needs to be taken care of to avoid falling into new arrears; my preference would be to move on it now, so that we can put this behind us quickly and focus together on further steps toward UN reform. I hope that the Committee will take the necessary steps to amend the 1994 provision as rapidly as possible.

Again, thank you for your letter. I welcome your partnership on this and other matters as we seek to advance America's foreign policy interests in the months ahead.

Sincerely,

COLIN L. POWELL.

Mr. BIDEN. I know we do not have a vote until 3 o'clock. That is when it has been set. I am not sure who is going to be here to speak when, but I am not going to trespass on the Senate's time anymore. I am going to shortly yield the floor, and I look to my colleague to ask whether I should suggest the absence of a quorum or does he wish to speak?

Mr. President, I yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER (Mrs. CLINTON). The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

The PRESIDING OFFICER. Without objection, it is so ordered. Who yields time?

Mr. WARNER. I ask unanimous consent for such time that I may require.

Mr. HELMS. I yield to the Senator.

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

Mr. WARNER. Madam President, I rise in strong support of the work that has been done by our distinguished chairman, the senior Senator from North Carolina, and indeed the ranking member, the senior Senator from Delaware. I have had the privilege of working with them on this issue including traveling to New York City with them while we were working with the distinguished Ambassador, Mr. Holbrooke, on this issue. I also traveled a second time to New York City at the invitation of then-Ambassador Holbrooke to work on this issue.

These three, the great triumvirate, have brought this about. It is a remarkable feat for freedom. This institution, the U.N., through the years has collected a good deal of disparaging comment, but it is an essential institution. Despite the disparaging references in years past, it is a stronger institution today under the current leadership of the distinguished Kofi Annan, and it is performing tasks that, frankly, I would not want to see our Government out in front on. Better we take second place and work with other nations through the U.N. to achieve certain objectives, rather than the unilateral intervention or, indeed, the unilateral participation by the United States.

This funding issue has been a cloud that has hung over the institution of the Congress and the U.N. for many years. Through the able leadership of Chairman HELMS and the ranking member, Mr. BIDEN, that cloud is now in a large measure dispelled. It is a job that should receive the commendation and support of all in this Chamber.

I see the Presiding Officer is a distinguished Senator from the great State of New York which provides a home for the United Nations. The United Nations is an institution that hopefully will live long and will benefit from the strong support expressed by this vote in the Senate today.

I rise today as an original cosponsor of this very important legislation on the payment of United States arrearages to the United Nations. We are at this crucial point due to the determined efforts of the distinguished chairman and ranking member of the Senate Foreign Relations Committee

and our former Ambassador to the United Nations, Richard Holbrooke.

The United Nations Reform Act of 1999, known as Helms-Biden, provided for the payment of $926 million in U.S. arrears to the United Nations in return for a series of United Nations reforms, including a reduction in the U.S. assessment for the regular and peacekeeping budgets. The United States made its first payment under Helms-Biden, which totaled $100 million, in December of 1999. Under Helms-Biden, however, the second installment, totaling $582 million, could only be paid once the Secretary of State certifies that the ceiling for the U.N.'s regular budget scale of assessment for the U.S. is set at 22 percent, and that there is a ceiling set at 25 percent for the U.S. assessment for the U.N.'s peacekeeping budget.

After a lengthy and substantive debate, in late December 2000 the United Nation's General Assembly agreed to reduce U.S. dues to the United Nations. The General Assembly voted to set the ceiling for the regular budget scale of assessment for the U.S. at 22 percent—down from 25 percent—and set the ceiling for the peacekeeping scale of assessment for the U.S. at 28.15 percent—previously there was no ceiling and the U.S. was assessed approximately 31 percent. While the new scale of assessment ceiling for the U.N. regular budget meets the requirements of Helms-Biden, the new scale of assessment ceiling for the U.N. peacekeeping budget falls just short of what is required under Helms-Biden.

This legislation we are considering today will amend Helms-Biden so as to allow the U.S. to make its second payment of arrears to the U.N. Specifically, the requirement that the U.N.'s peacekeeping scale of assessment ceiling for the U.S. must be set at 25 percent is amended to the U.N. agreed upon number of 28.15 percent.

Although we all wish that the U.N. would have agreed to the 25 percent ceiling for the U.S. share of the peacekeeping budget, the agreement that was reached is significant and deserves our wholehearted support. By passing this legislation, we can move forward with the implementation of the goals of Helms-Biden and continue to strengthen our relationship with the United Nations.

At this point I want to recognize three individuals whose heroic efforts made this landmark agreement possible. Senate Foreign Relations Committee Chairman HELMS and Ranking Member BIDEN spent years crafting the Helms-Biden legislation. Without their tireless efforts and the bipartisanship with which they tackled a task which many felt was unachievable, we would not be where we are today. Their commitment and total devotion to strengthening and reforming the United Nations deserves our highest praise.

Likewise, the unflagging efforts of former U.S. Ambassador to the United Nations Richard Holbrooke must be recognized. Ambassador Holbrooke spent his 17 months at the U.N. working incessantly to see that the reforms contained in Helms-Biden were implemented. To achieve this goal, he traveled repeatedly to Washington to consult with Members of Congress, invited numerous Members, including myself, to New York for meetings with U.N. ambassadors and spent uncountable hours on the telephone promoting these reforms. In fact, during Ambassador Holbrooke's tenure I visited the U.N. twice to meet with numerous U.N. ambassadors and Secretary-General Kofi Annan in order to discuss U.N. reform issues. Without Ambassador Holbrooke's efforts, it is unlikely, in my view, that the U.N. General Assembly would have agreed to reform the U.N.'s regular and peacekeeping budgets.

The United Nations, under the strong leadership of Secretary-General Kofi Annan, plays a crucial role in global affairs. It is in our national interests to continue to work with the United Nations to ensure that it is strong and effective.

In light of that, I reiterate my strong support for the rapid passage of this legislation which will keep reforms at the U.N. on schedule and allow for the continued payment of U.S. arrearages.

I yield the floor.

Mr. GREGG of New Hampshire addressed the Chair.

The PRESIDING OFFICER. Who yields to the Senator from New Hampshire?

Mr. HELMS. Madam President, I yield such time as the Senator may need.

The PRESIDING OFFICER. The Senator from New Hampshire.

Mr. GREGG. I thank the Chair and congratulate the Senator from North Carolina for his efforts in bringing a resolution to the U.N. arrearage issue. This is an issue in which I have had a fair amount of involvement, as I chair the appropriations subcommittee which is responsible for actually paying the bills.

It was a pleasure to work with the Senator from North Carolina and the Senator from Delaware, the Senator from Minnesota, Mr. Grams, and Senator HOLLINGS, my ranking member, as we worked with the prior administration, especially the Secretary of State, to try to bring a resolution to this very intricate and difficult issue—very touchy issue in many ways—which had hung over the U.N. and America's relationship with the U.N. for far too long.

There were very significant issues, however, that had to be addressed and which, as a result of the efforts of Senator HELMS and Senator BIDEN and the working group which I had a pleasure to work with, were addressed.

Two of the ones that have gotten the most visibility, of course, are our contribution levels to the U.N. operation accounts, which were excessive, in my opinion and in the opinion of the Senate and the Congress, and also the contributions to the peacekeeping accounts, which were equally excessive.

So the adjustments in the contribution levels, although not everything we desire, are a significant step in the right direction. But I think we need to remember as we proceed, especially in the area of peacekeeping, that basically the United States is, no matter what the assessment level, giving the U.N. what amounts to essentially a blank check.

The tremendous expansion in peacekeeping activity which the U.N. has undertaken over the last few years—much of it, quite honestly, not consistent with American policy—for example, what is happening today in Sierra Leone, where the U.N. has one of its major peacekeeping initiatives—is not consistent with the present American policy on how to handle that situation. In fact, the British, who are physically on the ground there, and whose position we do agree with, are taking the brunt of the legitimate effort in that country; whereas the U.N. peacekeepers, regrettably, are not contributing to the process of resolving the Sierra Leone situation but are actually, well, at best, on site but not a positive force. Yet we are paying for that. American taxpayers are paying for that.

It is inconsistent with the policy as laid out in a letter from the then-Ambassador to the U.N., Mr. Holbrooke, to the Congress relative to what the American policy was to be in Sierra Leone. That letter, which was very specific and quite appropriate and on point, unfortunately, is not the U.N. policy.

So as we move down the road, this whole issue of peacekeeping is going to be a continuing concern to us, as the payers of the bills, because I am not much interested, quite honestly, in sending a large amount of tax dollars, in what amounts to an open check, to the U.N. on the matter of peacekeeping, if the policies of the U.N. are going to be—in those areas where we are actually paying for the peacekeeping—180 degrees at odds with American policy.

I do not understand why we should be paying to underwrite policies which are inconsistent and, in some instances, actually at odds with what our policies are as a nation. So this issue of an open check for U.N. peacekeeping is one which will require more attention.

But as to the question of arrearages, we have at least settled the matter of what the percentage should be in those instances where U.N. obligations are due relative to peacekeeping. For that reason, we are able to release the $582 million which was held up relative to that issue. There remains, however, one more payment, one more tranche here—$244 million—which needs to be made and which we have appropriated.

By the way, all this money was always appropriated. We, in our committee, put it on the table, signed the

check, but we did not send the check. It was a letter of credit. We said: When you meet the conditions of the letter of credit, which were basically the Helms-Biden proposal, then we will release the funds. But, again, the $244 million, which is available to the U.N., and which is the third payment, is still conditioned on what I would call structural reforms within the U.N. which are very important, structural reforms which go to the operation of the U.N., specifically, stronger Inspector General activities, stronger evaluation of the effectiveness and the relevance of U.N. programs, a termination of programs that are no longer needed, establishment of clearer budget priorities and, of course, an accounting office similar to the General Accounting Office we have here in the U.S. which can actually go in and audit what goes on in the U.N.

One of the big problems we have had in the U.N. was that for many years, regrettably, it was essentially, for lack of a better word, a patronage stop for a lot of folks from other countries who found it was a place where they could basically place friends and relatives, and, as a result, end up with the United States paying the cost of the salaries of those friends and relatives. It had a huge inefficiency. It also had programmatic activity which simply was inconsistent with what you would call good fiscal policy.

I understand it is not something you can change overnight because, to some degree, it is an institutional issue, but the U.N. is moving towards trying to address this. And that is positive. We look forward to these management systems being put in place which can show the American people that their tax dollars are not being wasted when they are sent to the U.N.

The U.N. is a very important institution. It is important that the American people have confidence in it. This is an institution which can play a huge and positive role as we, as a nation, engage the world. Since we are paying a quarter of the costs of the institution, American taxpayers have to know that when they send the tax dollar up there, it is going to be used effectively and efficiently. It is not because they oppose, at least in my State—there is some opposition, but there is general support for the U.N. funding. It is not because they oppose funding per se for the U.N; it is because they oppose the concept that money isn't being used efficiently and effectively. In fact, for a number of years it was being used inefficiently and ineffectively and in some cases just plain in a poor way.

So putting these systems in place—a strong Inspector General approach, general accounting rules along the lines of what we use in the U.S. General Accounting Office, financial data procedures which allow us to track the dollars, where they go, who is using them, and actual personnel tracking procedures which allow us to make sure the personnel that claims to be doing things is actually doing them, and that we are not ending up paying no-show employees—is very important in running a fiscal house effectively.

They are the basic elements of good governance. If you are expecting taxpayers to support an undertaking, then you must expect that the taxpayers will demand that there be an accounting as to how their dollars are being used. That is all we have asked for here. We have not asked for anything outrageous or unreasonable, in my opinion. We have just asked for reasonable accounting procedures.

The U.N., to their credit, especially the present Secretary General, has made an extra effort to try to address these concerns. I congratulate the Secretary General for doing that. I especially congratulate Ambassador Holbrooke because really he has been a fierce force for bringing responsibilities to the U.N. in the way they have dealt with American tax dollars over his tenure there. He has been a conscientious protector of the American tax dollar. I think he has done it because he understands that support for the U.N. is critical, and support is tied to American taxpayers having confidence in their dollars being used effectively.

The agreement which has been reached—I again congratulate the Senator from North Carolina for his extraordinary effort, the Senator from Delaware, and all those who played a role in it—is a very positive step forward in putting in place the systems that are necessary to give American taxpayers confidence in the U.N. When we give that confidence to the American taxpayer, we will in turn give the U.N. strength. When we give the U.N. strength, in the end it will benefit us as a nation and obviously the world. It is a plus for us. It is a plus for the U.N.

I am very happy to be here today to support this initiative and look forward, as chairman of the appropriating committee, to their completion of the additional issues that are to be addressed and the release of the additional $244 million as a result of successful completion of those initiatives.

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. LEAHY. Madam President, I ask unanimous consent that the order for the quorum call be rescinded.

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

Mr. LEAHY. Madam President, I also rise to voice support for S. 248, a bill to release $582 million in U.S. dues to the United Nations. Payment of our dues is long overdue, and I am glad to see this bipartisan bill come before the Senate.

We know the United Nations is not a perfect organization. No organization made up of 189 countries could possibly satisfy everyone. In that sense, it is sort of like a country composed of 50 States. But just as the States rely on the Federal Government to address problems that affect each of us collectively, the United States relies on the collective diplomacy and security that only the United Nations can provide.

Every day the U.N. is fighting critical battles to resolve conflicts, contain the spread of infectious diseases, stop environmental pollution, protect human rights, strengthen democracy, and prevent starvation, to mention just some of its roles. U.N. peacekeepers are deployed around the world—from East Timor to Cyprus to the Sinai—to help prevent violence and restore stability where it is badly needed. Of the tens of thousands of U.N. peacekeepers deployed, only a tiny fraction are Americans. These missions help to avoid U.S. military intervention and far more costly humanitarian relief operations.

We are the world's only superpower, and we have a wide range of interests on every continent. We need to send a strong message that the United States supports the United Nations but that other nations need to contribute their share as well. This legislation is a clear step in that direction.

Getting here has not been easy, and I want to commend four individuals who deserve special credit. First and foremost, it was the determination of Ambassador Richard Holbrooke who led us to this breakthrough that few thought was possible. In January, he received a standing ovation from both Republicans and Democrats on the Foreign Relations Committee. It was well deserved.

We also had the bipartisan vision and leadership of Senator JESSE HELMS and Senator JOE BIDEN. They established a framework for this deal with the Helms-Biden legislation, and both deserve a great deal of credit.

Finally, we should recognize Ted Turner. It was his gift of $34 million that was the final piece of the puzzle. We should all be grateful for his generosity and foresight, although it is somewhat embarrassing that the government of the wealthiest, most powerful nation in history had to rely on the personal donation of a private citizen to help meet its obligations to the international community.

While I am very pleased with this legislation, more still needs to be done to address weaknesses in United Nations peacekeeping missions. We have seen poorly conceived missions, serious logistical delays, ill-equipped and undertrained troops, and instances of misconduct. While these were exceptions rather than the rule and were largely the fault of the U.N.'s member states, I was encouraged by two developments early this fall that began to address some of these problems.

First, the U.N. issued a report, produced by an outside panel of experts, that included some common-sense recommendations for improving the effectiveness of U.N. peacekeeping. This was followed by a serious discussion of

peacekeeping reform by the heads of state of several key countries at the Millennium Summit.

These two events triggered widespread praise from the international community and a number of supportive editorials in the U.S. press. The Bush administration and Congress need to take a close look at these developments and determine what the U.S. can do to further efforts to improve U.N. peacekeeping.

The administration and Congress should also consider lifting the 25 percent cap on U.S. peacekeeping contributions. During the campaign, President Bush called for the U.S. to act in a more ''humble'' manner in the international arena. This may be a good place to start. The European Union, whose GDP is roughly equivalent our own, pays over 39 percent of U.N. peacekeeping costs, while the U.S. contribution will fall to 26.5 percent. Moreover, the agreement that was reached in December requires 29 nations to accept increases in their assessment rates, ranging from 50 percent to 500 percent. Yet, we still maintain the 25 percent cap, and continue to accumulate arrears—hardly a statement of humility. The time may now be right to remove the cap, especially if the administration concludes that U.S. interests are better served without it.

Mr. President, we all want to see reform to continue at the U.N. However, refusing to pay our dues has irritated our friends and allies, who were legitimately concerned that we wanted a continued veto over U.N. decisions, without meeting our treaty obligations. It hurt our credibility, and it weakened our influence.

So I am pleased that we are finally acting to remedy this problem by passing this legislation today.

I see the Senator from Florida, and I yield the floor to him.

The PRESIDING OFFICER. The Senator from Florida is recognized.

(The remarks of Mr. NELSON of Florida are located in today's RECORD under ''Morning Business.'')

The PRESIDING OFFICER. The Senator from Georgia is recognized.

(The remarks of Mr. CLELAND pertaining to the introduction of S. 269 are located in today's RECORD under ''Statements on Introduced Bills and Joint Resolutions.'')

Mr. CLELAND. 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. BYRD. Mr. President, I ask unanimous consent the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. CHAFEE). Without objection, it is so ordered.

Mrs. FEINSTEIN. Mr. President, I rise today to express my support for S. 248, a bill to amend the Helms-Biden agreement on United Nations arrears payments.

I have long supported the goals of the United Nations as it works to promote peace, to protect human rights, and to improve economic and social development throughout the world. Participation in the UN acts as an incentive to promote peace and provides a forum for negotiations and international action which can avert the need for more expensive unilateral or bilateral military interventions in the future.

I believe repaying United States arrears to the UN is crucial to ensure that the organization can continue to be a force for peace and security in the 21st Century.

As you know, significant steps have been undertaken in the last several years by the UN to reform their administrative structure and to reduce costs as called for by the Helms-Biden agreement. Among other things, the UN has reduced its budget and staffing levels, and has strengthened its Office of Internal Oversight.

In addition, the UN has agreed to reduce the US assessment for the UN regular budget from 25 percent to 22 percent, and the peacekeeping assessment from more than 30 percent. I congratulate Senator HELMS, Senator BIDEN, Ambassador Richard Holbrooke, and Secretary-General Kofi Annan for their efforts and hard work on these issues.

It is my hope that the UN will continue in this direction and enact further reforms designed to save costs and to make the UN a more effective and efficient organization. This bill recognizes that efforts have been made and will continue to be made towards achieving this goal. I urge my colleagues to support it.

Mr. DASCHLE. Mr. President, I come to the floor to express my strong support for S. 248, the U.N. dues bill. This is a straightforward bill that continues our efforts to set right U.S. accounts at the United Nations. Those efforts are not yet complete, but in passing this bill today we take a big step in the right direction.

This bill—and the $582 million in U.S. arrears it will allow us to pay—will go a long way to improving our relations at the United Nations. The importance of a solid relationship with a capable UN should not be underestimated. In the last year alone, we have worked with the UN to bolster U.S. interests, including: Containing Saddam Hussein; combating the debilitating effects of the AIDS pandemic; confronting—and detaining—war criminals in the Balkans; and controlling the potentially destabilizing conflicts in East Timor and East Africa.

Two years ago the outlook was much different. At that time, skepticism about the effectiveness of the UN prevailed, and Congress outlined an aggressive agenda for reform at the United Nations. Behind the leadership of Senators BIDEN and HELMS, Congress outlined a series of conditions before we would pay the nearly $1 billion in debts.

Passing that bill was difficult here, including months of debate, deliberation and negotiation. But it turns out that we in Congress had the easy part. The heavy lifting was done by Ambassador Richard Holbrooke and his team at the United States Mission to the United Nations, who took the demands we made here in Congress and came back from New York with a solid deal.

Let's take a quick look at what Ambassador Holbrooke and his team delivered:

A reduction in the U.S. assessed costs for the UN regular budget: That reduction—from 25 percent to 22 percent—is the first rate drop for the United States in the regular budget account since 1972.

A reduction in the U.S. assessed costs for the UN peacekeeping budget: That reduction—from 31 percent to 27 percent—is the first rate drop for the United States in the peacekeeping account since 1973.

A combined savings for the U.S. from these reductions is in excess of $100 million annually; and, perhaps most importantly, rejuvenated Congressional support for the United Nations.

Yet the agreement that Ambassador Holbrooke delivered does not spell the end of reform at the United Nations.

Last year saw the release of the so-called Brahimi Report, a series of common sense improvements to the way the United Nations handles peacekeeping operations. The report gives cause for optimism, but aggressive implementation of the report's recommendations is crucial to ensure success. Those recommendations will go a long way to burying the peacekeeping failures of Srebrenica and Sierra Leone and developing a Department of Peacekeeping Operations that can successfully plan, deploy and manage complex peacekeeping operations.

We will also watch the implementation of a series of accountability, oversight and planning measures created in the last year. Secretary General Annan is demanding a high level of excellence from his team in New York, and we join him in expecting efficiency and results.

Work here in Washington is not done yet. Nor is our work in Congress done yet. Continued reform at the United Nations demands U.S. leadership and involvement—and approving this bill today is only the first step in convincing the international community that we are serious about reform.

As it stands right now, the United States will continue to accrue arrears at the United Nations. A law we passed in 1994 that caps U.S. payments to the UN peacekeeping budget at 25 percent, but we will continue to be billed by the UN for between 26 percent and 28 percent of that budget, generating arrears and engendering criticism of the U.S.—particularly from our European allies whose combined assessments account for well over a third of UN peacekeeping operations.

If Congress does not make this fix this year, we risk worsening U.S. relations with the UN and its member

states, limiting our ability to use the United Nations to advance vital U.S. interests, and setting back the efforts or reform that Ambassador Holbrooke did so much to move forward.

It is my hope that, before the end of this fiscal year, Congress will lift the cap on U.S. assessed contributions to international peacekeeping efforts. Doing otherwise will be a lost opportunity.

Mr. MCCAIN. Mr. President, I am pleased the Senate will vote today to release $582 million in U.S. arrearages to the United Nations. In 1999, Congress mandated a series of reform benchmarks for the United Nations to meet in order for the United States to release funds we were withholding. One requirement related to reform of the scales for peacekeeping assessments by member nations, which were created in 1973 to fund the Sinai mission and have been in place ever since. As we move today to release the so-called Tranche II funds for the U.N. under the terms of the Helms-Biden law, I commend my colleagues for their work on this issue and note the efforts of Ambassador Richard Holbrooke and the American mission to the United Nations that made this progress possible.

Over the years, the United Nations and its subsidiary bodies have supported U.S. humanitarian interests in a number of ways, performed peacekeeping missions important to the security of our nation and our allies, and provided a useful forum for developing consensus among nations, as demonstrated by former President Bush's extraordinarily successful coalition-building to repel Saddam Hussein's 1990 invasion of Kuwait. But U.N. accomplishments cannot hide the fact that the U.N. bureaucracy must be totally reformed from top to bottom.

As Ambassador Holbrooke recently told the Foreign Relations Committee, ''I leave my position as confident as ever that the United Nations remains absolutely indispensable to American foreign policy. . . . But at the same time, I am even more convinced that the U.N. is deeply flawed, and that we must fix it to save it.'' Our vote today to pay $582 million in U.S. arrearages reflects this philosophy. I expect close Congressional scrutiny of United Nations operations and administration to spur additional and much-needed reforms. And I look forward to a continuing debate in this body over the level of U.S. contributions for U.N. peacekeeping, which requires additional review and may call for further Congressional action.

Mr. BYRD. Mr. President, I ask for the yeas and nays on the passage of the bill.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The clerk will read the bill for the third time.

The bill (S. 248) was read the third time.

The PRESIDING OFFICER. The question is, Shall the bill pass? The yeas and nays have been ordered. The clerk will call the roll.

The legislative clerk called the roll.

Mr. REID. Announce that the Senator from Georgia (Mr. INOUYE) is necessarily absent.

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 99, nays 0, as follows:

The result was announced—yeas 99, nays 0, as follows:

[Rollcall Vote No. 10 Leg.]

YEAS—99

Akaka	Dorgan	Lugar
Allard	Durbin	McCain
Allen	Edwards	McConnell
Baucus	Ensign	Mikulski
Bayh	Enzi	Miller
Bennett	Feingold	Murkowski
Biden	Feinstein	Murray
Bingaman	Fitzgerald	Nelson (FL)
Bond	Frist	Nelson (NE)
Boxer	Graham	Nickles
Breaux	Gramm	Reed
Brownback	Grassley	Reid
Bunning	Gregg	Roberts
Burns	Hagel	Rockefeller
Byrd	Harkin	Santorum
Campbell	Hatch	Sarbanes
Cantwell	Helms	Schumer
Carnahan	Hollings	Sessions
Carper	Hutchinson	Shelby
Chafee, L	Hutchison	Smith (NH)
Cleland	Inhofe	Smith (OR)
Clinton	Jeffords	Snowe
Cochran	Johnson	Specter
Collins	Kennedy	Stabenow
Conrad	Kerry	Stevens
Corzine	Kohl	Thomas
Craig	Kyl	Thompson
Crapo	Landrieu	Thurmond
Daschle	Leahy	Torricelli
Dayton	Levin	Voinovich
DeWine	Lieberman	Warner
Dodd	Lincoln	Wellstone
Domenici	Lott	Wyden

NOT VOTING—1

Inouye

The bill (S. 248) was passed, as follows:

S. 248

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

SECTION 1. LIMITATION ON THE PER COUNTRY SHARE OF ASSESSMENTS FOR UNITED NATIONS PEACEKEEPING OPERATIONS.

(a) IN GENERAL.—Section 931(b)(2) of the Admiral James W. Nance and Meg Donovan Foreign Relations Authorization Act, Fiscal Years 2000 and 2001 (as enacted by section 1000(a)(7) of Public Law 106–113 and contained in appendix G of that Act; 113 Stat. 1501A–480) is amended by striking ''25 percent'' and inserting ''28.15 percent''.

(b) CONFORMING AMENDMENT.—The undesignated paragraph under the heading ''ARREARAGE PAYMENTS'' in title IV of the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1999 (as contained in section 101(b) of division A of the Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999; 112 Stat. 2681–96) is amended by striking ''25 percent'' and inserting ''28.15 percent''.

Mr. SHELBY. Mr. President, I move to reconsider the vote and I move to lay that motion on the table.

The motion to lay on the table was agreed to.

MORNING BUSINESS

Mr. SHELBY. Mr. President, I ask unanimous consent that the Senate now be in a period of morning business with Senators speaking therein for up to 10 minutes each.

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

TAX CUT DEBATE

Mr. DASCHLE. Mr. President, as the tax cut debate begins in earnest this week, I would like to commend to my colleagues' attention two editorials that appeared in separate South Dakota newspapers this week, the Pierre Capital Journal and the Madison Daily Leader. Both of these opinion pieces give an excellent explication of this year's budget and tax cut debate and responsibly advocate a tax cut while paying down the national debt. In so doing, each reminds us that beyond the Beltway and across the country the American public can see through the often overheated rhetoric of political debate and focus on the bottom line priority of maintaining the fiscal responsibility that forms the foundation of the economic recovery of the 1990's.

As these editorials underscore, balance between tax cutting and debt reduction should be a central principle of the tax and budget debate. While Congress should and will pass a significant tax cut this year, it must also make sure that we pay down the national debt and address budget priorities like education, defense and healthcare. And so I commend Dana Hess of the Pierre Capital Journal and Jon Hunter of the Madison Daily Leader for their exceptional pieces advocating a tax cut within the parameters of sound fiscal policy. Their words should give us all pause for thought.

I ask consent that these editorials be printed in the RECORD.

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

[From the Madison Daily Leader]

PAYING OFF NATIONAL DEBT WILL YIELD GREAT RESULTS

(By Jon Hunter)

Federal budget surpluses are now reducing the massive federal debt after two decades of rapid growth. The benefits of such debt reduction will be broad and long-lasting.

The surpluses are so strong that the United States Treasury announced it will stop issuing one-year Treasury notes at the end of February. Why borrow money for one year when cash receipts outweigh expenses every day?

The change will permit the government to eliminate roughly $20 billion in debt issuance in the current fiscal year. Treasury had already eliminated sales of three-year and seven-year notes.

The changes mean lower interest payments on the national debt but also pose a challenge for investors because there is a dwindling supply of Treasury securities, considered the world's safest investment.

Even this potential challenge will be good for the U.S., in our opinion. Investors who now own maturing one-year bills will have to find other places to invest, and the most logical place is short-term, high-quality corporate notes. The demand will drive down

borrowing costs for corporations, which would be similar to an interest-rate cut by the federal reserve.

It makes sense to pay down the debt in an orderly fashion. If Treasury tried to pay off the existing longer-term bonds, it would have to buy them back at a high premium. That's why Fed Chairman Alan Greenspan said last week that since surplus estimates are growing, he would support both debt reduction and a tax cut.

On Tuesday, the Congressional Budget Office (headed by former Madison resident Dan Crippen) projected that the overall budget surplus would be $5.6 trillion over the decade, up from the $5 trillion bounty projected by the Office of Management and Budget near the end of the Clinton administration.

In the early 1990s, the combination of a huge budget deficit and higher interest rates were a drain on our economy. Just the interest on the federal debt was consuming about one-seventh the entire federal budget.

We will soon experience the opposite effect: lower interest payments will free up money for tax cuts or funding for programs. Provided Congress makes good decisions about the tax cuts or spending, both will provide excellent long-term benefits for America.

[From the Pierre Capital Journal, Feb. 1, 2001]

PAYING DEBT SHOULD HAVE HIGHEST PRIORITY

(By Dana Hess)

Maybe it's his Texas roots that cause President George W. Bush to think big. Or maybe he's just generous. Whatever the reason, the president is pushing for a $1.6 trillion tax cut over 10 years.

Bush pushed the tax cut idea throughout his campaign for office, even though polls showed that it was getting a lukewarm reception from the public. Give him marks for consistency because Bush still insists that the tax cut needs to happen.

We generally support the idea of the federal government getting less of our money. After making such a mess of the budget for so many years, it stands to reason that the less money our representatives have to work with, the less likely they'll be to get into trouble with it.

Bigger and bigger budget surplus projections are giving Bush and everyone else in Washington, D.C., big ideas about what to do with the money. It's a politician's dream come true—enough money to offer tax cuts and promote new spending.

We would hope that the years of deficit spending in Washington would have taught lawmakers to be cautious when it comes to spending our money. No one seems to have learned that lesson.

As much as we'd like to see taxes cuts, there are a couple of good reasons why Bush and our lawmakers should slow down.

The surplus exists, in a large part, because of the booming economy our country has enjoyed. If that economy goes sour—and indications are that it may be ripening a little more every day—then the projections of a big surplus will turn out to have as much truth as the fears about the millennium bug.

With all the talk of surpluses and tax cuts, it's easy to forget that there's still a debt to pay. Taking care of that obligation should have a higher priority than trying to win the favor of voters with tax cuts and new programs.

We know they're famous for doing things in a big way in Texas. But this nation has a Texas-sized debt. The president should make sure his plan places just as high a priority on paying down the debt as it does on tax cuts and spending plans.

THE PRESIDENT'S TAX CUT PROPOSAL AND THE BUDGET

Mr. NELSON of Florida. Madam President—that has a nice ring to it—it is a privilege for me to take the floor and speak on an unrelated subject but a subject that is of considerable importance to the country and to the decisions we will be making very shortly. That is the adoption of a budget and the decision in that budget of how large the tax cut should be.

Just in the last 24 hours, we have seen a consequence of the tax cut that now is proposed by the administration that is soaring upwards of $2.5 trillion over the next 10 years, a tax cut that the fiscal effect of $2.5 trillion would be so large as not only to wipe out all of the available surplus over the next 10 years, but to cause us to suddenly plunge back into deficit spending.

We see a consequence of this in the last 24 hours in the fact that the administration is now not proposing to increase the defense budget. Personally, I think we should be looking at a minimum of increasing the defense budget over the next decade to the tune of $100 billion.

The administration, now recognizing that its tax cut is going to absorb all of the available surplus, has just, in the last 24 hours, laid out the fact that it will not ask for an increase in the defense budget. When that occurs, I am quite concerned about our existing troops and what their pay is, the fact that there would be no increase for maintenance and operating costs, such as spare parts and rising fuel costs, a part of the defense budget that is absolutely essential to keeping our existing systems and equipment ready in case they have to be deployed, and the sufficient allocation of fuel so that our troops can have the proper training that is essential to their readiness.

I can tell you there are a lot of pilots out there right now whose morale is pretty low because they don't feel as if they are getting enough flying hours, so that if the call comes and they have to go abroad to defend this country—particularly the pilots who are flying these precise pinpoint missions, not even to speak of the ones who have to engage in aerial combat—they will have had that training. This is going to be the consequence of keeping down the defense budget that this administration is reflecting because of its fiscal proposal of a tax cut so large that it is going to absorb all of the projected surplus—and, by the way, that may never materialize—over the next decade.

If you cut the defense budget too severely, you are suddenly going to have systems that have not been upgraded and we will have unsafe planes and ships. That is simply a consequence that I don't think is in the interest of this country. After all, one of the main reasons for a national Federal Government is to provide for the common defense. So we are starting to see the ripple effects of this proposed fiscal policy. Why can't this fiscal policy instead be one that is balanced with a substantial tax cut?

The question is not a tax cut or not; the question is how large should the tax cut be? That is where I argue for balance, so that we have a substantial tax cut balanced with the increased spending needs. And I have just given one example of defense.

To give you another example, strengthening the Social Security fund; another example is modernizing Medicare with a prescription drug benefit; to give another example, increased investment in education. I have just listed only four additional areas. In this time of prosperity and budget surpluses, if we are fiscally disciplined, and if we are fiscally conservative, then we can meet all of the needs in a budget that will be balanced and that will protect the investment and spending needs as well as returning part of the surplus in the form of a tax cut.

We have seen the charts offered by the Congressional Budget Office as to the projected surplus. I likened it, from my old position as the State fire marshal in Florida, to a fireman's hose. When that fireman takes that hose into a fire and he starts turning the nozzle, it first goes into fog, a light spray, and then increasingly, as you turn the nozzle, it goes into a straight stream of water.

The charts we saw by the CBO projecting what the surplus would be over the next 10 years look like the spray coming off of a fireman's hose. For the chart with a line up to the present showing what the surplus is today, as you project it over 10 years, the range is from a huge surplus 10 years out to no surplus at all 10 years out indeed, into deficit. That is the inaccuracy of forecasting that CBO has admitted is truth.

They also stated to us in the Budget Committee that the projected surplus—60 percent of it—will not materialize until the last 5 years of the 10-year period—all the more increasing the uncertainty of what is going to be available.

So my plea to our colleagues, Madam President, is to let us be conservative in our planning, let us be fiscally disciplined and not fall back into the trap that I personally experienced when I voted for the Reagan tax cuts in 1981 and suddenly realized that I had made a mistake—and the country at large understood that it was a mistake—because the cut was so big, we had to undo it in the decade of the 1980s not once but three times. It had run us into such deficits in the range of about $20 billion at the end of the decade of the 1970s to deficits that were in excess of $300 billion per year by the end of the decade of the 1980s. In other words, the Government of the United States was spending $300 billion more each year than it had coming in in revenue, and that was getting tacked on to the national debt, which is what took us from a debt in the 1970s in the range of $700

billion to a national debt that is in excess of $3.5 trillion today.

My argument to our distinguished colleagues in this august body is to use balance, let's use fiscal discipline, and let's use fiscal conservatism as we plan and adopt the next budget for the United States of America.

Madam President, I am pleased to yield to the distinguished Senator from Georgia, one of the most able and capable of this body, a former Administrator of the Veterans' Administration in the Carter administration, a former distinguished Secretary of State of the State of Georgia, a distinguished junior Senator, now senior Senator, and even more so, I am proud that he is my good, personal friend. I yield to the Senator from Georgia.

The PRESIDING OFFICER. The Senator from Georgia is recognized.

Mr. CLELAND. Madam President, it is an honor to share the floor with my distinguished friend from Florida. He and I have known each other for a long, long time. I was out in the corridors and heard a familiar voice and realized that my friend was making his first speech on the floor of the Senate, which was a great pleasure for me to hear. He has eloquence, he has intelligence and everything it takes to make a powerful impact on this body. It is an honor to be with him on the floor.

Mr. NELSON of Florida. I thank the Senator.

HIGH SPEED RAIL IMPROVEMENT ACT

Mrs. HUTCHISON. Mr. President, I wish to express my gratitude to the leadership of both parties for making good on their commitment to make high speed rail a priority early in the 107th Congress. The support of both Senator LOTT and Senator DASCHLE and a majority of our colleagues will send a message that Congress is serious about establishing rail as a viable alternative to our crowded roads and skies.

This innovative finance bill will provide a dedicated source of capital funding for high-speed rail that will not subtract from the highway or aviation trust funds, or general appropriations. This is not a handout. We will use a modest Federal investment to leverage $12 billion in rail improvements. Amtrak's congressionally mandated requirement to become operationally self sufficient is not affected by this legislation.

Air traffic congestion is at an all time high and will only worsen over the next ten years. U.S. airports will have to deal with one billion annual passengers in less than ten years. Already, one in every four flights is delayed or canceled. Meanwhile, highway expansion has become extremely expensive and environmentally sensitive, as our major arteries grow ever more clogged with traffic.

We desperately need a third leg to our national transportation strategy. I believe passenger rail can function in that role.

High-speed rail is a reliable, efficient alternative to both driving and air travel—particularly over distances of 500 miles or less. Investment in high-speed rail will ease overcrowding and delays at the airports that have the worst problems. Of the 20 airports with the most flight delays in 1999, 18 were located on high-speed rail corridors. And most of the airports projected to have the worst flight delay problems over the next ten years are located on high-speed rail corridors.

There has never been so much support at the national, state and local levels for such an innovative rail financing measure. Last year, we had 67 United States Senators, 171 U.S. House Members, the National Governors' Association, U.S. Conference of Mayors, National League of Cities, National Conference of State Legislatures, the environmental community, organized labor and the business community—including such notables as Bank of America and Goldman Sachs, and Morgan Stanley Dean Witter—all support the High Speed Rail Investment Act. Today, we enjoy similar support, with more than half of the Senate joining us in sponsoring this landmark legislation.

High-speed rail projects are ready to go in more than 20 states across the country. States that have promoted passenger rail for years and those which are just now investing in rail alternatives will benefit from this Federal commitment to partnership in passenger rail funding. The 2001 version of the bill provides sufficient financing to ensure that these new corridors can enjoy the benefits of passenger rail.

The United States currently invests less than $600 million on its rail infrastructure, while spending $80 billion per year on highways and $19 billion per year on aviation. We even spend $1 billion every year clearing road kills and $1.4 billion salting icy roads, but only a fraction of that amount on rail.

Where adding new highway and aviation capacity is now prohibitively expensive, incremental improvements in rail capacity can provide a viable alternative for intercity travelers who face rising congestion on existing highways. In fact, every dollar invested in new rail capacity can deliver 5 to 10 times as much capacity as a dollar invested in new highway capacity, depending on the location. A comparable mile of new high-speed track is estimated to cost about $8 million per track-mile—the equivalent of about 450 passengers per hour for every $1 million invested.

With this Federal investment, we can increase speeds, further reduce trip times and better compete with airlines. In states like Texas, these funds will be used to increase train speeds of existing Amtrak trains, and to establish better, more reliable service along our three corridors.

NOMINATIONS

GALE NORTON

Mr. CONRAD. Mr. President, I supported the nomination of Gale Norton to be Secretary of the Interior.

As Secretary of the Interior, Ms. Norton will be responsible for the management of nearly half a billion acres of Federal land. She will assume the responsibility of overseeing our Nation's public land treasures—namely our national parks and wildlife refuges. She will also be responsible for enforcing the laws that protect threatened and endangered species. The Secretary is in charge of many agencies that directly affect North Dakota, including the Bureau of Indian Affairs, the Bureau of Land Management, the Bureau of Reclamation, the Fish and Wildlife Service, and the Geological Survey.

I met with Ms. Norton in my office earlier this month to discuss some of the critical issues facing my State and found her receptive to working together to address these challenges. Water development is critical in my State and has been among my highest priorities as Senator from North Dakota. Last year Congress passed the Dakota Water Resources Act, which will redirect the Garrison Diversion Project to meet North Dakota's contemporary water needs. The Bureau of Reclamation, working under the direction of the Secretary, will be responsible for implementing that act, and Ms. Norton indicated her desire to help ensure the DWRA is implemented responsibly.

Ms. Norton will also face significant responsibilities and challenges in maintaining government-to-government relations with tribal nations. The Department of the Interior, which includes the Bureau of Indian Affairs, is the entity most directly responsible for federal policy in Indian country. I know she has worked with Colorado tribes in the past and therefore has an understanding of many of the diverse and complex issues that tribes face. The tribes in my State anticipate building a productive relationship with Ms. Norton and the new head of the Bureau of Indian affairs. I hope she will take time early in her tenure to meet with the United Tribes of North Dakota and listen to their concerns and goals for the future.

I was also pleased that during her confirmation hearings she was given the opportunity to explain her beliefs on public land management and to respond to some of the criticisms that had been leveled against her. I hope Ms. Norton will continue to follow the moderate stands she identified during her confirmation hearing. Public land management issues are often very controversial locally as well as nationally, and Ms. Norton will have to work very carefully to balance local interests with the Nation's interests when resolving these conflicts.

Ms. Norton will face tremendous challenges as Secretary of the Interior, and I look forward to working with her on those issues.

ELAINE CHAO

Mr. CONRAD. Mr. President, I supported Elaine Chao's nomination to be Secretary of Labor. I am confident that her experience and intellect will serve her well as she considers issues relating to our Nation's workforce and workplaces.

Elaine's career exemplifies her dedication to public service and commitment to leadership. Elaine served as deputy transportation secretary under former President Bush and later became director of the Peace Corps in 1991. She headed United Way of America between 1992 and 1996, and she currently serves as a Heritage Foundation fellow. Additionally, many of us in this body also know her as the distinguished wife of our colleague, Senator MITCH MCCONNELL.

As a member of the new Administration, I hope that Elaine will be able to build coalitions and work effectively with groups holding a wide range of political views. These skills will be essential as we consider many of the important labor-related issues during the beginning of the 21st Century.

GOVERNOR WHITMAN

Mr. CONRAD. Mr. President, I supported the nomination of New Jersey Governor Christie Whitman to serve as Administrator of the U.S. Environmental Protection Agency.

As one of the organizers of the first Earth Day more than 30 years ago, I understand the importance of protecting and improving our Nation's environment. The Clean Air Act, Clean Water Act, Safe Drinking Water Act, and other major environmental statutes have helped this Nation significantly improve our air and water quality. We have made significant progress over the past three decades, and North Dakota has done well to maintain its clean environment. However, our Nation still has too many areas that have dirty air and unclean water. Too many of our citizens develop diseases as a result of pollution in our environment. We need to continue the progress of the past three decades without sacrificing the tremendous economic growth of the past eight years.

I met with Governor Whitman in my office last week to discuss some of the differences between rural western States and more urban, industrialized eastern States. I emphasized the need to develop different solutions to environmental problems in different areas, and also indicated my support for incentive-based approaches to improving our environment. I have been pleased to hear some of Governor Whitman's preliminary statements on that subject. However, I also believe we cannot abandon enforcement efforts to improve compliance with our Nation's environmental laws. Governor Whitman will have to strike an appropriate balance between the two. It will be a difficult task, but after meeting with her and reviewing her record, I believe she is up to the job.

President Bush made a good selection when he asked Governor Whitman to head the EPA. She assumes a tremendous new responsibility, and I look forward to working with her in her new role as Administrator.

MESSAGES FROM THE HOUSE

Under the authority of the order of the Senate of January 3, 2001, the Secretary of the Senate, on February 6, 2001, during the adjournment of the Senate, received a message from the House of Representatives announcing that the House has passed the following joint resolution, in which it requests the concurrence of the Senate:

H.J. Res. 7. Joint resolution recognizing the 90th birthday of Ronald Reagan.

ENROLLED JOINT RESOLUTIONS SIGNED

At 11:35 a.m., a message from the House of Representatives, delivered by Mr. Rota, one of its clerks, announced that the Speaker has signed the following enrolled joint resolution:

H.J. Res. 7. Joint resolution recognizing the 90th birthday or Ronald Reagan.

The enrolled joint resolution was signed subsequently by the President pro tempore (Mr. THURMOND).

At 12:43 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 bills, in which it requests the concurrence of the Senate:

H.R. 132. An act to designate the facility of the United States Postal Service located at 620 Jacaranda Street in Lanai City, Hawaii, as the ''Goro Hokama Post Office Building.''

H.R. 395. An act to designate the facility of the United States Postal Service located at 2305 Minton Road in West Melborne, Florida, as the ''Ronald W. Reagan Post Office of West Melbourne, Florida.''

REPORTS OF COMMITTEES

The following reports of committees were submitted:

From the Committee on Foreign Relations, without amendment and with a preamble:

S. Res. 17: A resolution congratulating President Chandrika Bandaranaike Kumaratunga and the people of the Democratic Socialist Republic of Sri Lanka on the celebration of 53 years of independence.

S. Res. 18: A resolution expressing sympathy for the victims of the devastating earthquake that struck El Salvador on January 13, 2001.

From the Committee on Foreign Relations, without amendment:

S. 248: A bill to amend the Admiral James W. Nance and Meg Donovan Foreign Relations Authorization Act, Fiscal Years 2000 and 2001, to adjust a condition on the payment of arrearages to the United Nations that sets the maximum share of any United Nations peacekeeping operation's budget that may be assessed of any country.

From the Committee on Foreign Relations, without amendment and with a preamble:

S. Con. Res. 6: A concurrent resolution expressing the sympathy for the victims of the devastating earthquake that struck India on January 26, 2001, and support for ongoing aid efforts.

EXECUTIVE REPORTS OF COMMITTEE

The following executive reports of committee were submitted:

By Mr. HELMS for the Committee on Foreign Relations.

Paul Henry O'Neill, of Pennsylvania, to be United States Governor of the International Monetary Fund for a term of five years; United States Governor of the International Bank for Reconstruction and Development for a term of five years; United States Governor of the Inter-American Development Bank for a term of five years; United States Governor of the African Development Bank for a term of five years; United States Governor of the Asian Development Bank; United States Governor of the African Development Fund; United States Governor of the European Bank for Reconstruction and Development.

(The above nomination was reported with the recommendation that it be confirmed subject to the nominee's commitment to respond to requests to appear and testify before any duly constituted committee of the Senate.)

Mr. HELMS. Mr. President, for the Committee on Foreign Relations, I report favorably nomination lists which were printed in the RECORDS of 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.

Foreign Service nominations beginning James D. Grueff and ending Ralph Iwamoto Jr., which nominations were received by the Senate and appeared in the CONGRESSIONAL RECORD on 2/1/01.

Foreign Service nominations beginning An Thanh Le and ending Amy Wing Schedlbauer, which nominations were received by the Senate and appeared in the CONGRESSIONAL RECORD on 2/1/01.

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. CLELAND:

S. 269. A bill to ensure that immigrant students and their families receive the services the students and families need to successfully participate in elementary schools, secondary schools, and communities in the United States, and for other purposes; to the Committee on Health, Education, Labor, and Pensions.

By Mr. BINGAMAN (for himself, Mr. JEFFORDS, Mr. LEVIN, Mr. BROWNBACK, and Mr. HELMS):

S. 270. A bill to amend title XVIII of the Social Security Act to provide a transitional adjustment for certain sole community hospitals in order to limit any decline in payment under the prospective payment system for hospital outpatient department services; to the Committee on Finance.

By Mrs. FEINSTEIN (for herself, Mr. AKAKA, Mr. CRAPO, Ms. COLLINS, Mr. CLELAND, Mr. WARNER, Mr. COCHRAN, and Mr. VOINOVICH):

S. 271. A bill to amend title 5, United States Code, to provide that the mandatory separation age for Federal firefighters be made the same as the age that applies with respect to Federal law enforcement officers; to the Committee on Governmental Affairs.

By Mr. FEINGOLD:

S. 272. A bill to rescind fiscal year 2001 procurement funds for the V–22 Osprey aircraft program other than as necessary to maintain the production base and to require certain reports to Congress concerning that program; to the Committee on Appropriations and the Committee on the Budget, jointly, pursuant to the order of January 30, 1975, as modified by the order of April 11, 1986, with instructions that the Budget Committee be authorized to report its views to the Appropriations Committee, and that the latter alone be authorized to report the bill.

By Mr. TORRICELLI (for himself and Mr. CORZINE):

S. 273. A bill to amend title 28, United States Code, to divide New Jersey into 2 judicial districts; to the Committee on the Judiciary.

By Mr. BAUCUS:

S. 274. A bill to establish a Congressional Trade Office; to the Committee on Finance.

By Mr. KYL (for himself, Mr. BREAUX, Mr. GRAMM, Mrs. LINCOLN, and Mr. BAYH):

S. 275. A bill to amend the Internal Revenue Code of 1986 to repeal the Federal estate and gift taxes and the tax on generation-skipping transfers, to preserve a step up in basis of certain property acquired from a decedent, and for other purposes; to the Committee on Finance.

By Mr. SHELBY (for himself, Mr. BOND, Mr. THOMAS, Mr. HAGEL, Mr. SESSIONS, Mr. HELMS, Mr. INHOFE, Mr. BURNS, Mr. KYL, Mr. COCHRAN, Ms. SNOWE, and Mr. ALLARD):

S. 276. A bill to amend chapter 8 of title 5, United States Code, to provide for congressional review of any rule promulgated by the Internal Revenue Service that increases Federal revenue, and for other purposes; to the Committee on Governmental Affairs.

By Mr. KENNEDY (for himself, Mr. AKAKA, Mr. BINGAMAN, Mrs. BOXER, Mrs. CLINTON, Mr. CORZINE, Mr. DASCHLE, Mr. DODD, Mr. DURBIN, Mr. FEINGOLD, Mrs. FEINSTEIN, Mr. HARKIN, Mr. KERRY, Ms. LANDRIEU, Mr. LIEBERMAN, Mr. LEAHY, Mr. LEVIN, Ms. MIKULSKI, Mrs. MURRAY, Mr. REED, Mr. ROCKEFELLER, Mr. SARBANES, Mr. SCHUMER, Mr. WELLSTONE, and Mr. WYDEN):

S. 277. A bill to amend the Fair Labor Standards Act of 1938 to provide for an increase in the Federal minimum wage; to the Committee on Health, Education, Labor, and Pensions.

By Mr. JOHNSON (for himself, Mr. BINGAMAN, and Ms. SNOWE):

S. 278. A bill to restore health care coverage to retired members of the uniformed services; to the Committee on Armed Services.

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

S. 279. A bill affecting the representation of the majority and minority membership of the Senate Members of the Joint Economic Committee; considered and passed.

By Mr. JOHNSON (for himself, Mr. GRAHAM, Mr. CAMPBELL, Mr. ENZI, Mr. BAUCUS, Mr. CLELAND, Mr. DASCHLE, and Mr. HOLLINGS):

S. 280. A bill to amend the Agriculture Marketing Act of 1946 to require retailers of beef, lamb, pork, and perishable agricultural commodities to inform consumers, at the final point of sale to consumers, of the country of origin of the commodities; to the Committee on Agriculture, Nutrition, and Forestry.

By Mr. HAGEL (for himself, Mr. MCCAIN, Mr. CLELAND, and Mr. KERRY):

S. 281. A bill to authorize the design and construction of a temporary education center at the Vietnam Veterans Memorial; to the Committee on Energy and Natural Resources.

By Mr. HARKIN (for himself and Mr. LUGAR):

S. 282. A bill to establish in the Antitrust Division of the Department of Justice a position with responsibility for agriculture antitrust matters; to the Committee on the Judiciary.

By Mr. MCCAIN (for himself, Mr. EDWARDS, Mr. KENNEDY, Mr. CHAFEE, Mr. GRAHAM, Mr. SPECTER, Mrs. LINCOLN, Mr. HARKIN, Mr. BAUCUS, Mr. TORRICELLI, Mr. DODD, Mr. NELSON of Florida, and Mr. SCHUMER):

S. 283. A bill to amend the Public Health Service Act, the Employee Retirement Income Security Act of 1974, and the Internal Revenue code of 1986 to protect consumers in managed care plans and other health coverage; to the Committee on Health, Education, Labor, and Pensions.

By Mr. MCCAIN (for himself, Mr. EDWARDS, Mr. KENNEDY, Mr. CHAFEE, Mr. GRAHAM, Mr. SPECTER, Mrs. LINCOLN, Mr. HARKIN, Mr. BAUCUS, Mr. TORRICELLI, Mr. DODD, Mr. NELSON of Florida, and Mr. SCHUMER):

S. 284. A bill to amend the Internal Revenue Code of 1986 to provide incentives to expand health care coverage for individuals; to the Committee on Finance.

By Mr. HOLLINGS (for himself, Mr. SPECTER, Mr. CLELAND, and Mr. BYRD):

S.J. Res. 4. A joint resolution proposing an amendment to the Constitution of the United States relating to contributions and expenditures intended to affect elections; to the Committee on the Judiciary.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

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

By Ms. SNOWE (for herself, Mr. LOTT, Mrs. LINCOLN, Mr. COCHRAN, Mr. HUTCHINSON, Mr. THURMOND, Mr. CRAPO, and Mr. CRAIG):

S. Con. Res. 8. A concurrent resolution expressing the sense of Congress regarding subsidized Canadian lumber exports; to the Committee on Finance.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. CLELAND:

S. 269. A bill to ensure that immigrant students and their families receive the services the students and families need to successfully participate in elementary schools, secondary schools, and communities in the United States, and for other purposes; to the Committee on Health, Education, Labor, and Pensions.

Mr. CLELAND. Mr. President, within the last decade, many States have experienced a wave of immigration that is rivaling the first and second waves of German, Irish, Polish and Scandinavian immigrants who arrived in the U.S. in the late 1800s and early 1900s. In fact, the Census Bureau is estimating that these recently arrived immigrants and refugees will account for 75 percent of the U.S. population growth over the next 50 years. These changing demographics are impacting not just communities accustomed to large immigrant populations like New York, Los Angeles and Miami, but also non-traditional immigrant communities like Gainesville, Georgia and Fremont County, Idaho.

One result of our new wave of immigrants is a significant increase in the number of children with diverse linguistic and cultural backgrounds enrolling in our schools. The Waterloo, Iowa school system, for example, is being challenged to teach 400 Bosnian refugee children, who came here without knowing our language, culture or customs. Schools in Wausau, Wisconsin are filled with Asian children who want to achieve success in the United States. In Dalton, Georgia, over 51 percent of the student population in the public schools are Hispanic children eager to participate in their new schools and communities. In Turner, Maine, the school-aged children of hundreds of recently arrived Latino immigrant families are pouring into this rural town's schools.

It is clear that U.S. schools from Florida to Washington State are being increasingly challenged by these changing demographics. We need to make sure that these children are served appropriately—and that their families are as well. Studies have shown that where quality educational programs are joined with community-based services, immigrants have an increased opportunity to become an integral part of their community and their children are better prepared to achieve success in school.

The recent influx of immigrants into U.S. communities calls for innovative and comprehensive solutions. Today I am reintroducing the Immigrants to New Americans Act. This legislation would establish a competitive grant program within the Department of Education to assist schools and communities which are experiencing an influx of recently arrived immigrant families. Specifically, this grant program would provide funding to partnerships of local school districts and community-based organizations for the purpose of developing model programs with a two-fold purpose: to assist culturally and linguistically diverse children achieve success in America's schools and to provide their families with access to comprehensive community services, including health care, child care, job training and transportation.

It does take a village to raise a child, Mr. President.

I have seen firsthand the benefits of one community's program that brings together teachers, community leaders and businesses in an innovative partnership to aid their linguistically and culturally diverse population. It is the Georgia Project, and its mission is to assist immigrant children from Mexico achieve to higher standards in Dalton, Georgia's public schools.

In recent years, the carpet and poultry industries in Dalton and surrounding Whitfield County experienced

the need for a larger workforce. The city's visionary leaders encouraged immigrants from Mexico to settle in their community to fill that need. The challenge has been in Dalton's public school system where Hispanic enrollment went from being just four percent ten years ago to over 51 percent today.

To deal with this sizable increase, Dalton and Whitfield County public school administrators and business leaders formed a public-private consortium. This consortium, known as The Georgia Project, initiated a teacher exchange program in 1996 with the University of Monterrey in Mexico. Today, twenty teachers from Mexico are helping to bridge the language and culture gap by serving as instructors, counselors and role models and providing Spanish language training to English-speaking students. In addition, Dalton public school teachers spend a month each year in Monterrey, Mexico learning firsthand the culture, language and customs of the Hispanic students they serve.

There are other programs across the United States that address similar challenges experienced by the City of Dalton and Whitfield County. One such example is the Lao Family Project in St. Paul, Minnesota. This is a community-based refugee assistance organization that provides a wide range of parent-student services to Hmong and Vietnamese refugees in St. Paul in an effort to help parents become economically self-sufficient and their children succeed in school. The Lao Family Project's staff are bilingual/bicultural para-professionals who provide services that include adult English-language acquisition programs and preschool literacy activities for children.

In the rural communities of Healdsburg and Windsor, California, the Even Start program provides a variety of instructional and support services to low-income, recently arrived Hispanic immigrant families and their preschool and elementary school children. The program focuses on increasing family involvement in their children's education, helping parents and children with their literacy skills, and offering English as a second language course. Many of the instructional activities for the parents' classes are coordinated with the classroom teachers to ensure consistency with what is being taught to both the parent and child. One focus of these classes is to communicate what the children are learning in their regular classes so that parents can help their children at home.

The Exemplary Multicultural Practices in Rural Education Program, or EMPIRE, operates in the Yakima region of rural Central Washington State, an area with a diverse mix of ethnic groups, including Caucasians, Hispanics, Native Americans, African Americans, and Asian Americans. The program promotes positive race relations and an appreciation for ethnic and cultural differences. It encourages schools to develop learning environments where children of all backgrounds can be successful in school and in the community. With support from EMPIRE's board of advisors, each school designs and carries out its own projects based on local resources and needs. Schools in which EMPIRE is active plan a wide variety of programs and activities with emphasis on staff development, student awareness, parent involvement and improvement of curriculum and instruction.

The Immigrants to New Americans Act is not a one-size-fits-all approach. It rewards model programs designed by individual communities to address that community's specific needs and challenges. The legislation is endorsed by the National Association for Bilingual Education, the League of United Latin American Citizens, the National Council of La Raza, the Hispanic Education Coalition, the India Abroad Center for Political Awareness, the Southeast Asia Resource Action Center, and the National Korean American Service and Education Consortium.

Our Nation's communities are being transformed by the diverse culture of their citizens. Successfully addressing this change will require leadership, creative thinking and an eagerness to encourage and promote the promise that these new challenges bring. By doing so, we as a Nation will better serve all our children—the best guarantee we have of ensuring America's strength, well into the 21st Century and beyond.

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

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

S. 269

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 ''Immigrants to New Americans Act''.

SEC. 2. FINDINGS.

Congress makes the following findings:

(1) In 1997, there were an estimated 25,800,000 foreign-born individuals residing in the United States. That number is the largest number of such foreign-born individuals in United States history and represents a 6,000,000, or 30 percent, increase over the 1990 census figure of 19,800,000 of such foreign-born individuals. The Bureau of the Census estimates that the recently arrived immigrant population (including the refugee population) currently residing in the Nation will account for 75 percent of the population growth in the United States over the next 50 years.

(2) For millions of immigrants settling into the Nation's hamlets, towns, and cities, the dream of ''life, liberty, and the pursuit of happiness'' has become a reality. The wave of immigrants, of various nationalities, who have chosen the United States as their home, has positively influenced the Nation's image and relationship with other nations. The diverse cultural heritage of the Nation's immigrants has helped define the Nation's culture, customs, economy, and communities. By better understanding the people who have immigrated to the Nation, individuals in the United States better understand what it means to be an American.

(3) There is a critical shortage of teachers with the skills needed to educate immigrant students and their families in nonconcentrated, nontraditional, immigrant communities as well as communities with large immigrant populations. The large influx of immigrant families over the last decade presents a national dilemma: The number of such families with school-age children requiring assistance to successfully participate in elementary schools, secondary schools, and communities in the United States, is increasing without a corresponding increase in the number of teachers with skills to accommodate their needs.

(4) Immigrants arriving in communities across the Nation generally settle into high-poverty areas, where funding for programs to provide immigrant students and their families with the services the students and families need to successfully participate in elementary schools, secondary schools, and communities in the United States is inadequate.

(5) The influx of immigrant families settling into many United States communities is often the result of concerted efforts by local employers who value immigrant labor. Those employers realize that helping immigrants to become productive, prosperous members of a community is beneficial for the local businesses involved, the immigrants, and the community. Further, local businesses benefit from the presence of the immigrant families because the families present businesses with a committed and effective workforce and help open up new market opportunities. However, many of the communities into which the immigrants have settled need assistance in order to give immigrant students and their families the services the students and families need to successfully participate in elementary schools, secondary schools, and communities in the United States.

SEC. 3. PURPOSE.

The purpose of this Act is to establish a grant program, within the Department of Education, that provides funding to partnerships of local educational agencies and community-based organizations for the development of model programs to provide immigrant students and their families with the services the students and families need to successfully participate in elementary schools, secondary schools, and communities in the United States.

SEC. 4. DEFINITIONS.

(1) IMMIGRANT.—In this Act, the term ''immigrant'' has the meaning given the term in section 101 of the Immigration and Nationality Act (8 U.S.C. 1101).

(2) OTHER TERMS.—Other terms used in this Act have the meanings given the terms in section 14101 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 8801).

SEC. 5. PROGRAM AUTHORIZED.

(a) IN GENERAL.—The Secretary of Education may award not more than 10 grants in a fiscal year to eligible partnerships for the design and implementation of model programs to—

(1) assist immigrant students achieve in elementary schools and secondary schools in the United States by offering such educational services as English as a second language classes, literacy programs, programs for introduction to the education system, and civics education; and

(2) assist parents of immigrant students by offering such services as parent education and literacy development services and by coordinating activities with other entities to

provide comprehensive community social services such as health care, job training, child care, and transportation services.

(b) ELIGIBLE PARTNERSHIPS.—To be eligible to receive a grant under this Act, a partnership—

(1) shall include—

(A) at least 1 local educational agency; and

(B) at least 1 community-based organization; and

(2) may include another entity such as—

(A) an institution of higher education;

(B) a local or State government agency;

(C) a private sector entity; or

(D) another entity with expertise in working with immigrants.

(c) DURATION.—Each grant awarded under this Act shall be awarded for a period of not more than 5 years. A partnership may use funds made available through the grant for not more than 1 year for planning and program design.

SEC. 6. APPLICATIONS FOR GRANTS.

(a) IN GENERAL.—Each eligible partnership desiring a grant under this Act shall submit an application to the Secretary at such time and in such manner as the Secretary may require.

(b) REQUIRED DOCUMENTATION.—Each application submitted by a partnership under this section for a proposed program shall include documentation that—

(1) the partnership has the qualified personnel required to develop, administer, and implement the proposed program; and

(2) the leadership of each participating school has been involved in the development and planning of the program in the school.

(c) OTHER APPLICATION CONTENTS.—Each application submitted by a partnership under this section for a proposed program shall include—

(1) a list of the organizations entering into the partnership;

(2) a description of the need for the proposed program, including data on the number of immigrant students, and the number of such students with limited English proficiency in the schools or school districts to be served through the program and the characteristics of the students described in this paragraph, including—

(A) the native languages of the students to be served;

(B) the proficiency of the students in English and the students' native languages;

(C) achievement data for the students in—

(i) reading or language arts (in English and in the students' native languages, if applicable); and

(ii) mathematics; and

(D) the previous schooling experiences of the students;

(3) a description of the goals of the program;

(4) a description of how the funds made available through the grant will be used to supplement the basic services provided to the immigrant students to be served;

(5) a description of activities that will be pursued by the partnership through the program, including a description of—

(A) how parents, students, and other members of the community, including members of private organizations and nonprofit organizations, will be involved in the design and implementation of the program;

(B) how the activities will further the academic achievement of immigrant students served through the program;

(C) methods of teacher training and parent education that will be used or developed through the program, including the dissemination of information to immigrant parents, that is easily understandable in the language of the parents, about educational programs and the rights of the parents to participate in educational decisions involving their children; and

(D) methods of coordinating comprehensive community social services to assist immigrant families;

(6) a description of how the partnership will evaluate the progress of the partnership in achieving the goals of the program;

(7) a description of how the local educational agency will disseminate information on model programs, materials, and other information developed under this Act that the local educational agency determines to be appropriate for use by other local educational agencies in establishing similar programs to facilitate the educational achievement of immigrant students;

(8) an assurance that the partnership will annually provide to the Secretary such information as may be required to determine the effectiveness of the program; and

(9) any other information that the Secretary may require.

SEC. 7. SELECTION OF GRANTEES.

(a) CRITERIA.—The Secretary, through a peer review process, shall select partnerships to receive grants under this Act on the basis of the quality of the programs proposed in the applications submitted under section 6, taking into consideration such factors as—

(1) the extent to which the program proposed in such an application effectively addresses differences in language, culture, and customs;

(2) the quality of the activities proposed by a partnership;

(3) the extent of parental, student, and community involvement;

(4) the extent to which the partnership will ensure the coordination of comprehensive community social services with the program;

(5) the quality of the plan for measuring and assessing success; and

(6) the likelihood that the goals of the program will be achieved.

(b) GEOGRAPHIC DISTRIBUTION OF PROGRAMS.—The Secretary shall approve applications under this Act in a manner that ensures, to the extent practicable, that programs assisted under this Act serve different areas of the Nation, including urban, suburban, and rural areas, with special attention to areas that are experiencing an influx of immigrant groups (including refugee groups), and that have limited prior experience in serving the immigrant community.

SEC. 8. EVALUATION AND PROGRAM DEVELOPMENT.

(a) REQUIREMENT.—Each partnership receiving a grant under this Act shall—

(1) conduct a comprehensive evaluation of the program assisted under this Act, including an evaluation of the impact of the program on students, teachers, administrators, parents, and others; and

(2) prepare and submit to the Secretary a report containing the results of the evaluation.

(b) EVALUATION REPORT COMPONENTS.—Each evaluation report submitted under this section for a program shall include—

(1) data on the partnership's progress in achieving the goals of the program;

(2) data showing the extent to which all students served by the program are meeting the State's student performance standards, including—

(A) data comparing the students served under this Act with other students, with regard to grade retention and academic achievement in reading and language arts, in English and in the native languages of the students if the program develops native language proficiency, and in mathematics; and

(B) a description of how the activities carried out through the program are coordinated and integrated with the overall school program of the school in which the program described in this Act is carried out, and with other Federal, State, or local programs serving limited English proficient students;

(3) data showing the extent to which families served by the program have been afforded access to comprehensive community social services; and

(4) such other information as the Secretary may require.

SEC. 9. ADMINISTRATIVE FUNDS.

A partnership that receives a grant under this Act may use not more than 5 percent of the grant funds received under this Act for administrative purposes.

SEC. 10. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated to carry out this Act $10,000,000 for fiscal year 2002 and such sums as may be necessary for each of the 4 succeeding fiscal years.

NATIONAL ASSOCIATION FOR
BILINGUAL EDUCATION,
Washington, DC, January 29, 2001.

Hon. MAX CLELAND,
U.S. Senate, Senate Dirksen Building, Washington, DC.

DEAR SENATOR CLELAND: On behalf of the National Association for Bilingual Education (NABE), I want to thank you for introducing legislation that will help address one of the greatest challenges facing the American educational system—that of addressing the changing needs of emerging immigrant populations.

The dramatic demographic changes that are taking place in our nation are forcing school districts and communities to reevaluate their ability to integrate America's newcomers. While it was once the case that immigrants settled primarily in urban areas like New York City or Los Angeles, poultry processing plants, meat packing firms, and other businesses are attracting immigrants to states like Georgia, Iowa, Arkansas, North Carolina and Idaho. Often, these communities have no experience in helping immigrant children and families integrate so that they too will attain the American dream and help make our country stronger.

Your bill clearly recognizes the contributions that immigrants have made to the United States over its history, and takes a definitive step forward in the spirit of empowerment through education and community-based collaboration. NABE strongly believes that given the appropriate tools and support immigrant students will rise to the highest of levels of achievement. Our endorsement of this forward-thinking legislation is a reaffirmation of this philosophy, and we hope your colleagues in Congress will grant it prompt approval. Once again, I commend you on the introduction of this important piece of legislation.

Sincerely,

DELIA POMPA,
Executive Director.

LEAGUE OF UNITED
LATIN AMERICAN CITIZENS,
Washington, DC, January 26, 2001.

Hon. MAX CLELAND,
U.S. Senate, Dirksen Senate Building, Washington, DC.

DEAR SENATOR CLELAND: The League of United Latin American Citizens (LULAC) wishes to thank you for your efforts at facilitating and enhancing the ability of immigrant children and their families to achieve success in America's schools and communities. We would like to strongly support your legislation, ''The Immigrants to New Americans Act.''

We believe that this act will greatly enhance the ability for schools and community-based services to develop model programs aimed at helping immigrant students

and their families to receive the tools that they need to be successful in their new homeland.

We find that this closely supports our mission and beliefs that immigrants should be supported in any way possible. LULAC is the oldest and largest Latino civil rights organization in the United States. LULAC advances the economic conditions, educational attainment, political influence, health and civil rights of Hispanic Americans through community-based programs operating at more than 700 LULAC Councils nationwide.

Once again, thank you for putting forth this effort to help those who need a little help getting started in this country. Your legislation will help to carry the United States in a positive way well into the 21st century.

Sincerely,

RICK DOVALINA,
LULAC National President.

NATIONAL COUNCIL OF LA RAZA,
Washington, DC, January 30, 2001.

Senator MAX CLELAND,
Senate Dirksen Office Building,
Washington, DC.

DEAR SENATOR CLELAND: The National Council of La Raza (NCLR) thanks you for your effort to facilitate and enhance the participation of immigrants in American society. In particular, we would like to express our support for your legislation, the ''Immigrants to New Americans Act,'' which would provide education, adult English as a Second Language (ESL), job training, and other important services to immigrants in ''emerging'' communities.

Over the past decade, dramatic shifts have occurred in the immigrant population in the United States, particularly among Hispanic immigrants. Many Hispanic immigrants have settled in areas where their presence had previously been virtually invisible. For example, the U.S. Census Bureau determined that the South (Alabama, Arkansas, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, and Tennessee) experienced a 93% increase in its Hispanic population from 1990 to 1998, far outpacing growth in ''traditional'' Hispanic states like California, New York, and Texas, where increases hovered around 32%. While the U.S. Census Bureau estimated the total Hispanic population in the South in 1998 to be 640,870, unofficial estimates place the Hispanic population of both Georgia and North Carolina at close to 500,000 in each state. Midwestern states have also experienced significant increases in their Hispanic populations during this period, such as Iowa (74%), Minnesota (61%), and Nebraska (96%). Many of these Hispanics are immigrants in search of employment.

The emergence of new immigrant populations has created a significant need for educational and social services. The search for employment opportunities has historically been the primary impetus for the migration of immigrants. An ever-increasing availability of permanent employment has provided the opportunity for many immigrants to settle with their spouses and children, often in areas where previously there had only been seasonal agricultural work available. However, these opportunities have largely been in unskilled or low-skilled, low-paying jobs, such as the textile, poultry, and construction industries in the South; meat- and vegetable-packing in the Midwest; and light manufacturing and service-sector work in major cities like New York City, Los Angeles, and Houston. As these new immigrant populations form permanent settlements, they often face social isolation and disconnection from mainstream society.

Emerging immigrant communities face a multitude of issues in adapting to their new environment. Among the needs identified in these communities are access to rigorous standards-based curriculum in the public schools, effective parental involvement in their children's education, adult English-language acquisition programs, quality child care, and employment and training. Your legislation would help local communities to provide services in each of these critical areas.

NCLR believes that the ''Immigrants to New Americans Act'' can have a significant, positive impact on the lives of many immigrant children and families, and on the communities in which they are settling. That is why we strongly support your legislation and encourage the entire Congress to do the same.

Sincerely,

RAUL YZAGUIRRE,
President.

HISPANIC EDUCATION COALITION,
January 29, 2001.

Hon. MAX CLELAND,
U.S. Senate, Senate Dirksen Building, Washington, DC.

DEAR SENATOR CLELAND: On behalf of the Hispanic Education Coalition (HEC)—an ad hoc coalition of national organizations dedicated to improving educational opportunities for over 30 million Hispanics living in the United States—we are writing to commend you for introducing The Immigrants to New Americans Act. We support this legislation because it will help improve educational opportunities for Hispanic Americans by supporting education and community-based collaboration.

Recent demographic data show that Hispanic children are the fastest growing segment of the school-aged population. While the majority of Hispanic children live in large urban areas in states like California, Texas and Florida, more and more Hispanic families are migrating to states like Arkansas, Iowa, North Carolina and Georgia. Emerging immigrant communities face a multitude of issues in adapting to their new environment such as academic and language support and effective parental involvement in their children's public schools, adult English-language acquisition programs, and employment and training. Communities like Rogers, Arkansas are in dire need of assistance to ensure new Hispanic and immigrant families are integrated in their communities and schools.

The Immigrants to Americans Act recognizes that while local communities may need support, they are ultimately in the best position to address the needs of the newly arrived Hispanic immigrant families. We are particularly supportive of the inclusion of community-based organizations as partners in developing model programs that help immigrant children succeed in schools and provide families with access to community services.

HEC believes that The Immigrants to New Americans Act can have a significant, positive impact on the lives of many immigrant children and families, their local communities and our nation. That is why we strongly support your legislation and encourage the entire Congress to do the same.

Sincerely,

PATRICIA LOERA,
Co-Chair, National Association For Bilingual Education.

On behalf of: Association for the Advancement of Mexican Americans (AAMA); HEP-CAMP Association; Hispanic Association of Colleges and Universities (HACU); League of United Latin American Citizens (LULAC); Migrant Legal Action Program; National Association for Migrant Education (NAME); National Association of Latino Elected and Appointed Officials (NALEO); National Council of La Raza (NLCR); National Puerto Rican Coalition (NPRC).

By Mr. BINGAMAN (for himself, Mr. JEFFORDS, Mr. LEVIN, Mr. BROWNBACK, and Mr. HELMS):

S. 270. A bill to amend title XVIII of the Social Security Act to provide a transitional adjustment for certain sole community hospitals in order to limit any decline in payment under the prospective payment system for hospital outpatient department services; to the Committee on Finance.

Mr. BINGAMAN. Mr. President, I rise today to introduce, along with my colleagues Senators JEFFORDS, LEVIN, BROWNBACK, and HELMS the ''Rural Hospital and Health Network Preservation Act of 2001.''

As you are aware, rural health care providers have operating margins that are often much lower and more dependent upon Medicare and Medicaid reimbursement then suburban or urban providers. The Balanced Budget Refinement Act of 1999 (BBRA 99) allowed rural hospitals of less than 100 beds to be held harmless in the conversion to the new outpatient Prospective Payment System by allowing them to choose to stay essentially under the old fee-for-service program which provided them with increased revenue. However, that 100-bed limit seems arbitrary and will actually result in many slightly larger rural hospitals, that have even higher per patient costs and lower per patient margins, being squeezed even harder under BBA 97 rules.

With passage of the Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000, several additional fixes were put in place for rural providers. While these were steps in the right direction, rural hospitals with between 100 and 400 beds are still not being held harmless in the conversion to the new outpatient Prospective Payment System. This group of hospitals is still suffering under provisions of the BBA of 1997.

Rural hospitals, and all hospitals for that matter, operate on very slim margins yet manage to bring cutting-edge medical care to the communities they serve. But changes in Medicare payments to hospitals have put many institutions in a bind.

The bill I am introducing today will extend the BBRA of 99 hold-harmless provisions to rural hospitals of up to 400 beds that are both Rural Referral Centers and Sole Community Hospitals. This will bring outpatient reimbursement rates for these critical health care providers closer in line to the actual health care costs incurred in rural America by these valued providers.

Rural communities across New Mexico have felt the negative impact of the BBA of 97. The Carlsbad Regional Medical Center, Eastern New Mexico Medical Center, San Juan Regional Medical Center, and Lea Regional Hospital have

all been suffering because of the BBA of 97. They tell me that they are bearing substantially higher expenses per patient due to diseconomies of scale for the technically intensive speciality care that is required at these types of facilities. In addition, they face difficulties in recruiting qualified health professionals, as well as qualified coders and compliance experts that are required under the new outpatient Prospective Payment System given Medicare's complexity. This is not a New Mexico only problem. There are at least sixty-one other rural hospitals that fall in this same category across the United States that are also suffering.

While the positive restorative effects of BBRA of 99 and the recently enacted ''Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000'' were very helpful, they are not enough to protect rural providers. We must prevent rural hospitals from reducing services or closing completely. When a rural hospital reduces services, or worse yet closes, local residents lose access to preventive, routine, and even emergency services. Doctors and other highly trained professionals move away. Then people must drive a hundred miles or more in some cases to get the care city dwellers take for granted. Local economies suffer when jobs are lost. Existing businesses may have to move, and new businesses won't locate in places where health care is unavailable. Hospital closure can be a deathknell for struggling towns. We must move forward to preserve and strengthen the ability of our Nation's rural hospitals and other Medicare providers to provide adequate health care to their patients.

I urge my colleagues to support and pass the Rural Hospital and Health Network Preservation Act of 2001.

I ask 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. 270

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 ''Rural Hospital and Health Network Preservation Act of 2001''.

SEC. 2. TEMPORARY TREATMENT OF CERTAIN SOLE COMMUNITY HOSPITALS TO LIMIT DECLINE IN PAYMENT UNDER THE OPD PPS.

(a) HOLD HARMLESS PROVISION.—Section 1833(t)(7)(D)(i) of the Social Security Act (42 U.S.C. 1395l(t)(7)(D)(i)) is amended by inserting ''(or not more than 400 beds if such hospital is a sole community hospital (as defined in section 1886(d)(5)(D)(iii)) and is classified as a rural referral center under section 1886(d)(5)(C))'' after ''100 beds''.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect as if included in the amendments made by section 202(a) of the Medicare, Medicaid, and SCHIP Balanced Budget Refinement Act of 1999 (113 Stat. 1501A–342), as enacted into law by section 1000(a)(6) of Public Law 106–113.

By Mr. FEINGOLD:

S. 272. A bill to rescind fiscal year 2001 procurement funds for the V–22 Osprey aircraft program other than as necessary to maintain the production base and to require certain reports to Congress concerning that program; to the Committee on Appropriations and the Committee on the Budget, concurrently, pursuant to the order of January 30, 1975, as modified by the order of April 11, 1986, with instructions that the Budget Committee be authorized to report its views to the Appropriations Committee, and that the latter alone be authorized to report the bill.

Mr. FEINGOLD. Mr. President, today I am introducing the Osprey Safety, Performance, and Reliability Evaluation Act of 2001. This legislation would delay the procurement of the V–22 Osprey tilt-rotor aircraft for one year, and would require reports from the Secretary of the Navy and the Department of Defense's Inspector General regarding the program.

The Osprey is an experimental tilt-rotor aircraft that takes off and lands like a helicopter, but flies like an airplane by tilting its wing-mounted rotors forward to serve as propellers. The premise for the aircraft is to combine the operational flexibility of a helicopter with the speed, range, and efficiency of a fixed-wing aircraft.

The Marines, Air Force, and Navy all want to purchase versions of this aircraft. The MV–22 would be used by the Marines for missions such as troop and cargo transport and amphibious assault; the CV–22 would be used by the Air Force for special operations; and the HV–22 would be used by the Navy for search and rescue missions.

I want to be very clear. This bill does not terminate the V–22 program. It does not affect the Marine Corps' ability to continue the research, development, testing, and evaluation of this aircraft.

This bill delays the start of full-rate procurement of the MV–22 Osprey, the Marines' version of this aircraft, for one year. It also delays the procurement of four CV–22s, the Air Force's version of this aircraft, for one year.

There are serious allegations and serious questions surrounding the V–22 program. Thirty Marines have died in Osprey crashes since 1991. Many questions regarding the validity of maintenance records and the safety and viability of this aircraft remain unanswered.

We cannot, in good conscience, move forward with the full-scale procurement of the MV–22 until these allegations have been investigated fully and until these questions have been answered.

We should not move forward with the procurement of this aircraft until further testing has been done to address potentially serious design flaws that could continue to endanger the lives of our military personnel.

We owe it to our men and women in uniform to put their safety first. They are willing to go into harm's way while serving their country. That service should not include being put into harm's way by a potentially unsafe aircraft. We should not move forward with the procurement of an aircraft that crashed as recently as December. We should not procure this aircraft until the Department of Defense is absolutely certain that all major design flaws have been corrected.

The legislation that I am introducing today will delay full-rate production of the MV–22 for one year. This delay is prudent given the ongoing controversy that has loomed over this program during the last weeks and months.

I want to reiterate that this legislation does not require the Department of Defense to terminate the Osprey program. I appreciate the importance of this program to the Marine Corps. I agree that they need to replace the aging CH–46 Sea Knight helicopters that they currently have. However, I am not sure that the Osprey is the safest and most cost-effective alternative to the Sea Knight.

I know that the leaders of the Marines and the Air Force have the greatest concern for the safety of their personnel who are and who will be assigned to the Osprey program. I share that concern. My bill would require the Marine Corps to wait one year to move to full-rate production of the MV–22. Because the airframes for the MV–22 and the CV–22 are 90 percent similar, it follows that the four CV–22s the Air Force plans to buy this year may be subject to many of the same design flaws that have been found in the MV–22. For that reason, my bill would also require the Air Force to wait one year to procure the four CV–22s, which would be used to train their pilots.

I realize that an effort is being made to address the design flaws found during testing of this aircraft resulting in some changes in the new planes that are scheduled to go into production in fiscal year 2001. However, I remain concerned about the many unanswered questions, and the potentially costly retrofits that these aircraft would require as more information about the safety and reliability of the Osprey continues to come to light. In my view, it would be more prudent and more cost effective to wait to move to full-rate production until these questions have been answered.

For those reasons, my bill rescinds most of the fiscal year 2001 procurement funds for the MV–22 and the CV–22, but leaves enough funding in place to maintain the integrity of the production line. These rescissions would return to the taxpayers more than $1.2 billion dollars. This kind of investment should not go forward until we are sure that the Osprey is safe.

The bill does not affect the $148 million in research and development funding for this program. During the next year, vigorous research and testing on the problems that remain should continue once the decision has been made to resume test flights.

This program has a troubled history. Thirty Marines have been killed in Osprey crashes since 1991, twenty-three of them in the past eleven months alone. The Osprey program has been grounded since the December crash that killed four Marines. Following that crash, former Secretary of Defense William Cohen appointed a blue ribbon panel to study the Osprey program. That panel's report is due to be presented to Secretary of Defense Rumsfeld in March or April of this year. In addition, two investigations on the December crash are ongoing.

The safety of our men and women in uniform should be the top priority every time the Department of Defense develops and procures new technology, whether it be weapons, ships, or aircraft.

During his tenure as Secretary of Defense, Vice President CHENEY tried to cancel the V–22 program in each of his budget requests from fiscal year 1990 through 1993 because he believed the program was too costly. Congress disagreed, and the program continued to receive funds.

When asked about the Osprey program last month, the Vice President said, ''Given the track record and the loss of life so far, it would appear to me that there are very serious questions that can and should be—and I hope will be—raised about the Osprey.''

I agree with Vice President CHENEY's statement, and I hope that this legislation will help to get answers to these serious concerns.

One additional concern about this program is its cost. The Marines, the Air Force, and the Navy each want to buy a version of this aircraft, for a total of 458 aircraft at a cost of $38.1 billion, or about $83 million per Osprey. Some defense observers have argued that the mission of the Osprey could be performed by less costly helicopters.

Another concern is the safety of the aircraft. One of the newspapers in my home state of Wisconsin, the Milwaukee Journal Sentinel, has called the Osprey a ''lemon with wings.'' Is that a fair description? There is reason to pause and take a good look at the program and find out. In addition to the four crashes that have occurred since 1991, there are also a number of unanswered questions regarding the design and performance of the aircraft.

The MV–22 underwent operational evaluation, OPEVAL, between October 1999 and August 2000. During OPEVAL, in June 2000, a draft DoD Inspector General's report cited 23 major operational effectiveness and suitability requirements that would not be met prior to the scheduled December 2000 Milestone III decision on whether to enter into full-rate production of the MV–22 in June 2001. The Marine Corps conceded that these problems exist, and said they had been aware of these deficiencies prior to the beginning of the OPEVAL.

In October 2000, the Navy announced that the MV–22 had been judged operationally effective and suitable for land-based operations. In November 2000, the MV–22 was also judged operationally effective and suitable for sea-based operations.

Following the completion of OPEVAL, the Department of Defense's Director of Operational Testing and Evaluation, Philip Coyle, released his report on the MV–22. This report, which was issued on November 17, 2000, makes a number of recommendations regarding further testing that should be conducted on this aircraft, including testing on a number of requirements for the aircraft that were waived during OPEVAL.

Particularly troubling are the MV–22's Mission Capable, MC, and Full Mission Capable, FMC, rates at the end of OPEVAL. These ratings demonstrate the availability of the aircraft—the amount of time that each MV–22 is able to fly versus the amount of time that each MV–22 is unavailable due to maintenance needs.

The Mission Capable rating represents the percentage of time that the test aircraft were able to perform at least one of their assigned missions. The Marine Corps' objective for the MC rate is between 82 and 87 percent. At the end of OPEVAL, the MC rate for the MV–22 was 49 percent. That means, Mr. President, that the MV–22 test fleet was capable of performing at least one of its missions only 49 percent of the time during OPEVAL. From 1995–1999, the entire CH–46 fleet Sea Knight fleet, which the Osprey is supposed to replace, was rated Mission Capable 79 percent of the time.

The Full Mission Capable rate, FMC, is defined as the percentage of time that the aircraft could perform all of its assigned missions. The Marine Corps' objective for FMC is 75 percent. At the end of OPEVAL, the MV–22 had a FMC rate of only 20 percent. From 1995–1999, the CH–46 fleet had a FMC rate of 74 percent.

I want to say this again—at the end of OPEVAL, the MV–22 test fleet was capable of performing all of its assigned missions only 20 percent of the time. The Coyle report says that part of this low rating can be attributed to problems with the blade fold wing stow, BFWS, system, and that measures to address this problem will be incorporated into all new MV–22s.

While both the MC and the FMC both improved over the course of OPEVAL, both rates are still well below the Marines' own requirements. By delaying the full rate production of the MV–22 for one year, the Marines will have the opportunity to further improve these crucial rates, including testing the modifications to the BFWS system, and potentially save countless maintenance hours and costs over the life of this program.

In addition to the problems outlined in the Coyle report, a General Accounting Office report released last month titled ''Major Management Challenges and Program Risks: Department of Defense'' also expresses concern about the Osprey program. The report states that ''the DoD . . . begins production on many major and nonmajor weapons without first ensuring that the systems will meet critical performance requirements.'' The report cites a number of examples, including the Osprey. GAO reports that ''the Navy was moving toward a full-rate production decision on the MV–22 Osprey aircraft without having an appropriate level of confidence that the program would meet design parameters as well as cost and schedule objectives.''

This finding is just another of the many reasons why the full-rate procurement of the MV–22 and the procurement of four CV–22s should be delayed. I share GAO's concern about the frequency with which DoD moves into full-rate production of systems that may not have been adequately tested. This rush to production often raises safety concerns and costs the taxpayers large sums for costly retrofits to address problems that were often evident—but not fixed—before full-rate production began. And even if the Osprey is proven to be safe, questions still remain about its cost.

I am also deeply troubled by the allegations that the Commander of the Marine Tilt-Rotor Training Squadron 204 may have ordered his team to falsify maintenance records for the MV–22. An anonymous DoD whistle blower released a letter and documentation, including an audio tape on which it is reported that the Commander is heard telling his squadron to ''lie'' about maintenance reports on the MV–22 until the Milestone III decision to move into full-rate production of the aircraft had been made. This decision was scheduled to be made in December 2000, but has been postponed indefinitely. The Commander has been relieved of his command pending a full investigation by the DoD Inspector General's office.

There have been reports that high-ranking Marine Corps officers may have known about the low MC and FMC rates for the MV–22 in November 2000, and that one of them may have released inaccurate information to the press regarding the Mission Capable rates of the MV–22.

An electronic mail message from one of these officers to a superior officer dated November 11, 2000, states that the information regarding the MV–22 MC and FMC rates for November contained in the message should be ''close held'' and that the MC and FMC rates for Squadron 204 were 26.7 percent and 7.9 percent, respectively. The message also said that the sender ''had hoped to be able to use some recent numbers next month when [his superior] meet[s] with Dr. Buchanan for his Milestone III/FRP decision in December . . . this isn't going to help.''

Later that month, on November 30, 2000, the officer who reportedly sent that electronic mail message participated in a DoD press briefing at which

the Osprey was discussed in some detail. During this press briefing, the officer said the following regarding the Mission Capable rates of the MV–22s being tested by Squadron 204: ''. . . as I was walking down here [to the briefing], I pulled the first 13 days of November, mission-capable rate on those airplanes, and the average is 73.2 percent for the first 13 days in November of those nine airplanes. So when we start talking about the airplane, even since OPEVAL, improving and getting better, the answer is it is absolutely a resounding yes.''

This information is contrary to the electronic mail message that the officer in question reportedly sent to a superior officer only nine days before, which stated that the MC rate for the MV–22s being tested by Squadron 204 for November 2000 was only 26.7 percent. That is a difference of 46.5 percent. News reports last week said that the officer admitted sending the message and attributes the discrepancy in the MC rate figures to a new software system.

I understand that these very serious allegations are still being investigated, and I agree that all of those involved deserve a fair and impartial investigation. We should not rush to judgement about the alleged conduct of any of these personnel, all of whom who have dedicated their lives to serving and protecting this country. However, we must remain cognizant of the fact that the outcome of this investigation could have an enormous impact on the Osprey program.

This still unfolding situation is another reason why the full rate procurement of the MV–22 should be delayed. Until these disturbing allegations have been fully investigated to determine whether records were falsified in order to make the Osprey appear safe and reliable, the Department of Defense should not move ahead with this program.

Because of the safety concerns outlined above, Mr. President, my bill requires the Secretary of the Navy to submit a report to the Congress on the V–22 program that includes: a description of the planned uses for the fiscal year 2001 research and development funding for the Osprey program; a description of the actions taken as a result of the Coyle report; and a description of the manner in which the Navy and the Marine Corps have responded to the allegations of the falsification of maintenance records at Squadron 204. The bill also requires the DoD Inspector General to report to the Congress on the results of its investigation into the alleged falsification of maintenance records at Squadron 204. It would require that these reports be submitted three months after the enactment of this legislation or on the date of the Milestone III decision regarding full-rate production of the MV–22 Osprey, whichever is earlier.

The safety of our men and women in uniform should be the principle that guides this important decision. We should not begin to procure the MV–22 in mass quantities until we know for certain that this aircraft is safe, that its maintenance records are accurate, and that the design flaws described in the Coyle report have been adequately addressed.

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. 272

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 ''Osprey Safety, Performance, and Reliability Evaluation Act of 2001''.

SEC. 2. RESCISSIONS.

(a) IN GENERAL.—Of the funds made available in the Department of Defense Appropriations Act, 2001 (Public Law 106–259), the following amounts are rescinded from the following accounts:

(1) ''Aircraft Procurement, Navy'', $856,618,000, of which $776,760,000 shall be derived from ''V–22 (Medium Lift)'' and $79,858,000 shall be derived from ''V–22 (Medium Lift) (AP–CY)''.

(2) ''Aircraft Procurement, Air Force'', $358,440,000, of which $335,766,000 shall be derived from ''V–22 Osprey'' and $22,674,000 shall be derived from ''V–22 Osprey (AP–CY)''.

(b) LIMITATION ON USE OF REMAINING FUNDS.—Following the rescission made by subsection (a)(1), the balance of the funds remaining available for obligation in the account involved for ''V–22 (Medium Lift)'' may be used only to carry out activities necessary to maintain the production base for such aircraft program.

SEC. 3. REPORTS TO CONGRESS.

(a) SECRETARY OF THE NAVY REPORT.—The Secretary of the Navy shall submit to Congress a report on the V–22 Osprey aircraft program. The report shall include the following:

(1) A description of the activities carried out, and programmed to be carried out, using funds appropriated for that program for research, development, test, and evaluation for fiscal year 2001.

(2) A description of the actions taken by the Secretary as a result of the report on that program issued by the Director of Operational Test and Evaluation of the Department of Defense dated November 17, 2000.

(3) A description of the manner in which the Marine Corps and the Department of the Navy have responded to the reports of data falsification concerning the Osprey aircraft by Marine Corps personnel assigned to Marine Medium Tilt-Rotor Training Squadron 204.

(b) INSPECTOR GENERAL REPORT.—The Inspector General of the Department of Defense shall submit to Congress a report on the results, as of the submission of the report, of the investigation of the Inspector General into the V–22 Osprey aircraft program.

(c) TIME FOR SUBMISSION OF REPORTS.—The reports under subsections (a) and (b) shall each be submitted not later than the earlier of the following:

(1) The date that is three months after the date of the enactment of this Act.

(2) The date of the Milestone III decision for the V–22 Osprey aircraft program approving the entry of that program into full-rate production.

By Mr. TORRICELLI (for himself and Mr. CORZINE):

S. 273 A bill to amend title 28, United States Code, to divide New Jersey into 2 judicial districts; to the Committee on the Judiciary.

Mr. TORRICELLI. Mr. President, I rise today to introduce, on behalf of myself and my distinguished colleague, Senator CORZINE, a bill that will help bring more criminals to justice and create a better federal judicial system in New Jersey. This legislation will divide the federal District of New Jersey into the Southern and Northern Districts of New Jersey thus enabling federal courts and federal law enforcement to better serve the State's approximately eight million residents.

Currently, the District of New Jersey has 17 judges. This bill does not increase the number of judges, but divides them between the Southern and Northern Districts giving the South 7 judges and the North 10. The bill will also result in the creation of several new federal positions for the Southern District including a Clerk of the Court, U.S. Attorney, U.S. Marshal, and a Federal Public Defender.

The creation of two districts in New Jersey is called for by the additional crime-fighting resources a split will bring to the State and by the sheer size of the State. The current District of New Jersey is the third most populous federal judicial district in the nation. Of the 25 states that have a single federal judicial district, New Jersey has the largest population. More than a dozen states with smaller populations have multiple judicial districts. In fact, with more than 2 million residents in the southern counties, the population of the proposed Southern District of New Jersey would exceed that of almost half of the current judicial districts. The proposed Northern District would rank even higher.

And while the bill would not create any new judgeships, it would mean that, for the first time, the judges of the Southern District would necessarily come from and be part of the unique community they serve. This can only lead to enhanced sensitivity to the community's needs.

The bill will also take a significant step towards addressing the disparity in crime-fighting resources allocated to northern and southern New Jersey. In 1998, southern New Jersey accounted for 25 percent of the state's urban murders, 32 percent of the state's murder arrests and 33 percent of the state's arrests for violent crimes. Despite these statistics, only 10 percent of the FBI agents, 15 percent of U.S. Marshals and 18 percent of DEA agents in New Jersey are assigned to the southern counties.

The bill will also ensure that crime-fighting decisions are made locally instead of by officials who are based elsewhere in the state. This too would result in a government more sensitive and responsive to the people it serves.

Given these facts, it is not surprising that the bill has received a ringing endorsement from many in New Jersey's

legal and law enforcement community. In the last Congress, the House version of this bill was cosponsored by the entire southern New Jersey Congressional delegation. I hope to have their support again. It is also supported by the New Jersey State Bar Association, all of the southern county bar associations, the South Jersey Police Chief's Association, the Chamber of Commerce of Southern New Jersey, and various former county prosecutors and former federal law enforcement officials.

While the process of reviewing and deliberating the merits of this legislation will be lengthy and time consuming, this is a change that is long overdue. The citizens of New Jersey deserve a better federal judicial system and their fair share of federal crime-fighting resources. I look forward to working with my colleagues to secure passage of this legislation.

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

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

S. 273

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

SECTION 1. FINDINGS.

The Congress finds the following:

(1) In 1978, the Judicial Conference of the United States established a procedure for creating new Federal judicial districts, which is still in force. According to the ''Proceedings of the Judicial Conference, September 21–22, 1978'', this procedure requires that 4 principal criteria be taken into consideration in evaluating the establishment of a new Federal judicial district: caseload, judicial administration, geography, and community convenience.

(2) The criterion of ''caseload'' is found to include the total number of Federal court cases and the number of cases per Federal judge, for both criminal and civil Federal cases.

(3)(A) The 13 southern counties of New Jersey, consisting of Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester, Hunterdon, Mercer, Monmouth, Ocean, Salem, Somerset, and Warren Counties, have a substantial criminal caseload which requires the creation of a separate judicial district.

(B) 463 Federal criminal cases originated in the 13 southern New Jersey counties in fiscal year 1999 and were handled principally by the 5 judges of the Camden vicinage and the 3 judges of the Trenton vicinage.

(C) In fiscal year 1999, the criminal cases originating in the 13 southern New Jersey counties exceeded that of 57 of the current 93 Federal judicial districts other than the District of New Jersey. Only 36 of the other current Federal judicial districts had more criminal cases than the southern region of New Jersey.

(D) For example, in the District of Massachusetts (19 judges), 434 criminal cases were filed in fiscal year 1999. In the District of Connecticut (14 judges), only 250 criminal cases were filed in fiscal year 1999.

(4)(A) The substantial civil caseload concentrated in the southern counties of New Jersey requires the creation of a separate judicial district.

(B) Approximately 2,983 Federal civil cases originated in the 13 southern New Jersey counties in fiscal year 1999 and were handled principally by the 5 judges of the Camden vicinage and the 3 judges of the Trenton vicinage.

(C) In the fiscal year 1999, the civil cases originating in the 13 southern New Jersey counties exceeded that of 68 of the current Federal judicial districts other than the District of New Jersey. Only 25 of the other Federal judicial districts had more civil cases than the southern region of New Jersey.

(D) For example, in the Southern District of West Virginia, a separate judicial district with 8 judges, only 1,203 civil cases were commenced in fiscal year 1999. The Western District of Tennessee, with 6 judges, had only 1,512 civil cases commenced in fiscal year 1999.

(5) The criterion of ''judicial administration'' is found to include the backlog of pending cases in a Federal judicial district, which hinders the effective resolution of pending business before the court.

(6)(A) The size of the backlog of pending cases concentrated in the 13 southern counties of New Jersey requires the creation of a separate judicial district.

(B) In fiscal year 1999, the pending criminal cases attributed to the 13 southern New Jersey counties exceeded that of 62 of the current 93 Federal judicial districts other than the District of New Jersey. Only 31 of the other current Federal judicial districts had more pending criminal cases than the southern region of New Jersey.

(C) In fiscal year 1999, the pending civil cases attributed to the 13 southern New Jersey counties exceeded that of 66 of the current 93 Federal judicial districts other than the District of New Jersey. Only 27 of the other current Federal judicial districts had more pending civil cases than the southern region of New Jersey.

(D) The number of pending cases in the Camden vicinage of New Jersey exceeds the number of cases pending before entire judicial districts with similar numbers of judges, clearly indicating that southern New Jersey merits a separate Federal judicial district. For example, as of October 1, 1999, there were 1,431 civil cases pending before the Camden vicinage, and only 113 of those were commenced in fiscal year 1999. The Western District of Tennessee, with 6 judges, had only 1,079 civil cases pending in fiscal year 1999. The Western District of Oklahoma had only 1,356 civil cases pending in fiscal year 1999 before 9 judges. Finally, there are 161 criminal cases pending before the Camden vicinage, while the entire Southern District of Indiana, with 7 judges, had only 117 criminal cases pending in fiscal year 1999.

(7) The criterion of ''geography'' is found to mean the accessibility of the central administration of the Federal judicial district to officers of the court, parties with business before the court, and other citizens living within the Federal judicial district.

(8)(A) The distance between the northern and southern regions of New Jersey and the density of New Jersey's population create a substantial barrier to the efficient administration of justice.

(B) The distance from Newark, New Jersey to Camden, New Jersey is more than 85 miles.

(C) When a new Federal court district was created in Louisiana in 1971, the distance between New Orleans and Baton Rouge (nearly 80 miles) was cited as a major factor in creating a new district court, as travel difficulties were impeding the timely administration of justice.

(9) The criterion of ''community convenience'' is found to mean the extent to which creating a new Federal judicial district will allow the court to better serve the population and diverse communities of the area.

(10)(A) New Jersey's culturally and regionally diverse population of over 8,000,000 citizens, widely distributed across a densely populated State, is inconvenienced by having only 1 judicial district.

(B) The District of New Jersey is the third most populous Federal judicial district in the United States.

(C) The population of the 13 southern New Jersey counties exceeds the population of 67 of the current 93 Federal judicial districts other than the District of New Jersey. The population of the 8 northern New Jersey counties (consisting of Bergen, Essex, Hudson, Middlesex, Morris, Passaic, Sussex, and Union) exceeds the population of 73 of the current 93 Federal judicial districts other than the District of New Jersey.

(D) Of the 25 States that have only a single Federal judicial district (including Puerto Rico, the United States territories, and the District of Columbia), New Jersey has the highest population.

(E) More than a dozen States have smaller populations than New Jersey, yet they have multiple Federal judicial districts, including Washington, Oklahoma, Iowa, Georgia, West Virginia, and Missouri.

(11) In evaluating the creation of a new Southern District of New Jersey, the Judicial Conference should seek the views of the chief judge of the affected district, the judicial council for the affected circuit court, and the affected United States Attorney as representative of the views of the Department of Justice, as required in the procedure established by the ''Proceedings of the Judicial Conference, September 21–22, 1978''.

SEC. 2. ESTABLISHMENT OF 2 DISTRICTS IN NEW JERSEY.

(a) CREATION.—Section 110 of title 28, United States Code, is amended to read as follows:

''§ 110. New Jersey

''New Jersey is divided into 2 judicial districts to be known as the Northern and Southern Districts of New Jersey.

''Northern District

''(a) The Northern District comprises the counties of Bergen, Essex, Hudson, Middlesex, Morris, Passaic, Sussex, and Union.

''Court for the Northern District shall be held at Newark.

''Southern District

''(b) The Southern District comprises the counties of Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester, Hunterdon, Mercer, Monmouth, Ocean, Salem, Somerset, and Warren.

''Court for the Southern District shall be held at Camden and Trenton.''.

(b) JUDGESHIPS.—The item relating to New Jersey in the table set forth in section 133(a) of title 28, United States Code, is amended to read as follows:

''New Jersey:
  ''Northern 10
  ''Southern ..... 7''.

(c) BANKRUPTCY JUDGESHIPS.—The item relating to New Jersey in the table set forth in section 152(a)(1) of title 28, United States Code, is amended to read as follows:

''New Jersey:
  ''Northern 4
  ''Southern ..... 4''.

SEC. 3. DISTRICT JUDGES, BANKRUPTCY JUDGES, MAGISTRATE JUDGES, UNITED STATES ATTORNEY, UNITED STATES MARSHAL, AND FEDERAL PUBLIC DEFENDER.

(a) TRANSFER OF DISTRICT JUDGES.—(1) Any district judge of the District Court of New Jersey who is holding office on the day before the effective date of this Act and whose official duty station is in Bergen, Essex, Hudson, Middlesex, Morris, Passaic, Sussex,

or Union County shall, on or after such effective date, be a district judge for the Northern District of New Jersey. Any district judge of the District Court of New Jersey who is holding office on the day before the effective date of this Act and whose official duty station is in Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester, Hunterdon, Mercer, Monmouth, Ocean, Salem, Somerset, or Warren County shall, on and after such effective date, be a district judge of the Southern District of New Jersey.

(2) Whenever a vacancy occurs in a judgeship in either judicial district of New Jersey, the vacancy shall first be offered to those judges appointed before the enactment of this Act and in active service in the other judicial district of New Jersey at the time of the vacancy, and of those judges wishing to fill the vacancy, the judge most senior in service shall fill that vacancy. In such a case, the President shall appoint a judge to fill the vacancy resulting in the district of New Jersey from which such judge left office.

(b) TRANSFER OF BANKRUPTCY AND MAGISTRATE JUDGES.—Any bankruptcy judge or magistrate judge of the District Court of New Jersey who is holding office on the day before the effective date of this Act and whose official duty station is in Bergen, Essex, Hudson, Middlesex, Morris, Passaic, Sussex, or Union County shall, on or after such effective date, be a bankruptcy judge or magistrate judge, as the case may be, for the Northern District of New Jersey. Any bankruptcy judge or magistrate judge of the District Court of New Jersey who is holding office on the day before the effective date of this Act and whose official duty station is in Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester, Hunterdon, Mercer, Monmouth, Ocean, Salem, Somerset, or Warren County shall, on and after such effective date, be a bankruptcy judge or magistrate judge, as the case may be, of the Southern District of New Jersey.

(c) UNITED STATES ATTORNEY, UNITED STATES MARSHAL, AND FEDERAL PUBLIC DEFENDER.—

(1) THOSE IN OFFICE.—This Act and the amendments made by this Act shall not affect the tenure of office of the United States attorney, the United States marshal, and the Federal Public Defender, for the District of New Jersey who are in office on the effective date of this Act, except that such individuals shall be the United States attorney, the United States marshal, and the Federal Public Defender, respectively, for the Northern District of New Jersey as of such effective date.

(2) APPOINTMENTS.—The President shall appoint, by and with the advice and consent of the Senate, a United States attorney and a United States marshal for the Southern District of New Jersey. The Court of Appeals for the Third Circuit shall appoint a Federal Public Defender for the Southern District of New Jersey.

(d) PENDING CASES NOT AFFECTED.—This Act and the amendments made by this Act shall not affect any action commenced before the effective date of this Act and pending in the United States District Court for the District of New Jersey on such date.

(e) JURIES NOT AFFECTED.—This Act and the amendments made by this Act shall not affect the composition, or preclude the service, of any grand or petit jury summoned, empaneled, or actually serving in the Judicial District of New Jersey on the effective date of this Act.

SEC. 4. EFFECTIVE DATE.

(a) IN GENERAL.—This Act and the amendments made by this Act shall take effect 180 days after the date of the enactment of this Act.

(b) APPOINTMENTS.—Notwithstanding subsection (a), the President and the Court of Appeals for the Third Circuit may make the appointments under section 3(c)(2) at any time after the date of the enactment of this Act.

By Mr. BAUCUS:

S. 274. A bill to establish a Congressional Trade Office; to the Committee on Finance.

Mr. BAUCUS. Mr. President, I am introducing a bill today to create a Congressional Trade Office. It is similar to the bill I offered in the last session of Congress. This legislation is designed to assist the Congress in fulfilling our Constitutional responsibility for trade policy by creating an entity that can provide us with the expertise we need to get independent, non-partisan, and neutral analysis and information about trade.

Over the past three decades, the role of trade in our economy has grown enormously. In 1970, trade was equal to only eleven percent of our Gross Domestic Product. In contrast, today exports and imports are equivalent to 27 percent of our economy.

I have been in Congress for 26 years. During that time, I have watched a continuing transfer of authority and responsibility for trade policy from the Congress to the Executive Branch. The trend has been subtle, but it has been clear and constant. We need to reverse this trend.

Article I, Section 8, of the U.S. Constitution says: ''The Congress shall have power . . . To regulate commerce with foreign nations.'' It is our responsibility to set the direction for the Executive Branch in its Formulation of trade policy. It is our responsibility to ensure that agreements with our trading partners are followed and that there is full compliance. It is our responsibility to provide more effective and active oversight of our nation's trade policy. I believe strongly that we must re-assert Congress' constitutionally defined responsibility for international commerce.

The Congressional Trade Office I am proposing will provide the entire Congress, through the Senate Finance Committee and the House Ways and Means Committee, with the additional trade expertise that will allow us to meet these responsibilities.

The trade issues that the Congress may face this session are many and complex: Fast track; incorporating legitimate labor and environmental issues into trade policy; the U.S./Jordan Free Trade Agreement; the U.S./Vietnam Bilateral Trade Agreement; Free Trade Area for the Americas; possible free trade agreements with Singapore, Chile, and others; Chinese accession to WTO and then compliance with its WTO commitments; and a new comprehensive multilateral trade round.

Congress needs to be much better prepared to deal with these issues responsibly and authoritatively. That means we need access to more and better information, independently arrived at, from people whose commitment is to the Congress, and only to the Congress.

The Congressional Trade Office would help us meet these responsibilities through its four core functions.

First, it will monitor compliance with major bilateral, regional, and multilateral trade agreements. Congress needs the independent ability to look more closely at agreements with other countries. The Congressional Trade Office will analyze the performance under key agreements and evaluate success based on commercial results. It will do this in close consultation with the affected industries. The Congressional Trade Office will recommend to the Congress actions necessary to ensure that commitments made to the United States are fully implemented. It will also provide annual assessments of the extent to which agreements comply with labor and environmental goals.

The General Accounting Office has reported on the deficiencies in the Executive Branch in following trade agreements and monitoring compliance. Often more energy goes into negotiating new agreements than into ensuring that existing agreements work. The Administration has increased the resources it devotes to compliance, and I supported that. But an independent and neutral assessment in the Congress of compliance is necessary. It is unrealistic to expect an agency that negotiated an agreement to provide a totally objective and dispassionate assessment of that agreement's success or failure. Human nature, and institutional nature, does not lead to such an outcome.

Second, observing trade negotiations first hand is critical to the ability of Congress to provide meaningful oversight of trade policy. Congressional Trade Office staff will participate in selected negotiations as observers and report back to the Committees.

Third, the Congressional Trade Office will be active in dispute settlement deliberations. It will evaluate each WTO decision where the U.S. is a participant. In the case of a U.S. loss, it will explain why it lost. In the case of a U.S. win, it will measure the commercial results from that decision. Congressional Trade Office staff should participate as observers on the U.S. delegation at appropriate dispute settlement panel meetings at the WTO.

I don't think we even know whether the WTO dispute settlement process has been successful or not from the perspective of U.S. commercial interests. A count of wins versus losses tells us nothing. The Congressional Trade Office will give us the facts we need to evaluate this process properly.

Fourth, the Congressional Trade Office will have an analytic function. For example, after the Administration delivers its annual National Trade Estimates report, the NTE, to Congress, it will analyze the major outstanding trade barriers based on the cost to the

U.S. economy. It will also provide an analysis of the Administration's Trade Policy Agenda.

The Congressional Trade Office will analyze proposed trade agreements. It will examine the impact of Administration trade policy actions. And it will analyze the trade accounts every quarter, including the global current account, the global trade account, and key bilateral trade accounts.

The Congressional Trade Office is designed to service the Congress. Its Director will report to the Senate Finance Committee and the House Ways and Means Committee. It will also advise other committees on both the impact of trade negotiations and the impact of the Administration's trade policy on those committees' areas of jurisdiction. Trade rules increasingly affect domestic regulations. Expertise on the implications of trade policy on domestic regulatory issues will be vitally necessary. The Congressional Trade Office can provide that assistance.

The staff of the Congressional Trade Office will consist of professionals who have a mix of expertise in economics and trade law, plus in various industries and geographic regions. My expectation is that staff members will see this as a career position, thus, providing the Congress with long-term institutional memory.

I encourage my colleagues to support this innovative proposal.

By Mr. KYL (for himself, Mr. BREAUX, Mr. GRAMM, Mrs. LINCOLN, and Mr. BAYH):

S. 275. A bill to amend the Internal Revenue Code of 1986 to repeal the Federal estate and gift taxes and the tax on generation-skipping transfers, to preserve a step up in basis of certain property acquired from a decedent, and for other purposes; to the Committee on Finance.

Mr. KYL. Mr. President, today, Senators BREAUX, GRAMM, LINCOLN, and BAYH and I are introducing the Estate Tax Elimination Act, a bill to replace the federal estate tax with a tax on capital gains earned from inherited assets due when those assets are sold.

This is the approach that won the support of bipartisan majorities in both houses of Congress last year. Instead of levying an estate tax at death, Congress agreed that a tax should be imposed when income is actually realized from inherited property—that is, when it is sold. The bipartisan consensus that already exists in support of this plan means that Congress and President Bush—who, unlike his predecessor, supports repeal of the death tax—can come together and quickly dispose of the issue this year.

Mr. President, the beauty of this approach is that it removes death as the trigger for any tax. Whether an asset is sold by the decedent during his or her lifetime, or by someone who later inherits the property, the gain is taxed the same. Death neither confers a benefit, nor results in a punitive, confiscatory tax. Senators on both sides of the aisle accepted this arrangement last year, and should support it again this year.

Mr. President, we know that many Americans are troubled by the estate tax's complexity and high rates, and by the mere fact that it is triggered by a person's death rather than the realization of income. For a long time, I have advocated repeal, because I believe death should not be a taxable event.

Others agree that the tax is problematic, but are concerned that the unrealized appreciation in certain assets might escape taxation forever if the death tax were repealed while the step-up in basis allowed by under current law remained in effect. That is a legitimate concern.

We address this by recommending the elimination of both the death tax and the step-up in basis, and attributing a carryover basis to inherited property so that all gains are taxed at the time the property is sold and income is realized.

The concept of a carryover basis is not new. It exists in current law with respect to gifts, property transferred in cases of divorce, and in connection with involuntary conversions of property relating to theft, destruction, seizure, requisition, or condemnation.

In the latter case, when an owner receives compensation for involuntarily converted property, a taxable gain normally results to the extent that the value of the compensation exceeds the basis of the converted property. However, Section 1033 of the Internal Revenue Code allows the taxpayer to defer the recognition of the gain until the property is sold. The concept recommended in this amendment would treat the transfer of property at death—perhaps the most involuntary conversion of all—the same way, deferring recognition of any gain until the inherited property is sold.

Small estates, which currently pay no estate tax by virtue of the unified credit, and no capital-gains tax by virtue of the step up, would be unaffected by the basis changes being proposed here. The estate tax would be eliminated for them, and a limited step-up in basis would be preserved. Each person could still step up the basis in his or her assets by up to $2.8 million. Beyond that, a carryover basis would apply.

I want to stress to colleagues, particularly colleagues on the Democratic side of the aisle, that this measure would not allow unrealized appreciation in inherited assets—beyond the limited step-up amount—to go untaxed, as other death-tax repeal proposals would do. We are merely saying that if a tax is imposed, it should be imposed when income is realized.

Mr. President, some people may ask whether the American people want this kind of tax relief. I will answer that question. Although most Americans will probably never pay a death tax, most still sense that there is something terribly wrong with a system that allows Washington to seize more than half of whatever is left after someone dies—a system that prevents hard-working Americans from passing the bulk of their nest eggs to their children or grandchildren.

Fairness, Mr. President. That is what the effort to repeal the death tax is all about. A June 22–25, 2000 Gallup poll found that 60 percent of the people support repeal, even though about three-quarters of those supporters do not think they will ever have to pay a death tax themselves.

A poll conducted by Zogby International on July 6, 2000, found that, given a choice between a candidate who believes that a large estate left to heirs should be taxed at a rate of 50 percent for anything over $2 million, and a candidate who believes that the estate tax is unfair to heirs and should be eliminated, 75 percent of the people prefer the person supporting death-tax repeal.

Other polls similarly put support for repeal at between 70 and 80 percent.

Voters in two states approved referenda last November to repeal their state death tax: South Dakota by a vote of 79 to 21 percent, and Montana by a vote of 68 to 32 percent. Many other states have already done the same.

Mr. President, the significant majorities in the House and Senate that voted for repeal last year means that we have finally found a formula for taxing inherited assets in a fair and commonsense way. Appreciated value will be taxed, but only when income is actually realized—that is, when the assets are sold. And then, the gains would be treated by the Tax Code no better, and no worse, than the gains from the sale of any other kind of asset.

I invite our Senate colleagues to join in support of this bipartisan initiative again this year.

By Mr. SHELBY (for himself, Mr. BOND, Mr. THOMAS, Mr. HAGEL, Mr. SESSIONS, Mr. HELMS, Mr. INHOFE, Mr. BURNS, Mr. KYL, Mr. COCHRAN, Ms. SNOWE, and Mr. ALLARD):

S. 276. A bill to amend chapter 8 of title 5, United States Code, to provide for congressional review of any rule promulgated by the Internal Revenue Service that increases Federal revenue, and for other purposes; to the Committee on Governmental Affairs.

Mr. SHELBY. Mr. President, I rise today with my colleague Senator BOND, to introduce the Stealth Tax Prevention Act. Perhaps the most important power given to Congress by the Constitution of the United States, is the responsibility of taxation. The Founding Fathers rationale behind bestowing this power on Congress is that as elected representatives, Congress remains accountable to the people when they levy and collect taxes. Members of Congress, unlike Federal agency bureaucrats, are rightly held responsible to the public for producing fair and prudent tax legislation.

In 1996, Mr. President, Congress passed the Congressional Review Act, which provides that when a major agency rule takes effect, Congress has 60 days to review it. During this time period, Congress has the option to pass a disapproval resolution. If no such resolution is passed, the rule then goes into effect.

As you know, Mr. President, the Internal Revenue Service maintains an enormous amount of power over the lives and the livelihoods of the American taxpayers through their authority to implement and enforce the Tax Code. Even though Congress, and only Congress, has the authority to tax, the Internal Revenue Service has found a ''backdoor'' way to increase our federal tax burden through their interpretive authority. The Stealth Tax Prevention Act, that Senator BOND and I are introducing along with Mr. THOMAS, Mr. HAGEL, Mr. KYL, Mr. BURNS, Mr. HELMS, Mr. INHOFE, Mr. SESSIONS, Mr. COCHRAN, Ms. SNOWE, and Mr. ALLARD, will return the authority of taxation to the United States Congress by expanding the definition of a major rule to include any IRS regulation which increases Federal revenue.

For example, if the Office of Management and Budget finds that the implementation and enforcement of a rule would result in an increase of Federal revenues over current practices or revenues anticipated from the rule on the date of the enactment of the statute, the Stealth Tax Prevention Act would allow Congress to review the regulations and take appropriate measures to avoid raising taxes on hard working Americans and small businesses.

The discretionary authority of the Internal Revenue Service exposes small businesses, farmers, and individual taxpayers to the sometimes arbitrary actions of bureaucrats, creating an uncertain and, in many instances, a hostile environment in which to conduct day-to-day activities. The Stealth Tax Prevention Act will be particularly helpful in lowering the tax burden on small business which suffers disproportionately, Mr. President, from IRS regulations. This tax burden discourages the startup of new firms and ultimately the creation of new jobs in the economy, which has really made America great.

Average American families and small businesses are saddled with the highest tax burden in our country's history. Americans pay federal income taxes, they pay state income taxes and they pay property taxes. On the way to work in the morning they pay a gasoline tax when they fill up their car and a sales tax when they buy a cup of coffee. Allowing federal bureaucrats to increase taxes even further at their own discretion through interpretation of the tax code is intolerable. The Stealth Tax Prevention Act will leave tax policy where it belongs—to elected members of Congress—not an unelected and unaccountable IRS.

Mr. BURNS. Mr. President, I rise today with my colleague from Alabama to introduce the Stealth Tax Prevention Act. I sponsored this bill in the 105th and again in the 106th Congress. I felt strongly enough about this bill to sponsor it again this year.

One of the most common concerns I hear from my constituents is regarding the Federal Government's authority to levy and collect taxes. This is an important role that we in Congress do not take lightly as we are accountable to the voters who pay those taxes.

Three years ago, Congress passed the Congressional Review Act, which provides that when a major agency rule takes effect, Congress has 60 days to review it. During this time period, Congress has the option to pass a disapproval resolution. If no such resolution is passed, the rule then goes into effect.

The Stealth Tax Prevention Act will expand the definition of a major rule to include any IRS regulation which increases taxes. It is not the role of the IRS to make decisions that will result in increased taxes.

For example, if the Office of Management and Budget finds that the implementation and enforcement of a rule would result in an increase of Federal revenues over current practices or revenues anticipated from the rule on the date of the enactment of the statute, the Stealth Tax Prevention Act would allow Congress to review the regulations and take appropriate measures to avoid raising taxes on hard working Americans, in most cases, small businesses.

Bureaucrats are not directly accountable to taxpayers—I am.

Under the bill introduced today, an IRS implemented stealth tax could not go into effect for at least 60 days following its publication in the Federal. Register. This window would allow Congress the opportunity to review the rule and vote on a resolution to disapprove the tax increase before it is applied to a single taxpayer.

I urge my colleagues to join us in supporting this important legislation to ensure that the IRS neither usurps the proper role of Congress—nor skirts its obligations to identify the impact of its proposed and final rules. When the Department of the Treasury issues a final IRS rule that increases taxes, Congress should have the ability to exercise its discretion to enact a resolution of disapproval before the rule is applicable to a single taxpayer.

The Stealth Tax Prevention Act will leave tax policy where it belongs, to elected Members of the Congress, not unelected and unaccountable IRS bureaucrats.

Thank you, Mr. President, I yield the floor.

By Mr. KENNEDY (for himself, Mr. AKAKA, Mr. BINGAMAN, Mrs. BOXER, Mrs. CLINTON, Mr. CORZINE, Mr. DASCHLE, Mr. DODD, Mr. DURBIN, Mr. FEINGOLD, Mrs. FEINSTEIN, Mr. HARKIN, Mr. KERRY, Ms. LANDRIEU, Mr. LIEBERMAN, Mr. LEAHY, Mr. LEVIN, Ms. MIKULSKI, Mrs. MURRAY, Mr. REED, Mr. ROCKEFELLER, Mr. SARBANES, Mr. SCHUMER, Mr. WELLSTONE, and Mr. WYDEN):

S. 277. A bill to amend the Fair Labor Standards Act of 1938 to provide for an increase in the Federal minimum wage; to the Committee on Health, Education, Labor, and Pensions.

Mr. KENNEDY. Mr. President, this afternoon I and others will be introducing legislation to increase the minimum wage. We will increase the minimum wage by 60 cents this year, 50 cents next year, and 40 cents the year after.

The reason we are doing this is to recognize that over the last 8 years, we have had the most extraordinary economic expansion, but there are a number of Americans, about 11 million to 13 million Americans, who have not benefitted from our economic expansion.

They are the individuals who are on the lowest rung of the economic ladder. This is an attempt to make an adjustment in their income, and this increase in the minimum wage will provide an extremely modest increase in that income.

This issue is a women's issue because the great majority of those who receive the minimum wage are women.

This is a children's issue because the great majority of the women who are receiving the minimum wage have children and their lives are directly affected by the amount of income their mother or their parents make, and if they are making the minimum wage, often it is not just one job, but two jobs, and their lives are dramatically affected.

It is a civil rights issue because so many of those who are earning the minimum wage are men and women of color.

Most of all, it is a fairness issue. Men and women in this country who work 40 hours a week, 52 weeks a year should not have to live in poverty.

This is about rewarding work. It is a recognition that people in our country who are playing by the rules attempting to provide for their family, if they are making a minimum wage today with a family of three, they are still falling $3,400 below the poverty line in the United States of America. This minimum wage will reduce that, but they will still fall within the definition of poverty.

With this extraordinary expansion we have seen, with the extraordinary benefits that have gone to so many millions of Americans, it is time that we ought to give some attention to those who have been left out and left behind.

Who are these minimum wage workers? First of all, they are men and women of dignity; men and women who take pride in the work they do; men and women who are proud to go to work and understand the value of work, frustrated as others might be, but nonetheless are willing to put their

shoulder to the wheel because they want to take care of their families and because they have a sense of pride.

What do they do? By and large, minimum wage workers work in child care centers. They are helping to look after the children of others who are working hard in American industry. Many of them are assistants to teachers in our schools and, again, are working with children all across this country. Many others are working in nursing homes looking after those who have retired, those who need nursing home attention. These are men and women who are doing very important work, in many instances helping to make sure that the major buildings that house our industries and corporations are attended to during the nighttime. These are hard-working people, and they are people who take great pride in what they do, as they should.

Let's look at what their situation has come to. This chart says: Working hard, but losing ground. The real value of the minimum wage. If we look at constant dollars, the purchasing power of the minimum wage was $7.66 in 1968. Over the years, we have seen how that has fallen, with just a few interruptions when there was an increase in the minimum wage in 1988 and another increase in 1994. We can see what has happened with the purchasing power of the minimum wage. Without an increase in the minimum wage, in the year 2002, it would be down to $4.75, just about the lowest that it has been since the mid-1960s. This is in real purchasing power.

If we raise the minimum wage 60 cents, 50 cents, and 40 cents, and add that $1.50 on top of the $5.15 an hour now, the purchasing power would only be $6.14, which is identical to what it would be if we actually increased the minimum wage in the last 2 years by 50 cents and 50 cents, which was our proposal. Since we lost a year, there has been further deterioration in the purchasing power of the minimum wage. Even with the step-up of 60 cents, 50 cents, and 40 cents, its purchasing power will still only be $6.14.

This is an extremely modest increase. Historically, the percentage increase in the minimum wage we are asking for is extremely modest. Most other times, the percentage has been a good deal higher than it is in this proposal. This is a modest increase, but a very important increase.

What has been happening to our minimum wage workers? This chart indicates what has happened to average hourly earnings from 1969 to the year 2000.

You can see from the chart that the average hourly earnings have been constantly going up. Going back to 1969, the minimum wage was 53 percent of average hourly earnings. In the year 2000, do you think it has even held at 53 percent? No. It has dropped to 37 percent of average hourly earnings—a dramatic reduction, even in comparison to what has been happening to the average American workers across the country. They are falling further and further behind.

This chart is very interesting in that it shows what is happening out there in the workplace among those who have families with children who are in the bottom 40 percent of U.S. family incomes from 1979 to 1999.

All workers are averaging 416 hours more a year. Do we understand that? In 1999, they are working more than 400 hours a year more than they were working in 1979, even when their amount of income proportionately was a good deal better. Now we find American workers are working longer and harder than any other workers in any other industrial country in the world. And this is true about minimum wage workers, who, in most instances, have not just one job but have two jobs.

So for all those from whom we are going to hear in this Chamber about the importance of rewarding people who work, here we have some of the hardest workers in the world who are making pitiful little and find it enormously difficult to be able to provide for their families.

Four hundred sixteen hours, what does that translate into? What it translates into is this: The average minimum wage worker today gets to spend 25 hours a week less with his or her children than they did 15 years ago. When we are talking about family values—and we will hear a great deal about family values—one of the most important and basic and fundamental family values is having an adequate income to provide for one's children. The minimum wage does not provide it.

We see from this chart that working families are increasingly living in poverty. The red line indicates what the poverty line represents here in the United States. What we have seen for many years—in the 1960s, 1970s, right up to about 1980—is that the minimum wage was effectively the poverty wage. That was the bare minimum to be able to live with some degree of dignity in terms of providing the housing, the food, the shelter, the clothing, the essentials for families. What we have seen is this spread has been growing and increasing. Minimum wage workers are falling further and further behind.

Now, this is against a very important chart here which reflects the changes in family incomes from 1979 to 1999. The top fifth of families' incomes have increased by 42 percent in the last 20 years; middle-income families by about 11 percent over the last 20 years; the bottom fifth has actually declined in terms of their quality of life and in terms of what their income is. It shows they are going down, working longer, working harder, providing important kinds of services at a time of extraordinary economic prosperity. They are falling further and further and further behind. We have an opportunity to do something about that.

We provided an increase in the earned-income tax credit in the recent times, which is helpful for those with larger families who have a number of children; but still, for the single mom, or the mother and father with a single child, the minimum wage is the way to go when you are talking about benefitting and increasing the income for families.

We often hear on the Senate floor we cannot do that because if we do do it, we are going to have an adverse impact in terms of our employment situation. That is a lot of hogwash.

Let's look at what has happened since the last time we increased the minimum wage. Since 1996, when we increased the minimum wage in two steps, we heard: We do not want to do that because it is going to have an adverse impact on teens. That is wrong. The unemployment rate for teens has actually gone down with our two-step increase in the minimum wage.

For those who are lacking high school diplomas—they said: They will not be able to get employment at the McDonald's in order to gain work habits—wrong again. We found that the unemployment rate has gone down even for those lacking a high school diploma.

How about, we often heard: This isn't fair to African Americans. Wrong again. We found out the unemployment rate has still declined. It is certainly more than double what it is for the national average, but the employment level has dropped over what it was previously. The same is true with regard to Hispanics. And the same is true with regard to women.

So we believe this is an issue of fairness. We believe it is a matter of urgency. We have tried, over the period of recent years, to get this measure up before the Senate. We were denied that opportunity to have an up-or-down vote. We were told by the Republican leadership at the end of the last Congress: You can have this if you provide $73 billion in tax breaks for American companies and corporations. Effectively, they were saying: We are going to hold this hostage. They were going to hold this hostage until they got the $73 billion. They did not hold their own pay increase hostage. They did not hold hostage increasing Members' pay $3,800 a year in order to benefit businesses and corporations. But they are holding hostage those who are at the lowest level, the most vulnerable people, working hard, trying to make ends meet for their families. They are holding them hostage until they get additional tax breaks for companies and corporations at an unparalleled level.

The last time we had the increase we had a modest tax break for small business. Small business may need help and assistance, I am for that. But at that time, it was $20 billion. Now that they have that up at $73 billion, and they refuse to let us give consideration to an increase in the minimum wage, they are saying to all of those women, all of those children, all of those workers who are minimum wage workers: No,

you can just wait there. You can stay at $5.15 an hour. You can continue to work at $5.15 until we get around to developing our package in order for the $73 billion in tax breaks. And then at that time, when we are ready to get that $73 billion, the Senate of the United States better take all $73 billion or we are not going to increase your minimum wage.

I think that is an outrageous position to take in terms of a contemptible attitude toward our fellow Americans.

I want to indicate, we welcome the support we have. This issue is not going to go away. We are going to have to face this issue. We want to have a fair opportunity. It is not one of those issues that needs a great deal of study. All of us remember the situation where people tap us on the shoulder and say: Will you support H.R. 222 or S. 444? and we are unfamiliar with the details of a particular program. This one is very simple. Increase in the minimum wage: Three steps, 60, 50, 40 cents. You don't need to have a lot of hearings.

To reiterate, Mr. President, the minimum wage is one of the Nation's fundamental workplace protections. It is a bedrock right of every working man and woman. For over 60 years, this country has been committed to the principle that employees are entitled to a fair minimum wage that guarantees a fair day's pay for a fair day's work and protects the dignity of their employment.

In recent years, the country as a whole and most Americans have benefitted from unprecedented prosperity—the longest period of economic growth in the Nation's history and the lowest unemployment rate in three decades. But minimum wage workers have been left out and left behind. A fair increase in the minimum wage is long overdue.

The real value of the minimum wage is now nearly $3 below what it was in 1968. To have the purchasing power it had in that year, the minimum wage would have to be $8.05 an hour today, not $5.15 an hour.

At the same time, poverty has almost doubled among full-time, year-round workers. Since the late 1970s, it has climbed from about 1.5 million to almost 2.5 million in 1999. An unacceptably low minimum wage is part of the problem. Minimum wage employees working 40 hours a week, 52 weeks a year, earn only $10,700 a year—$3,400 below the poverty line for a family of three. Minimum wage workers today fail to earn enough to afford adequate housing in any area of this country. No one who works for a living should have to live in poverty.

In too many cases, minimum wage workers are forced to work longer and longer hours to make ends meet, with less and less time to spend with their families—still without sharing fairly in the Nation's prosperity. In fact, the lowest paid American families worked 416 more hours in 1999 then they did in 1979. Since 1969, the ratio of the minimum wage to average hourly earnings has dropped from 53 percent to 37 percent.

It is shameful that Congress acted to raise its own pay by $3,800 last year—the third pay increase in 4 years—yet we did not find time to provide any pay increase at all to the lowest paid workers.

The increase in the legislation we are introducing today—the Fair Minimum Wage Act of 2001—will directly benefit over 11 million workers. It will raise the minimum wage by $1.50 in three installments: 60 cents on the 30th day after the bill's enactment; another 50 cents on January 1, 2002; and 40 more cents on January 1, 2003. The bill will also apply the federal minimum wage to the Mariana Islands, which now has an unacceptably low level of $3.05 an hour.

The $1.50 increase is necessary to make up for lost time. In real value, the $1.50 increase will bring the minimum wage up to the same level it would have been if our proposed one dollar increase had gone into effect last year.

Raising the minimum wage is a labor issue, because it guarantees that American workers will be paid fairly for their contribution to building a strong Nation and a strong economy. It is a women's issue, since 60 percent of minimum wage earners are women. It is a children's issue, because 33 percent of minimum wage earners are parents with children—and 4.3 million children live in poverty, despite being in a family where a bread-winner works full-time, year-round. And it is a civil rights issue, because 16 percent of those who will benefit from a minimum wage increase are African Americans, and 20 percent are Hispanic.

The record of past increases clearly shows that raising the minimum wage has not had a negative impact on jobs, employment, or inflation. After the last increases in the minimum wage in 1996 and 1997, the economy continued to grow with impressive strength. The unemployment rate has fallen from 5.2 percent to 4.2 percent. Twelve million new jobs have been created, at a pace of 230,000 per month, with more than 6 million new service industry jobs, including one and a half million new retail jobs, and over a half a million new restaurant jobs. Similarly, the minimum wage increase during the recession in 1991 provided needed support for low-income workers and caused no loss of jobs.

President Bush supports raising the minimum wage, but suggests that states should be able to opt out of the increase. But allowing states to opt out of the minimum wage would violate the basic principle, which we have stood by for over 60 years, that working men and women are entitled to a fair minimum wage. Millions of workers across the country deserve a pay raise, and they deserve it now.

The Federal minimum wage guarantees a floor, but it also allows States to set wage rates higher than the Federal minimum. Massachusetts recently raised its minimum wage to $6.75 an hour, one of the highest levels in the country. Other states, such as California, Connecticut, Vermont and Rhode Island, have also set their State rates higher than the Federal minimum.

In other States, however, the State minimum wage is far below the Federal level. In these States, the Federal level applies to the vast majority of workers. But for those not covered by the Federal law, the State level is often extremely low. It is $1.60 in Wyoming, $2.65 in Kansas, and $3.35 in Texas. Clearly, Congress should not leave the minimum wage to the tender mercy of the States.

A fair increase in the federal minimum wage is long overdue. I urge Congress to act as quickly as possible to pass this long overdue increase.

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. 277

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 ''Fair Minimum Wage Act of 2001''.

SEC. 2. MINIMUM WAGE.

(a) IN GENERAL.—Section 6(a)(1) of the Fair Labor Standards Act of 1938 (29 U.S.C. 206(a)(1)) is amended to read as follows:

''(1) except as otherwise provided in this section, not less than—

''(A) $5.75 an hour beginning 30 days after the date of enactment of the Fair Minimum Wage Act of 2001;

''(B) $6.25 an hour during the year beginning January 1, 2002; and

''(C) $6.65 an hour beginning January 1, 2003;''.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect 30 days after the date of enactment of this Act.

SEC. 3. APPLICABILITY OF MINIMUM WAGE TO THE COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS.

(a) IN GENERAL.—Section 6 of the Fair Labor Standards Act of 1938 (29 U.S.C. 206) shall apply to the Commonwealth of the Northern Mariana Islands.

(b) TRANSITION.—Notwithstanding subsection (a), the minimum wage applicable to the Commonwealth of the Northern Mariana Islands under section 6(a)(1) of the Fair Labor Standards Act of 1938 (29 U.S.C. 206(a)(1)) shall be—

(1) $3.55 an hour beginning 30 days after the date of enactment of this Act; and

(2) increased by $0.50 an hour (or such lesser amount as may be necessary to equal the minimum wage under section 6(a)(1) of such Act), beginning 6 months after the date of enactment of this Act and every 6 months thereafter until the minimum wage applicable to the Commonwealth of the Northern Mariana Islands under this subsection is equal to the minimum wage set forth in such section.

By Mr. JOHNSON (for himself, Mr. BINGAMAN, and Ms. SNOWE):

S. 278. A bill to restore health care coverage to retired members of the uniformed services; to the Committee on Armed Services.

Mr. JOHNSON. Mr. President, our country must honor its commitments to military retirees and veterans, not only because it's the right thing to do, but also because it's the smart thing to do. We all know the history: for decades, men and women who joined the military were promised lifetime health care coverage for themselves and their families. They were told, in effect, if you disrupt your family, if you work for low pay, if you endanger your life and limb, we will in turn guarantee lifetime health benefits.

In my own family, my oldest son is in the Army and has served tours of duty in Bosnia and Kosovo. I fully appreciate what inadequate health care and broken promises can do to the morale of military families.

Military retirees and veterans are our nation's most effective recruiters. Unfortunately, poor health care options make it difficult for these men and women to encourage the younger generation to make a career of the military. In fact, in South Dakota, I was talking to military personnel and talking to retirees who are loyal and patriotic, who have paid a price second to none for our nation's liberty, and they told me: ''Tim, I can't in good faith tell my nephews, my children, young people whom I encounter, that they ought to serve in the U.S. military, that they ought to make a career of that service because I see what the Congress has done to its commitment to me, to my family, to my neighbors.''

I am pleased that last year we made historic improvements in health care coverage for the approximately 12,600 military retirees living in South Dakota. In the 106th Congress, I introduced the Keep Our Promise to America's Military Retirees Act to restore the broken promise of lifetime health care for military retirees and dependents. My bipartisan legislation received the endorsement from most military retiree and veterans organizations and called for military retirees to have the option of staying in their TRICARE military health care program or electing to participate in the Federal Employees Health Benefit Program, FEHBP.

I offered my legislation as an amendment to last year's defense bill and received 52 votes. Although the amendment failed on a procedural motion, I was able to convince my colleagues to include one part of my bill—the expansion of TRICARE to Medicare-eligible military retirees—in both the Senate defense bill and the final version signed into law.

While I am pleased that last year's defense bill begins to address problems with military retiree health care, there is more work that needs to be done. That is why I am once again working with fellow Democrats and Republicans in the Senate to continue the progress we've made at living up to our country's commitment to those who serve in the military.

Today, I am reintroducing the Keep Our Promise to America's Military Retirees Act to finish the job we started last year. I am pleased to be joined by Senator JEFF BINGAMAN and Senator OLYMPIA SNOWE. Similar legislation introduced in the House of Representatives by Representative RONNIE SHOWS and Representative CHARLIE NORWOOD already has overwhelming bipartisan support, and I expect a number of Democrats and Republicans here in the Senate to once again support my bill.

My legislation addresses the pressing health care needs of military retirees under age 65. Thanks to our efforts last year, retirees over 65 soon will be able to choose their own doctor and be covered by Medicare and TRICARE as a secondary payer. However, retirees under age 65 must continue coverage under a TRICARE program that offers care at military treatment facilities on a space available basis. Nationwide, base closures and downsizing have made access to these military bases difficult. For many military retirees in South Dakota and other rural states, it is next to impossible to find a doctor participating in TRICARE, and these men and women are forced to drive hundreds of miles just for basic health care.

In addition, retirees who entered the service prior to June 7, 1956, when space-available care for military retirees was enacted, actually have seen much of their promised benefits taken away. Under the Keep Our Promise to America's Military Retirees Act, the United States government would pay the full cost of FEHBP enrollment to this most elderly group of retirees.

Congress has the unique opportunity to use a portion of the budget surplus to improve the quality of life for our military retirees, veterans, and active duty personnel. I have always believed that our nation's defense is only as good as the men and women who serve in our armed forces. Broken promises of health care, retirement benefits, education incentives, and pay have eroded the morale of the most valuable assets to our national security. I am hopeful that members of both parties will join me once again making these issues a priority—instead of an afterthought—during this session of Congress.

By Mr. JOHNSON (for himself, Mr. GRAHAM, Mr. CAMPBELL, Mr. ENZI, Mr. BAUCUS, Mr. CLELAND, Mr. DASCHLE, and Mr. HOLLINGS):

S. 280. A bill to amend the Agriculture Marketing Act of 1946 to require retailers of beef, lamb, pork, and perishable agricultural commodities to inform consumers, at the final point of sale to consumers, of the country of origin of the commodities; to the Committee on Agriculture, Nutrition, and Forestry.

Mr. GRAHAM. Mr. President, I rise today with my colleagues Senator JOHNSON, Senator CAMPBELL, Senator CRAIG, and Senator CLELAND to introduce the Consumer Right to Know Act of 2001.

This bill would require country of origin labeling of perishable agricultural commodities and meat products sold in retail establishments. I offer this legislation to ensure that Americans know the origin of every orange, banana, tomato, cucumber, and green pepper on display in the grocery store.

For two decades, Floridians shopping at their local grocery stores have been able to make educated choices about the food products they purchase for their families. In 1979, during my first year as governor, I proudly signed legislation to make country-of-origin labels mandatory for produce sold in Florida. This labeling requirement has proven to be neither complicated nor burdensome for Florida's farmers or retailers.

Country of origin labeling is not new to the American marketplace. For decades, ''Made In'' labels have been as visible as price tags on clothes, toys, television sets, watches, and many other products. It makes little sense that such labels are nowhere to be found in the produce or meat sections of grocery stores in the vast majority of states. The current lack of identifying information on produce means that Americans who wish to heed government health warnings about foreign products don't have the information they need to protect themselves. Nor can Americans show justifiable concerns about other nations' labor, environmental, and agricultural standards by choosing other perishables.

According to nationwide surveys, between 74 and 83 percent of consumers favor mandatory country of origin labeling for fresh produce. This is a low-cost, common sense method of informing consumers, as retailers will simply be asked to provide this information by means of a label, stamp, or placard. It is estimated that implementing produce labeling would take about two hours per grocery store per week. At the current minimum wage, this equates to about $10.30 per store per week. This is a remarkable small price to pay to provide American consumers with the information they need to make informed produce purchases.

In addition, a study by the General Accounting Office found that all of the 28 countries that account for must of the U.S. produce imports and exports have requirements for fruit and vegetable labeling. By adopting this legislation, our law will become more consistent with the laws of our trading partners.

Consumers have the right to know basic information about the fruits and vegetables that they bring home to their families. Congress can take a major step toward achieving this simple goal by adopting this amendment, thereby restoring American shoppers' ability to make an informed decision.

Both Senator Johnson and I have worked on this legislation for several Congresses. I am very pleased to be introducing one legislative package this year which contains both fruit and vegetable and meat labeling requirements.

Both have passed the Senate in the 105th and 106th Congress.

I urge my colleagues who have supported this concept in the past to cosponsor our legislation. I urge those of you who are new to this issue to review this legislation and ask yourselves if American consumers deserve this basic level of information about their food supply—the country of origin.

I ask for your support, and I look forward to working with my colleagues on the Senate Agriculture Committee to move this legislation expeditiously through the Committee process.

By Mr. HARKIN (for himself and Mr. LUGAR):

S. 282. A bill to establish in the Antitrust Division of the Department of Justice a position with responsibility for agriculture antitrust matters; to the Committee on the Judiciary.

Mr. HARKIN. Mr. President, I am pleased to introduce today, along with Senator LUGAR, legislation that would ensure that there is in the Antitrust Division of the Department of Justice a position with the primary responsibility of providing advice and assistance to further effective enforcement of the antitrust laws in the food and agricultural sectors of our economy.

As so many of my colleagues understand, we are in a period of very rapid change in the economic structure of agriculture and of our food system from the farm on through retail distribution. Those changes include sweeping consolidation and greatly increased economic concentration in many segments of our nation's food and agriculture system that have profoundly affected agricultural producers and rural communities and raised serious questions about impacts on consumers.

The purpose of this bill is to ensure that our nation's antitrust laws are fully enforced during this time of rapid change in our food and agriculture system. This is the same legislation as Senator LUGAR and I introduced late in 1999. Following that introduction, the Clinton Administration did appoint a person to fill the position required by this legislation. While that action obviated the necessity of enacting the legislation at that time, we do not know for certain what the present or future administrations may do in assigning personnel at the Department of Justice to antitrust enforcement in agriculture. This bill is an important safeguard to ensure that we have a person who is devoted full-time at Justice to the critical task of enforcing our antitrust laws in the food and agriculture sector.

I urge my colleagues to support this important legislation.

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. 282

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

SECTION 1. ESTABLISHMENT.

(a) IN GENERAL.—There shall be established within the Antitrust Division of the Department of Justice a position the primary responsibility of which shall be to provide assistance and advice to the Assistant Attorney General of the Antitrust Division to further the effective enforcement of the antitrust laws with respect to the food and agricultural sectors.

(b) APPOINTMENT.—Not later than 180 days after the date of enactment of this Act, the Attorney General shall appoint a person to the position described in subsection (a).

(c) FUNCTIONS.—The responsibilities of the position established under subsection (a) shall include all actions appropriate to furthering effective enforcement of the antitrust laws with respect to the food and agricultural sectors, including—

(1) assisting and advising with respect to the investigation of possible restraints of trade;

(2) assisting and advising with respect to the investigation of mergers and acquisitions; and

(3) ensuring that any investigation described in paragraphs (1) or (2) takes into account the effects of the conduct or transaction under investigation on consumers, agricultural producers and rural communities.

SEC. 2. ENFORCEMENT AUTHORITY.

Nothing in this Act shall affect or limit the authority of the Attorney General or the Assistant Attorney General of the Antitrust Division to delegate or assign functions relating to the enforcement of any provision of law.

SEC. 3. EFFECTIVE PERIOD.

This Act shall be effective until the date that is 5 years after the date of enactment of this Act.

Mr. LUGAR. Mr. President, I rise today to join my esteemed colleague and Ranking Democratic Member of the Agriculture Committee from Iowa, Senator HARKIN, in once again introducing legislation to help ensure that antitrust laws impacting agriculture are properly enforced.

Mr. President, the face of rural America is rapidly changing. Everchanging technologies, developments in biotechnology and concentration in production agriculture and agribusiness are developing a new profile in rural areas. Farmers in my home state of Indiana have many questions and concerns related to these rapid changes. Many remain to be convinced that appropriate oversight of merger and acquisition activity in ag business is a reality.

The intent of this legislation is to establish the Office of Special Counsel for Agriculture in the Antitrust Division of the Justice Department. While this office will focus on reviewing ag business mergers and acquisition activity, it will also serve as an information resource for American agriculture producers wanting to provide input on antitrust-related issues.

It is important to note, Mr. President, that shortly after introduction of this legislation in 1999, Attorney General Reno, on her own initiative, established the Office of Special Counsel for Agriculture and appointed Mr. Doug Ross to that position. While the perspective of Attorney General Ashcroft is not yet known on this matter, this legislation is a signal, a strong statement, that the Chairman and the Ranking Democratic Member of the Senate Agriculture Committee are in favor of greater transparency and consideration to those issues surrounding ag business mergers in the United States.

By Mr. MCCAIN (for himself, Mr. EDWARDS, Mr. KENNEDY, Mr. L. CHAFEE, Mr. GRAHAM, Mr. SPECTER, Mrs. LINCOLN, Mr. HARKIN, Mr. BAUCUS, Mr. TORRICELLI, Mr. DODD, Mr. NELSON of Florida, and Mr. SCHUMER):

S. 283. A bill to amend the Public Health Service Act, the Employee Retirement Income Security Act of 1974, and the Internal Revenue Code of 1986 to protect consumers in managed care plans and other health coverage; to the Committee on Health, Education, Labor, and Pensions.

S. 284. A bill to amend the Internal Revenue Code of 1986 to provide incentives to expand health care coverage for individuals; to the Committee on Finance.

Mr. MCCAIN. Mr. President, I ask unanimous consent that the text of S. 283 and S. 284 be printed in the RECORD.

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

S. 283

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

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the ''Bipartisan Patient Protection Act of 2001''.

(b) TABLE OF CONTENTS.—The table of contents of this Act is as follows:

TITLE I—IMPROVING MANAGED CARE

Subtitle A—Utilization Review; Claims; and Internal and External Appeals

SEC. 101. UTILIZATION REVIEW ACTIVITIES.

(a) COMPLIANCE WITH REQUIREMENTS.—

(1) IN GENERAL.—A group health plan, and a health insurance issuer that provides health insurance coverage, shall conduct utilization review activities in connection with the provision of benefits under such plan or coverage only in accordance with a utilization review program that meets the requirements of this section and section 102.

(2) USE OF OUTSIDE AGENTS.—Nothing in this section shall be construed as preventing a group health plan or health insurance issuer from arranging through a contract or otherwise for persons or entities to conduct utilization review activities on behalf of the plan or issuer, so long as such activities are conducted in accordance with a utilization review program that meets the requirements of this section.

(3) UTILIZATION REVIEW DEFINED.—For purposes of this section, the terms ''utilization review'' and ''utilization review activities'' mean procedures used to monitor or evaluate the use or coverage, clinical necessity, appropriateness, efficacy, or efficiency of health care services, procedures or settings, and includes prospective review, concurrent review, second opinions, case management, discharge planning, or retrospective review.

(b) WRITTEN POLICIES AND CRITERIA.—

(1) WRITTEN POLICIES.—A utilization review program shall be conducted consistent with written policies and procedures that govern all aspects of the program.

(2) USE OF WRITTEN CRITERIA.—

(A) IN GENERAL.—Such a program shall utilize written clinical review criteria developed with input from a range of appropriate actively practicing health care professionals, as determined by the plan, pursuant to the program. Such criteria shall include written clinical review criteria that are based on valid clinical evidence where available and that are directed specifically at meeting the needs of at-risk populations and covered individuals with chronic conditions or severe illnesses, including gender-specific criteria and pediatric-specific criteria where available and appropriate.

(B) CONTINUING USE OF STANDARDS IN RETROSPECTIVE REVIEW.—If a health care service has been specifically pre-authorized or approved for a participant, beneficiary, or enrollee under such a program, the program shall not, pursuant to retrospective review, revise or modify the specific standards, criteria, or procedures used for the utilization review for procedures, treatment, and services delivered to the enrollee during the same course of treatment.

(C) REVIEW OF SAMPLE OF CLAIMS DENIALS.—Such a program shall provide for a periodic evaluation of the clinical appropriateness of at least a sample of denials of claims for benefits.

(c) CONDUCT OF PROGRAM ACTIVITIES.—

(1) ADMINISTRATION BY HEALTH CARE PROFESSIONALS.—A utilization review program shall be administered by qualified health care professionals who shall oversee review decisions.

(2) USE OF QUALIFIED, INDEPENDENT PERSONNEL.—

(A) IN GENERAL.—A utilization review program shall provide for the conduct of utilization review activities only through personnel who are qualified and have received appropriate training in the conduct of such activities under the program.

(B) PROHIBITION OF CONTINGENT COMPENSATION ARRANGEMENTS.—Such a program shall not, with respect to utilization review activities, permit or provide compensation or anything of value to its employees, agents, or contractors in a manner that encourages denials of claims for benefits.

(C) PROHIBITION OF CONFLICTS.—Such a program shall not permit a health care professional who is providing health care services to an individual to perform utilization review activities in connection with the health care services being provided to the individual.

(3) ACCESSIBILITY OF REVIEW.—Such a program shall provide that appropriate personnel performing utilization review activities under the program, including the utilization review administrator, are reasonably accessible by toll-free telephone during normal business hours to discuss patient care and allow response to telephone requests, and that appropriate provision is made to receive and respond promptly to calls received during other hours.

(4) LIMITS ON FREQUENCY.—Such a program shall not provide for the performance of utilization review activities with respect to a class of services furnished to an individual more frequently than is reasonably required to assess whether the services under review are medically necessary and appropriate.

SEC. 102. PROCEDURES FOR INITIAL CLAIMS FOR BENEFITS AND PRIOR AUTHORIZATION DETERMINATIONS.

(a) PROCEDURES OF INITIAL CLAIMS FOR BENEFITS.—

(1) IN GENERAL.—A group health plan, or health insurance issuer offering health insurance coverage, shall—

(A) make a determination on an initial claim for benefits by a participant, beneficiary, or enrollee (or authorized representative) regarding payment or coverage for items or services under the terms and conditions of the plan or coverage involved, including any cost-sharing amount that the participant, beneficiary, or enrollee is required to pay with respect to such claim for benefits; and

(B) notify a participant, beneficiary, or enrollee (or authorized representative) and the treating health care professional involved regarding a determination on an initial claim for benefits made under the terms and conditions of the plan or coverage, including any cost-sharing amounts that the participant, beneficiary, or enrollee may be required to make with respect to such claim for benefits, and of the right of the participant, beneficiary, or enrollee to an internal appeal under section 103.

(2) ACCESS TO INFORMATION.—

(A) TIMELY PROVISION OF NECESSARY INFORMATION.—With respect to an initial claim for benefits, the participant, beneficiary, or enrollee (or authorized representative) and the treating health care professional (if any) shall provide the plan or issuer with access to information requested by the plan or issuer that is necessary to make a determination relating to the claim. Such access shall be provided not later than 5 days after the date on which the request for information is received, or, in a case described in subparagraph (B) or (C) of subsection (b)(1), by such earlier time as may be necessary to comply with the applicable timeline under such subparagraph.

(B) LIMITED EFFECT OF FAILURE ON PLAN OR ISSUER'S OBLIGATIONS.—Failure of the participant, beneficiary, or enrollee to comply with the requirements of subparagraph (A) shall not remove the obligation of the plan or issuer to make a decision in accordance with the medical exigencies of the case and as soon as possible, based on the available information, and failure to comply with the time limit established by this paragraph shall not remove the obligation of the plan or issuer to comply with the requirements of this section.

(3) ORAL REQUESTS.—In the case of a claim for benefits involving an expedited or concurrent determination, a participant, beneficiary, or enrollee (or authorized representative) may make an initial claim for benefits orally, but a group health plan, or health insurance issuer offering health insurance coverage, may require that the participant, beneficiary, or enrollee (or authorized representative) provide written confirmation of such request in a timely manner on a form provided by the plan or issuer. In the case of such an oral request for benefits, the making of the request (and the timing of such request) shall be treated as the making at that time of a claims for such benefits without regard to whether and when a written confirmation of such request is made.

(b) TIMELINE FOR MAKING DETERMINATIONS.—

(1) PRIOR AUTHORIZATION DETERMINATION.—

(A) IN GENERAL.—A group health plan, or health insurance issuer offering health insurance coverage, shall make a prior authorization determination on a claim for benefits (whether oral or written) in accordance with the medical exigencies of the case and as soon as possible, but in no case later than 14

days from the date on which the plan or issuer receives information that is reasonably necessary to enable the plan or issuer to make a determination on the request for prior authorization and in no case later than 28 days after the date of the claim for benefits is received.

(B) EXPEDITED DETERMINATION.—Notwithstanding subparagraph (A), a group health plan, or health insurance issuer offering health insurance coverage, shall expedite a prior authorization determination on a claim for benefits described in such subparagraph when a request for such an expedited determination is made by a participant, beneficiary, or enrollee (or authorized representative) at any time during the process for making a determination and a health care professional certifies, with the request, that a determination under the procedures described in subparagraph (A) would seriously jeopardize the life or health of the participant, beneficiary, or enrollee or the ability of the participant, beneficiary, or enrollee to maintain or regain maximum function. Such determination shall be made in accordance with the medical exigencies of the case and as soon as possible, but in no case later than 72 hours after the time the request is received by the plan or issuer under this subparagraph.

(C) ONGOING CARE.—

(i) CONCURRENT REVIEW.—

(I) IN GENERAL.—Subject to clause (ii), in the case of a concurrent review of ongoing care (including hospitalization), which results in a termination or reduction of such care, the plan or issuer must provide by telephone and in printed form notice of the concurrent review determination to the individual or the individual's designee and the individual's health care provider in accordance with the medical exigencies of the case and as soon as possible, with sufficient time prior to the termination or reduction to allow for an appeal under section 103(b)(3) to be completed before the termination or reduction takes effect.

(II) CONTENTS OF NOTICE.—Such notice shall include, with respect to ongoing health care items and services, the number of ongoing services approved, the new total of approved services, the date of onset of services, and the next review date, if any, as well as a statement of the individual's rights to further appeal.

(ii) RULE OF CONSTRUCTION.—Clause (i) shall not be construed as requiring plans or issuers to provide coverage of care that would exceed the coverage limitations for such care.

(2) RETROSPECTIVE DETERMINATION.—A group health plan, or health insurance issuer offering health insurance coverage, shall make a retrospective determination on a claim for benefits in accordance with the medical exigencies of the case and as soon as possible, but not later than 30 days after the date on which the plan or issuer receives information that is reasonably necessary to enable the plan or issuer to make a determination on the claim, or, if earlier, 60 days after the date of receipt of the claim for benefits.

(c) NOTICE OF A DENIAL OF A CLAIM FOR BENEFITS.—Written notice of a denial made under an initial claim for benefits shall be issued to the participant, beneficiary, or enrollee (or authorized representative) and the treating health care professional in accordance with the medical exigencies of the case and as soon as possible, but in no case later than 2 days after the date of the determination (or, in the case described in subparagraph (B) or (C) of subsection (b)(1), within the 72-hour or applicable period referred to in such subparagraph).

(d) REQUIREMENTS OF NOTICE OF DETERMINATIONS.—The written notice of a denial of a claim for benefits determination under subsection (c) shall be provided in printed form and written in a manner calculated to be understood by the average participant, beneficiary, or enrollee and shall include—

(1) the specific reasons for the determination (including a summary of the clinical or scientific evidence used in making the determination);

(2) the procedures for obtaining additional information concerning the determination; and

(3) notification of the right to appeal the determination and instructions on how to initiate an appeal in accordance with section 103.

(e) DEFINITIONS.—For purposes of this part:

(1) AUTHORIZED REPRESENTATIVE.—The term ''authorized representative'' means, with respect to an individual who is a participant, beneficiary, or enrollee, any health care professional or other person acting on behalf of the individual with the individual's consent or without such consent if the individual is medically unable to provide such consent.

(2) CLAIM FOR BENEFITS.—The term ''claim for benefits'' means any request for coverage (including authorization of coverage), for eligibility, or for payment in whole or in part, for an item or service under a group health plan or health insurance coverage.

(3) DENIAL OF CLAIM FOR BENEFITS.—The term ''denial'' means, with respect to a claim for benefits, a denial (in whole or in part) of, or a failure to act on a timely basis upon, the claim for benefits and includes a failure to provide benefits (including items and services) required to be provided under this title.

(4) TREATING HEALTH CARE PROFESSIONAL.—The term ''treating health care professional'' means, with respect to services to be provided to a participant, beneficiary, or enrollee, a health care professional who is primarily responsible for delivering those services to the participant, beneficiary, or enrollee.

SEC. 103. INTERNAL APPEALS OF CLAIMS DENIALS.

(a) RIGHT TO INTERNAL APPEAL.—

(1) IN GENERAL.—A participant, beneficiary, or enrollee (or authorized representative) may appeal any denial of a claim for benefits under section 102 under the procedures described in this section.

(2) TIME FOR APPEAL.—

(A) IN GENERAL.—A group health plan, or health insurance issuer offering health insurance coverage, shall ensure that a participant, beneficiary, or enrollee (or authorized representative) has a period of not less than 180 days beginning on the date of a denial of a claim for benefits under section 102 in which to appeal such denial under this section.

(B) DATE OF DENIAL.—For purposes of subparagraph (A), the date of the denial shall be deemed to be the date as of which the participant, beneficiary, or enrollee knew of the denial of the claim for benefits.

(3) FAILURE TO ACT.—The failure of a plan or issuer to issue a determination on a claim for benefits under section 102 within the applicable timeline established for such a determination under such section is a denial of a claim for benefits for purposes this subtitle as of the date of the applicable deadline.

(4) PLAN WAIVER OF INTERNAL REVIEW.—A group health plan, or health insurance issuer offering health insurance coverage, may waive the internal review process under this section. In such case the plan or issuer shall provide notice to the participant, beneficiary, or enrollee (or authorized representative) involved, the participant, beneficiary, or enrollee (or authorized representative) involved shall be relieved of any obligation to complete the internal review involved, and may, at the option of such participant, beneficiary, enrollee, or representative proceed directly to seek further appeal through external review under section 104 or otherwise.

(b) TIMELINES FOR MAKING DETERMINATIONS.—

(1) ORAL REQUESTS.—In the case of an appeal of a denial of a claim for benefits under this section that involves an expedited or concurrent determination, a participant, beneficiary, or enrollee (or authorized representative) may request such appeal orally. A group health plan, or health insurance issuer offering health insurance coverage, may require that the participant, beneficiary, or enrollee (or authorized representative) provide written confirmation of such request in a timely manner on a form provided by the plan or issuer. In the case of such an oral request for an appeal of a denial, the making of the request (and the timing of such request) shall be treated as the making at that time of a request for an appeal without regard to whether and when a written confirmation of such request is made.

(2) ACCESS TO INFORMATION.—

(A) TIMELY PROVISION OF NECESSARY INFORMATION.—With respect to an appeal of a denial of a claim for benefits, the participant, beneficiary, or enrollee (or authorized representative) and the treating health care professional (if any) shall provide the plan or issuer with access to information requested by the plan or issuer that is necessary to make a determination relating to the appeal. Such access shall be provided not later than 5 days after the date on which the request for information is received, or, in a case described in subparagraph (B) or (C) of paragraph (3), by such earlier time as may be necessary to comply with the applicable timeline under such subparagraph.

(B) LIMITED EFFECT OF FAILURE ON PLAN OR ISSUER'S OBLIGATIONS.—Failure of the participant, beneficiary, or enrollee to comply with the requirements of subparagraph (A) shall not remove the obligation of the plan or issuer to make a decision in accordance with the medical exigencies of the case and as soon as possible, based on the available information, and failure to comply with the time limit established by this paragraph shall not remove the obligation of the plan or issuer to comply with the requirements of this section.

(3) PRIOR AUTHORIZATION DETERMINATIONS.—

(A) IN GENERAL.—A group health plan, or health insurance issuer offering health insurance coverage, shall make a determination on an appeal of a denial of a claim for benefits under this subsection in accordance with the medical exigencies of the case and as soon as possible, but in no case later than 14 days from the date on which the plan or issuer receives information that is reasonably necessary to enable the plan or issuer to make a determination on the appeal and in no case later than 28 days after the date the request for the appeal is received.

(B) EXPEDITED DETERMINATION.—Notwithstanding subparagraph (A), a group health plan, or health insurance issuer offering health insurance coverage, shall expedite a prior authorization determination on an appeal of a denial of a claim for benefits described in subparagraph (A), when a request for such an expedited determination is made by a participant, beneficiary, or enrollee (or authorized representative) at any time during the process for making a determination and a health care professional certifies, with the request, that a determination under the procedures described in subparagraph (A)

would seriously jeopardize the life or health of the participant, beneficiary, or enrollee or the ability of the participant, beneficiary, or enrollee to maintain or regain maximum function. Such determination shall be made in accordance with the medical exigencies of the case and as soon as possible, but in no case later than 72 hours after the time the request for such appeal is received by the plan or issuer under this subparagraph.

(C) ONGOING CARE DETERMINATIONS.—

(i) IN GENERAL.—Subject to clause (ii), in the case of a concurrent review determination described in section 102(b)(1)(C)(i)(I), which results in a termination or reduction of such care, the plan or issuer must provide notice of the determination on the appeal under this section by telephone and in printed form to the individual or the individual's designee and the individual's health care provider in accordance with the medical exigencies of the case and as soon as possible, with sufficient time prior to the termination or reduction to allow for an external appeal under section 104 to be completed before the termination or reduction takes effect.

(ii) RULE OF CONSTRUCTION.—Clause (i) shall not be construed as requiring plans or issuers to provide coverage of care that would exceed the coverage limitations for such care.

(4) RETROSPECTIVE DETERMINATION.—A group health plan, or health insurance issuer offering health insurance coverage, shall make a retrospective determination on an appeal of a claim for benefits in no case later than 30 days after the date on which the plan or issuer receives necessary information that is reasonably necessary to enable the plan or issuer to make a determination on the appeal and in no case later than 60 days after the date the request for the appeal is received.

(c) CONDUCT OF REVIEW.—

(1) IN GENERAL.—A review of a denial of a claim for benefits under this section shall be conducted by an individual with appropriate expertise who was not involved in the initial determination.

(2) REVIEW OF MEDICAL DECISIONS BY PHYSICIANS.—A review of an appeal of a denial of a claim for benefits that is based on a lack of medical necessity and appropriateness, or based on an experimental or investigational treatment, or requires an evaluation of medical facts, shall be made by a physician (allopathic or osteopathic) with appropriate expertise (including, in the case of a child, appropriate pediatric expertise) who was not involved in the initial determination.

(d) NOTICE OF DETERMINATION.—

(1) IN GENERAL.—Written notice of a determination made under an internal appeal of a denial of a claim for benefits shall be issued to the participant, beneficiary, or enrollee (or authorized representative) and the treating health care professional in accordance with the medical exigencies of the case and as soon as possible, but in no case later than 2 days after the date of completion of the review (or, in the case described in subparagraph (B) or (C) of subsection (b)(3), within the 72-hour or applicable period referred to in such subparagraph).

(2) FINAL DETERMINATION.—The decision by a plan or issuer under this section shall be treated as the final determination of the plan or issuer on a denial of a claim for benefits. The failure of a plan or issuer to issue a determination on an appeal of a denial of a claim for benefits under this section within the applicable timeline established for such a determination shall be treated as a final determination on an appeal of a denial of a claim for benefits for purposes of proceeding to external review under section 104.

(3) REQUIREMENTS OF NOTICE.—With respect to a determination made under this section, the notice described in paragraph (1) shall be provided in printed form and written in a manner calculated to be understood by the average participant, beneficiary, or enrollee and shall include—

(A) the specific reasons for the determination (including a summary of the clinical or scientific evidence used in making the determination);

(B) the procedures for obtaining additional information concerning the determination; and

(C) notification of the right to an independent external review under section 104 and instructions on how to initiate such a review.

SEC. 104. INDEPENDENT EXTERNAL APPEALS PROCEDURES.

(a) RIGHT TO EXTERNAL APPEAL.—A group health plan, and a health insurance issuer offering health insurance coverage, shall provide in accordance with this section participants, beneficiaries, and enrollees (or authorized representatives) with access to an independent external review for any denial of a claim for benefits.

(b) INITIATION OF THE INDEPENDENT EXTERNAL REVIEW PROCESS.—

(1) TIME TO FILE.—A request for an independent external review under this section shall be filed with the plan or issuer not later than 180 days after the date on which the participant, beneficiary, or enrollee receives notice of the denial under section 103(d) or notice of waiver of internal review under section 103(a)(4) or the date on which the plan or issuer has failed to make a timely decision under section 103(d)(2) and notifies the participant or beneficiary that it has failed to make a timely decision and that the beneficiary must file an appeal with an external review entity within 180 days if the participant or beneficiary desires to file such an appeal.

(2) FILING OF REQUEST.—

(A) IN GENERAL.—Subject to the succeeding provisions of this subsection, a group health plan, and a health insurance issuer offering health insurance coverage, may—

(i) except as provided in subparagraph (B)(i), require that a request for review be in writing;

(ii) limit the filing of such a request to the participant, beneficiary, or enrollee involved (or an authorized representative);

(iii) except if waived by the plan or issuer under section 103(a)(4), condition access to an independent external review under this section upon a final determination of a denial of a claim for benefits under the internal review procedure under section 103;

(iv) except as provided in subparagraph (B)(ii), require payment of a filing fee to the plan or issuer of a sum that does not exceed $25; and

(v) require that a request for review include the consent of the participant, beneficiary, or enrollee (or authorized representative) for the release of necessary medical information or records of the participant, beneficiary, or enrollee to the qualified external review entity only for purposes of conducting external review activities.

(B) REQUIREMENTS AND EXCEPTION RELATING TO GENERAL RULE.—

(i) ORAL REQUESTS PERMITTED IN EXPEDITED OR CONCURRENT CASES.—In the case of an expedited or concurrent external review as provided for under subsection (e), the request may be made orally. A group health plan, or health insurance issuer offering health insurance coverage, may require that the participant, beneficiary, or enrollee (or authorized representative) provide written confirmation of such request in a timely manner on a form provided by the plan or issuer. Such written confirmation shall be treated as a consent for purposes of subparagraph (A)(v). In the case of such an oral request for such a review, the making of the request (and the timing of such request) shall be treated as the making at that time of a request for such an external review without regard to whether and when a written confirmation of such request is made.

(ii) EXCEPTION TO FILING FEE REQUIREMENT.—

(I) INDIGENCY.—Payment of a filing fee shall not be required under subparagraph (A)(iv) where there is a certification (in a form and manner specified in guidelines established by the appropriate Secretary) that the participant, beneficiary, or enrollee is indigent (as defined in such guidelines).

(II) FEE NOT REQUIRED.—Payment of a filing fee shall not be required under subparagraph (A)(iv) if the plan or issuer waives the internal appeals process under section 103(a)(4).

(III) REFUNDING OF FEE.—The filing fee paid under subparagraph (A)(iv) shall be refunded if the determination under the independent external review is to reverse or modify the denial which is the subject of the review.

(IV) COLLECTION OF FILING FEE.—The failure to pay such a filing fee shall not prevent the consideration of a request for review but, subject to the preceding provisions of this clause, shall constitute a legal liability to pay.

(c) REFERRAL TO QUALIFIED EXTERNAL REVIEW ENTITY UPON REQUEST.—

(1) IN GENERAL.—Upon the filing of a request for independent external review with the group health plan, or health insurance issuer offering health insurance coverage, the plan or issuer shall immediately refer such request, and forward the plan or issuer's initial decision (including the information described in section 103(d)(3)(A)), to a qualified external review entity selected in accordance with this section.

(2) ACCESS TO PLAN OR ISSUER AND HEALTH PROFESSIONAL INFORMATION.—With respect to an independent external review conducted under this section, the participant, beneficiary, or enrollee (or authorized representative), the plan or issuer, and the treating health care professional (if any) shall provide the external review entity with information that is necessary to conduct a review under this section, as determined and requested by the entity. Such information shall be provided not later than 5 days after the date on which the request for information is received, or, in a case described in clause (ii) or (iii) of subsection (e)(1)(A), by such earlier time as may be necessary to comply with the applicable timeline under such clause.

(3) SCREENING OF REQUESTS BY QUALIFIED EXTERNAL REVIEW ENTITIES.—

(A) IN GENERAL.—With respect to a request referred to a qualified external review entity under paragraph (1) relating to a denial of a claim for benefits, the entity shall refer such request for the conduct of an independent medical review unless the entity determines that—

(i) any of the conditions described in clauses (ii) or (iii) of subsection (b)(2)(A) have not been met;

(ii) the denial of the claim for benefits does not involve a medically reviewable decision under subsection (d)(2);

(iii) the denial of the claim for benefits relates to a decision regarding whether an individual is a participant, beneficiary, or enrollee who is enrolled under the terms and conditions of the plan or coverage (including the applicability of any waiting period under the plan or coverage); or

(iv) the denial of the claim for benefits is a decision as to the application of cost-sharing requirements or the application of a specific exclusion or express limitation on the

amount, duration, or scope of coverage of items or services under the terms and conditions of the plan or coverage unless the decision is a denial described in subsection (d)(2).

Upon making a determination that any of clauses (i) through (iv) applies with respect to the request, the entity shall determine that the denial of a claim for benefits involved is not eligible for independent medical review under subsection (d), and shall provide notice in accordance with subparagraph (C).

(B) PROCESS FOR MAKING DETERMINATIONS.—

(i) NO DEFERENCE TO PRIOR DETERMINATIONS.—In making determinations under subparagraph (A), there shall be no deference given to determinations made by the plan or issuer or the recommendation of a treating health care professional (if any).

(ii) USE OF APPROPRIATE PERSONNEL.—A qualified external review entity shall use appropriately qualified personnel to make determinations under this section.

(C) NOTICES AND GENERAL TIMELINES FOR DETERMINATION.—

(i) NOTICE IN CASE OF DENIAL OF REFERRAL.—If the entity under this paragraph does not make a referral to an independent medical reviewer, the entity shall provide notice to the plan or issuer, the participant, beneficiary, or enrollee (or authorized representative) filing the request, and the treating health care professional (if any) that the denial is not subject to independent medical review. Such notice—

(I) shall be written (and, in addition, may be provided orally) in a manner calculated to be understood by an average participant or enrollee;

(II) shall include the reasons for the determination;

(III) include any relevant terms and conditions of the plan or coverage; and

(IV) include a description of any further recourse available to the individual.

(ii) GENERAL TIMELINE FOR DETERMINATIONS.—Upon receipt of information under paragraph (2), the qualified external review entity, and if required the independent medical reviewer, shall make a determination within the overall timeline that is applicable to the case under review as described in subsection (e), except that if the entity determines that a referral to an independent medical reviewer is not required, the entity shall provide notice of such determination to the participant, beneficiary, or enrollee (or authorized representative) within such timeline and within 2 days of the date of such determination.

(d) INDEPENDENT MEDICAL REVIEW.—

(1) IN GENERAL.—If a qualified external review entity determines under subsection (c) that a denial of a claim for benefits is eligible for independent medical review, the entity shall refer the denial involved to an independent medical reviewer for the conduct of an independent medical review under this subsection.

(2) MEDICALLY REVIEWABLE DECISIONS.—A denial of a claim for benefits is eligible for independent medical review if the benefit for the item or service for which the claim is made would be a covered benefit under the terms and conditions of the plan or coverage but for one (or more) of the following determinations:

(A) DENIALS BASED ON MEDICAL NECESSITY AND APPROPRIATENESS.—A determination that the item or service is not covered because it is not medically necessary and appropriate or based on the application of substantially equivalent terms.

(B) DENIALS BASED ON EXPERIMENTAL OR INVESTIGATIONAL TREATMENT.—A determination that the item or service is not covered because it is experimental or investigational or based on the application of substantially equivalent terms.

(C) DENIALS OTHERWISE BASED ON AN EVALUATION OF MEDICAL FACTS.—A determination that the item or service or condition is not covered based on grounds that require an evaluation of the medical facts by a health care professional in the specific case involved to determine the coverage and extent of coverage of the item or service or condition.

(3) INDEPENDENT MEDICAL REVIEW DETERMINATION.—

(A) IN GENERAL.—An independent medical reviewer under this section shall make a new independent determination with respect to whether or not the denial of a claim for a benefit that is the subject of the review should be upheld, reversed, or modified.

(B) STANDARD FOR DETERMINATION.—The independent medical reviewer's determination relating to the medical necessity and appropriateness, or the experimental or investigation nature, or the evaluation of the medical facts of the item, service, or condition shall be based on the medical condition of the participant, beneficiary, or enrollee (including the medical records of the participant, beneficiary, or enrollee) and valid, relevant scientific evidence and clinical evidence, including peer-reviewed medical literature or findings and including expert opinion.

(C) NO COVERAGE FOR EXCLUDED BENEFITS.—Nothing in this subsection shall be construed to permit an independent medical reviewer to require that a group health plan, or health insurance issuer offering health insurance coverage, provide coverage for items or services for which benefits are specifically excluded or expressly limited under the plan or coverage in the plain language of the plan document (and which are disclosed under section 121(b)(1)(C)) except to the extent that the application or interpretation of the exclusion or limitation involves a determination described in paragraph (2).

(D) EVIDENCE AND INFORMATION TO BE USED IN MEDICAL REVIEWS.—In making a determination under this subsection, the independent medical reviewer shall also consider appropriate and available evidence and information, including the following:

(i) The determination made by the plan or issuer with respect to the claim upon internal review and the evidence, guidelines, or rationale used by the plan or issuer in reaching such determination.

(ii) The recommendation of the treating health care professional and the evidence, guidelines, and rationale used by the treating health care professional in reaching such recommendation.

(iii) Additional relevant evidence or information obtained by the reviewer or submitted by the plan, issuer, participant, beneficiary, or enrollee (or an authorized representative), or treating health care professional.

(iv) The plan or coverage document.

(E) INDEPENDENT DETERMINATION.—In making determinations under this subtitle, a qualified external review entity and an independent medical reviewer shall—

(i) consider the claim under review without deference to the determinations made by the plan or issuer or the recommendation of the treating health care professional (if any); and

(ii) consider, but not be bound by the definition used by the plan or issuer of ''medically necessary and appropriate'', or ''experimental or investigational'', or other substantially equivalent terms that are used by the plan or issuer to describe medical necessity and appropriateness or experimental or investigational nature of the treatment.

(F) DETERMINATION OF INDEPENDENT MEDICAL REVIEWER.—An independent medical reviewer shall, in accordance with the deadlines described in subsection (e), prepare a written determination to uphold, reverse, or modify the denial under review. Such written determination shall include—

(i) the determination of the reviewer;

(ii) the specific reasons of the reviewer for such determination, including a summary of the clinical or scientific evidence used in making the determination; and

(iii) with respect to a determination to reverse or modify the denial under review, a timeframe within which the plan or issuer must comply with such determination.

(G) NONBINDING NATURE OF ADDITIONAL RECOMMENDATIONS.—In addition to the determination under subparagraph (F), the reviewer may provide the plan or issuer and the treating health care professional with additional recommendations in connection with such a determination, but any such recommendations shall not affect (or be treated as part of) the determination and shall not be binding on the plan or issuer.

(e) TIMELINES AND NOTIFICATIONS.—

(1) TIMELINES FOR INDEPENDENT MEDICAL REVIEW.—

(A) PRIOR AUTHORIZATION DETERMINATION.—

(i) IN GENERAL.—The independent medical reviewer (or reviewers) shall make a determination on a denial of a claim for benefits that is referred to the reviewer under subsection (c)(3) in accordance with the medical exigencies of the case and as soon as possible, but in no case later than 14 days after the date of receipt of information under subsection (c)(2) if the review involves a prior authorization of items or services and in no case later than 21 days after the date the request for external review is received.

(ii) EXPEDITED DETERMINATION.—Notwithstanding clause (i) and subject to clause (iii), the independent medical reviewer (or reviewers) shall make an expedited determination on a denial of a claim for benefits described in clause (i), when a request for such an expedited determination is made by a participant, beneficiary, or enrollee (or authorized representative) at any time during the process for making a determination, and a health care professional certifies, with the request, that a determination under the timeline described in clause (i) would seriously jeopardize the life or health of the participant, beneficiary, or enrollee or the ability of the participant, beneficiary, or enrollee to maintain or regain maximum function. Such determination shall be made as soon in accordance with the medical exigencies of the case and as soon as possible, but in no case later than 72 hours after the time the request for external review is received by the qualified external review entity.

(iii) ONGOING CARE DETERMINATION.—Notwithstanding clause (i), in the case of a review described in such subclause that involves a termination or reduction of care, the notice of the determination shall be completed not later than 24 hours after the time the request for external review is received by the qualified external review entity and before the end of the approved period of care.

(B) RETROSPECTIVE DETERMINATION.—The independent medical reviewer (or reviewers) shall complete a review in the case of a retrospective determination on an appeal of a denial of a claim for benefits that is referred to the reviewer under subsection (c)(3) in no case later than 30 days after the date of receipt of information under subsection (c)(2) and in no case later than 60 days after the date the request for external review is received by the qualified external review entity.

(2) NOTIFICATION OF DETERMINATION.—The external review entity shall ensure that the plan or issuer, the participant, beneficiary, or enrollee (or authorized representative) and the treating health care professional (if any) receives a copy of the written determination of the independent medical reviewer prepared under subsection (d)(3)(F). Nothing in this paragraph shall be construed as preventing an entity or reviewer from providing an initial oral notice of the reviewer's determination.

(3) FORM OF NOTICES.—Determinations and notices under this subsection shall be written in a manner calculated to be understood by an average participant.

(f) COMPLIANCE.—

(1) APPLICATION OF DETERMINATIONS.—

(A) EXTERNAL REVIEW DETERMINATIONS BINDING ON PLAN.—The determinations of an external review entity and an independent medical reviewer under this section shall be binding upon the plan or issuer involved.

(B) COMPLIANCE WITH DETERMINATION.—If the determination of an independent medical reviewer is to reverse or modify the denial, the plan or issuer, upon the receipt of such determination, shall authorize coverage to comply with the medical reviewer's determination in accordance with the timeframe established by the medical reviewer.

(2) FAILURE TO COMPLY.—

(A) IN GENERAL.—If a plan or issuer fails to comply with the timeframe established under paragraph (1)(B) with respect to a participant, beneficiary, or enrollee, where such failure to comply is caused by the plan or issuer, the participant, beneficiary, or enrollee may obtain the items or services involved (in a manner consistent with the determination of the independent external reviewer) from any provider regardless of whether such provider is a participating provider under the plan or coverage.

(B) REIMBURSEMENT.—

(i) IN GENERAL.—Where a participant, beneficiary, or enrollee obtains items or services in accordance with subparagraph (A), the plan or issuer involved shall provide for reimbursement of the costs of such items or services. Such reimbursement shall be made to the treating health care professional or to the participant, beneficiary, or enrollee (in the case of a participant, beneficiary, or enrollee who pays for the costs of such items or services).

(ii) AMOUNT.—The plan or issuer shall fully reimburse a professional, participant, beneficiary, or enrollee under clause (i) for the total costs of the items or services provided (regardless of any plan limitations that may apply to the coverage of such items or services) so long as the items or services were provided in a manner consistent with the determination of the independent medical reviewer.

(C) FAILURE TO REIMBURSE.—Where a plan or issuer fails to provide reimbursement to a professional, participant, beneficiary, or enrollee in accordance with this paragraph, the professional, participant, beneficiary, or enrollee may commence a civil action (or utilize other remedies available under law) to recover only the amount of any such reimbursement that is owed by the plan or issuer and any necessary legal costs or expenses (including attorney's fees) incurred in recovering such reimbursement.

(D) AVAILABLE REMEDIES.—The remedies provided under this paragraph are in addition to any other available remedies.

(3) PENALTIES AGAINST AUTHORIZED OFFICIALS FOR REFUSING TO AUTHORIZE THE DETERMINATION OF AN EXTERNAL REVIEW ENTITY.—

(A) MONETARY PENALTIES.—

(i) IN GENERAL.—In any case in which the determination of an external review entity is not followed by a group health plan, or by a health insurance issuer offering health insurance coverage, any person who, acting in the capacity of authorizing the benefit, causes such refusal may, in the discretion in a court of competent jurisdiction, be liable to an aggrieved participant, beneficiary, or enrollee for a civil penalty in an amount of up to $1,000 a day from the date on which the determination was transmitted to the plan or issuer by the external review entity until the date the refusal to provide the benefit is corrected.

(ii) ADDITIONAL PENALTY FOR FAILING TO FOLLOW TIMELINE.—In any case in which treatment was not commenced by the plan in accordance with the determination of an independent external reviewer, the Secretary shall assess a civil penalty of $10,000 against the plan and the plan shall pay such penalty to the participant, beneficiary, or enrollee involved.

(B) CEASE AND DESIST ORDER AND ORDER OF ATTORNEY'S FEES.—In any action described in subparagraph (A) brought by a participant, beneficiary, or enrollee with respect to a group health plan, or a health insurance issuer offering health insurance coverage, in which a plaintiff alleges that a person referred to in such subparagraph has taken an action resulting in a refusal of a benefit determined by an external appeal entity to be covered, or has failed to take an action for which such person is responsible under the terms and conditions of the plan or coverage and which is necessary under the plan or coverage for authorizing a benefit, the court shall cause to be served on the defendant an order requiring the defendant—

(i) to cease and desist from the alleged action or failure to act; and

(ii) to pay to the plaintiff a reasonable attorney's fee and other reasonable costs relating to the prosecution of the action on the charges on which the plaintiff prevails.

(C) ADDITIONAL CIVIL PENALTIES.—

(i) IN GENERAL.—In addition to any penalty imposed under subparagraph (A) or (B), the appropriate Secretary may assess a civil penalty against a person acting in the capacity of authorizing a benefit determined by an external review entity for one or more group health plans, or health insurance issuers offering health insurance coverage, for—

(I) any pattern or practice of repeated refusal to authorize a benefit determined by an external appeal entity to be covered; or

(II) any pattern or practice of repeated violations of the requirements of this section with respect to such plan or coverage.

(ii) STANDARD OF PROOF AND AMOUNT OF PENALTY.—Such penalty shall be payable only upon proof by clear and convincing evidence of such pattern or practice and shall be in an amount not to exceed the lesser of—

(I) 25 percent of the aggregate value of benefits shown by the appropriate Secretary to have not been provided, or unlawfully delayed, in violation of this section under such pattern or practice; or

(II) $500,000.

(D) REMOVAL AND DISQUALIFICATION.—Any person acting in the capacity of authorizing benefits who has engaged in any such pattern or practice described in subparagraph (C)(i) with respect to a plan or coverage, upon the petition of the appropriate Secretary, may be removed by the court from such position, and from any other involvement, with respect to such a plan or coverage, and may be precluded from returning to any such position or involvement for a period determined by the court.

(4) PROTECTION OF LEGAL RIGHTS.—Nothing in this subsection or subtitle shall be construed as altering or eliminating any cause of action or legal rights or remedies of participants, beneficiaries, enrollees, and others under State or Federal law (including sections 502 and 503 of the Employee Retirement Income Security Act of 1974), including the right to file judicial actions to enforce rights.

(g) QUALIFICATIONS OF INDEPENDENT MEDICAL REVIEWERS.—

(1) IN GENERAL.—In referring a denial to 1 or more individuals to conduct independent medical review under subsection (c), the qualified external review entity shall ensure that—

(A) each independent medical reviewer meets the qualifications described in paragraphs (2) and (3);

(B) with respect to each review at least 1 such reviewer meets the requirements described in paragraphs (4) and (5); and

(C) compensation provided by the entity to the reviewer is consistent with paragraph (6).

(2) LICENSURE AND EXPERTISE.—Each independent medical reviewer shall be a physician (allopathic or osteopathic) or health care professional who—

(A) is appropriately credentialed or licensed in 1 or more States to deliver health care services; and

(B) typically treats the condition, makes the diagnosis, or provides the type of treatment under review.

(3) INDEPENDENCE.—

(A) IN GENERAL.—Subject to subparagraph (B), each independent medical reviewer in a case shall—

(i) not be a related party (as defined in paragraph (7));

(ii) not have a material familial, financial, or professional relationship with such a party; and

(iii) not otherwise have a conflict of interest with such a party (as determined under regulations).

(B) EXCEPTION.—Nothing in subparagraph (A) shall be construed to—

(i) prohibit an individual, solely on the basis of affiliation with the plan or issuer, from serving as an independent medical reviewer if—

(I) a non-affiliated individual is not reasonably available;

(II) the affiliated individual is not involved in the provision of items or services in the case under review;

(III) the fact of such an affiliation is disclosed to the plan or issuer and the participant, beneficiary, or enrollee (or authorized representative) and neither party objects; and

(IV) the affiliated individual is not an employee of the plan or issuer and does not provide services exclusively or primarily to or on behalf of the plan or issuer;

(ii) prohibit an individual who has staff privileges at the institution where the treatment involved takes place from serving as an independent medical reviewer merely on the basis of such affiliation if the affiliation is disclosed to the plan or issuer and the participant, beneficiary, or enrollee (or authorized representative), and neither party objects; or

(iii) prohibit receipt of compensation by an independent medical reviewer from an entity if the compensation is provided consistent with paragraph (6).

(4) PRACTICING HEALTH CARE PROFESSIONAL IN SAME FIELD.—

(A) IN GENERAL.—In a case involving treatment, or the provision of items or services—

(i) by a physician, a reviewer shall be a practicing physician (allopathic or osteopathic) of the same or similar specialty, as a physician who typically treats the condition, makes the diagnosis, or provides the type of treatment under review; or

(ii) by a health care professional (other than a physician), a reviewer shall be a practicing physician (allopathic or osteopathic) or, if determined appropriate by the qualified external review entity, a practicing

health care professional (other than such a physician), of the same or similar specialty as the health care professional who typically treats the condition, makes the diagnosis, or provides the type of treatment under review.

(B) PRACTICING DEFINED.—For purposes of this paragraph, the term ''practicing'' means, with respect to an individual who is a physician or other health care professional that the individual provides health care services to individual patients on average at least 2 days per week.

(5) PEDIATRIC EXPERTISE.—In the case of an external review relating to a child, a reviewer shall have expertise under paragraph (2) in pediatrics.

(6) LIMITATIONS ON REVIEWER COMPENSATION.—Compensation provided by a qualified external review entity to an independent medical reviewer in connection with a review under this section shall—

(A) not exceed a reasonable level; and

(B) not be contingent on the decision rendered by the reviewer.

(7) RELATED PARTY DEFINED.—For purposes of this section, the term ''related party'' means, with respect to a denial of a claim under a plan or coverage relating to a participant, beneficiary, or enrollee, any of the following:

(A) The plan, plan sponsor, or issuer involved, or any fiduciary, officer, director, or employee of such plan, plan sponsor, or issuer.

(B) The participant, beneficiary, or enrollee (or authorized representative).

(C) The health care professional that provides the items or services involved in the denial.

(D) The institution at which the items or services (or treatment) involved in the denial are provided.

(E) The manufacturer of any drug or other item that is included in the items or services involved in the denial.

(F) Any other party determined under any regulations to have a substantial interest in the denial involved.

(h) QUALIFIED EXTERNAL REVIEW ENTITIES.—

(1) SELECTION OF QUALIFIED EXTERNAL REVIEW ENTITIES.—

(A) LIMITATION ON PLAN OR ISSUER SELECTION.—The appropriate Secretary shall implement procedures—

(i) to assure that the selection process among qualified external review entities will not create any incentives for external review entities to make a decision in a biased manner; and

(ii) for auditing a sample of decisions by such entities to assure that no such decisions are made in a biased manner.

No such selection process under the procedures implemented by the appropriate Secretary may give either the patient or the plan or issuer any ability to determine or influence the selection of a qualified external review entity to review the case of any participant, beneficiary, or enrollee.

(B) STATE AUTHORITY WITH RESPECT TO QUALIFIED EXTERNAL REVIEW ENTITIES FOR HEALTH INSURANCE ISSUERS.—With respect to health insurance issuers offering health insurance coverage in a State, the State may provide for external review activities to be conducted by a qualified external appeal entity that is designated by the State or that is selected by the State in a manner determined by the State to assure an unbiased determination.

(2) CONTRACT WITH QUALIFIED EXTERNAL REVIEW ENTITY.—Except as provided in paragraph (1)(B), the external review process of a plan or issuer under this section shall be conducted under a contract between the plan or issuer and 1 or more qualified external review entities (as defined in paragraph (4)(A)).

(3) TERMS AND CONDITIONS OF CONTRACT.—The terms and conditions of a contract under paragraph (2) shall—

(A) be consistent with the standards the appropriate Secretary shall establish to assure there is no real or apparent conflict of interest in the conduct of external review activities; and

(B) provide that the costs of the external review process shall be borne by the plan or issuer.

Subparagraph (B) shall not be construed as applying to the imposition of a filing fee under subsection (b)(2)(A)(iv) or costs incurred by the participant, beneficiary, or enrollee (or authorized representative) or treating health care professional (if any) in support of the review, including the provision of additional evidence or information.

(4) QUALIFICATIONS.—

(A) IN GENERAL.—In this section, the term ''qualified external review entity'' means, in relation to a plan or issuer, an entity that is initially certified (and periodically recertified) under subparagraph (C) as meeting the following requirements:

(i) The entity has (directly or through contracts or other arrangements) sufficient medical, legal, and other expertise and sufficient staffing to carry out duties of a qualified external review entity under this section on a timely basis, including making determinations under subsection (b)(2)(A) and providing for independent medical reviews under subsection (d).

(ii) The entity is not a plan or issuer or an affiliate or a subsidiary of a plan or issuer, and is not an affiliate or subsidiary of a professional or trade association of plans or issuers or of health care providers.

(iii) The entity has provided assurances that it will conduct external review activities consistent with the applicable requirements of this section and standards specified in subparagraph (C), including that it will not conduct any external review activities in a case unless the independence requirements of subparagraph (B) are met with respect to the case.

(iv) The entity has provided assurances that it will provide information in a timely manner under subparagraph (D).

(v) The entity meets such other requirements as the appropriate Secretary provides by regulation.

(B) INDEPENDENCE REQUIREMENTS.—

(i) IN GENERAL.—Subject to clause (ii), an entity meets the independence requirements of this subparagraph with respect to any case if the entity—

(I) is not a related party (as defined in subsection (g)(7));

(II) does not have a material familial, financial, or professional relationship with such a party; and

(III) does not otherwise have a conflict of interest with such a party (as determined under regulations).

(ii) EXCEPTION FOR REASONABLE COMPENSATION.—Nothing in clause (i) shall be construed to prohibit receipt by a qualified external review entity of compensation from a plan or issuer for the conduct of external review activities under this section if the compensation is provided consistent with clause (iii).

(iii) LIMITATIONS ON ENTITY COMPENSATION.—Compensation provided by a plan or issuer to a qualified external review entity in connection with reviews under this section shall—

(I) not exceed a reasonable level; and

(II) not be contingent on any decision rendered by the entity or by any independent medical reviewer.

(C) CERTIFICATION AND RECERTIFICATION PROCESS.—

(i) IN GENERAL.—The initial certification and recertification of a qualified external review entity shall be made—

(I) under a process that is recognized or approved by the appropriate Secretary; or

(II) by a qualified private standard-setting organization that is approved by the appropriate Secretary under clause (iii).

In taking action under subclause (I), the appropriate Secretary shall give deference to entities that are under contract with the Federal Government or with an applicable State authority to perform functions of the type performed by qualified external review entities.

(ii) PROCESS.—The appropriate Secretary shall not recognize or approve a process under clause (i)(I) unless the process applies standards (as promulgated in regulations) that ensure that a qualified external review entity—

(I) will carry out (and has carried out, in the case of recertification) the responsibilities of such an entity in accordance with this section, including meeting applicable deadlines;

(II) will meet (and has met, in the case of recertification) appropriate indicators of fiscal integrity;

(III) will maintain (and has maintained, in the case of recertification) appropriate confidentiality with respect to individually identifiable health information obtained in the course of conducting external review activities; and

(IV) in the case recertification, shall review the matters described in clause (iv).

(iii) APPROVAL OF QUALIFIED PRIVATE STANDARD-SETTING ORGANIZATIONS.—For purposes of clause (i)(II), the appropriate Secretary may approve a qualified private standard-setting organization if such Secretary finds that the organization only certifies (or recertifies) external review entities that meet at least the standards required for the certification (or recertification) of external review entities under clause (ii).

(iv) CONSIDERATIONS IN RECERTIFICATIONS.—In conducting recertifications of a qualified external review entity under this paragraph, the appropriate Secretary or organization conducting the recertification shall review compliance of the entity with the requirements for conducting external review activities under this section, including the following:

(I) Provision of information under subparagraph (D).

(II) Adherence to applicable deadlines (both by the entity and by independent medical reviewers it refers cases to).

(III) Compliance with limitations on compensation (with respect to both the entity and independent medical reviewers it refers cases to).

(IV) Compliance with applicable independence requirements.

(v) PERIOD OF CERTIFICATION OR RECERTIFICATION.—A certification or recertification provided under this paragraph shall extend for a period not to exceed 2 years.

(vi) REVOCATION.—A certification or recertification under this paragraph may be revoked by the appropriate Secretary or by the organization providing such certification upon a showing of cause.

(vii) SUFFICIENT NUMBER OF ENTITIES.—The appropriate Secretary shall certify and recertify a number of external review entities which is sufficient to ensure the timely and efficient provision of review services.

(D) PROVISION OF INFORMATION.—

(i) IN GENERAL.—A qualified external review entity shall provide to the appropriate Secretary, in such manner and at such times as such Secretary may require, such information (relating to the denials which have

been referred to the entity for the conduct of external review under this section) as such Secretary determines appropriate to assure compliance with the independence and other requirements of this section to monitor and assess the quality of its external review activities and lack of bias in making determinations. Such information shall include information described in clause (ii) but shall not include individually identifiable medical information.

(ii) INFORMATION TO BE INCLUDED.—The information described in this subclause with respect to an entity is as follows:

(I) The number and types of denials for which a request for review has been received by the entity.

(II) The disposition by the entity of such denials, including the number referred to a independent medical reviewer and the reasons for such dispositions (including the application of exclusions), on a plan or issuer-specific basis and on a health care specialty-specific basis.

(III) The length of time in making determinations with respect to such denials.

(IV) Updated information on the information required to be submitted as a condition of certification with respect to the entity's performance of external review activities.

(iii) INFORMATION TO BE PROVIDED TO CERTIFYING ORGANIZATION.—

(I) IN GENERAL.—In the case of a qualified external review entity which is certified (or recertified) under this subsection by a qualified private standard-setting organization, at the request of the organization, the entity shall provide the organization with the information provided to the appropriate Secretary under clause (i).

(II) ADDITIONAL INFORMATION.—Nothing in this subparagraph shall be construed as preventing such an organization from requiring additional information as a condition of certification or recertification of an entity.

(iv) USE OF INFORMATION.—Information provided under this subparagraph may be used by the appropriate Secretary and qualified private standard-setting organizations to conduct oversight of qualified external review entities, including recertification of such entities, and shall be made available to the public in an appropriate manner.

(E) LIMITATION ON LIABILITY.—No qualified external review entity having a contract with a plan or issuer, and no person who is employed by any such entity or who furnishes professional services to such entity (including as an independent medical reviewer), shall be held by reason of the performance of any duty, function, or activity required or authorized pursuant to this section, to be civilly liable under any law of the United States or of any State (or political subdivision thereof) if there was no actual malice or gross misconduct in the performance of such duty, function, or activity.

Subtitle B—Access to Care

SEC. 111. CONSUMER CHOICE OPTION.

(a) IN GENERAL.—If—

(1) a health insurance issuer providing health insurance coverage in connection with a group health plan offers to enrollees health insurance coverage which provides for coverage of services only if such services are furnished through health care professionals and providers who are members of a network of health care professionals and providers who have entered into a contract with the issuer to provide such services, or

(2) a group health plan offers to participants or beneficiaries health benefits which provide for coverage of services only if such services are furnished through health care professionals and providers who are members of a network of health care professionals and providers who have entered into a contract with the plan to provide such services,

then the issuer or plan shall also offer or arrange to be offered to such enrollees, participants, or beneficiaries (at the time of enrollment and during an annual open season as provided under subsection (c)) the option of health insurance coverage or health benefits which provide for coverage of such services which are not furnished through health care professionals and providers who are members of such a network unless such enrollees, participants, or beneficiaries are offered such non-network coverage through another group health plan or through another health insurance issuer in the group market.

(b) ADDITIONAL COSTS.—The amount of any additional premium charged by the health insurance issuer or group health plan for the additional cost of the creation and maintenance of the option described in subsection (a) and the amount of any additional cost sharing imposed under such option shall be borne by the enrollee, participant, or beneficiary unless it is paid by the health plan sponsor or group health plan through agreement with the health insurance issuer.

(c) OPEN SEASON.—An enrollee, participant, or beneficiary, may change to the offering provided under this section only during a time period determined by the health insurance issuer or group health plan. Such time period shall occur at least annually.

SEC. 112. CHOICE OF HEALTH CARE PROFESSIONAL.

(a) PRIMARY CARE.—If a group health plan, or a health insurance issuer that offers health insurance coverage, requires or provides for designation by a participant, beneficiary, or enrollee of a participating primary care provider, then the plan or issuer shall permit each participant, beneficiary, and enrollee to designate any participating primary care provider who is available to accept such individual.

(b) SPECIALISTS.—

(1) IN GENERAL.—Subject to paragraph (2), a group health plan and a health insurance issuer that offers health insurance coverage shall permit each participant, beneficiary, or enrollee to receive medically necessary and appropriate specialty care, pursuant to appropriate referral procedures, from any qualified participating health care professional who is available to accept such individual for such care.

(2) LIMITATION.—Paragraph (1) shall not apply to specialty care if the plan or issuer clearly informs participants, beneficiaries, and enrollees of the limitations on choice of participating health care professionals with respect to such care.

(3) CONSTRUCTION.—Nothing in this subsection shall be construed as affecting the application of section 114 (relating to access to specialty care).

SEC. 113. ACCESS TO EMERGENCY CARE.

(a) COVERAGE OF EMERGENCY SERVICES.—

(1) IN GENERAL.—If a group health plan, or health insurance coverage offered by a health insurance issuer, provides or covers any benefits with respect to services in an emergency department of a hospital, the plan or issuer shall cover emergency services (as defined in paragraph (2)(B))—

(A) without the need for any prior authorization determination;

(B) whether the health care provider furnishing such services is a participating provider with respect to such services;

(C) in a manner so that, if such services are provided to a participant, beneficiary, or enrollee—

(i) by a nonparticipating health care provider with or without prior authorization, or

(ii) by a participating health care provider without prior authorization,

the participant, beneficiary, or enrollee is not liable for amounts that exceed the amounts of liability that would be incurred if the services were provided by a participating health care provider with prior authorization; and

(D) without regard to any other term or condition of such coverage (other than exclusion or coordination of benefits, or an affiliation or waiting period, permitted under section 2701 of the Public Health Service Act, section 701 of the Employee Retirement Income Security Act of 1974, or section 9801 of the Internal Revenue Code of 1986, and other than applicable cost-sharing).

(2) DEFINITIONS.—In this section:

(A) EMERGENCY MEDICAL CONDITION.—The term ''emergency medical condition'' means a medical condition manifesting itself by acute symptoms of sufficient severity (including severe pain) such that a prudent layperson, who possesses an average knowledge of health and medicine, could reasonably expect the absence of immediate medical attention to result in a condition described in clause (i), (ii), or (iii) of section 1867(e)(1)(A) of the Social Security Act.

(B) EMERGENCY SERVICES.—The term ''emergency services'' means, with respect to an emergency medical condition—

(i) a medical screening examination (as required under section 1867 of the Social Security Act) that is within the capability of the emergency department of a hospital, including ancillary services routinely available to the emergency department to evaluate such emergency medical condition, and

(ii) within the capabilities of the staff and facilities available at the hospital, such further medical examination and treatment as are required under section 1867 of such Act to stabilize the patient.

(C) STABILIZE.—The term ''to stabilize'', with respect to an emergency medical condition (as defined in subparagraph (A)), has the meaning given in section 1867(e)(3) of the Social Security Act (42 U.S.C. 1395dd(e)(3)).

(b) REIMBURSEMENT FOR MAINTENANCE CARE AND POST-STABILIZATION CARE.—A group health plan, and health insurance coverage offered by a health insurance issuer, must provide reimbursement for maintenance care and post-stabilization care in accordance with the requirements of section 1852(d)(2) of the Social Security Act (42 U.S.C. 1395w–22(d)(2)). Such reimbursement shall be provided in a manner consistent with subsection (a)(1)(C).

(c) COVERAGE OF EMERGENCY AMBULANCE SERVICES.—

(1) IN GENERAL.—If a group health plan, or health insurance coverage provided by a health insurance issuer, provides any benefits with respect to ambulance services and emergency services, the plan or issuer shall cover emergency ambulance services (as defined in paragraph (2)) furnished under the plan or coverage under the same terms and conditions under subparagraphs (A) through (D) of subsection (a)(1) under which coverage is provided for emergency services.

(2) EMERGENCY AMBULANCE SERVICES.—For purposes of this subsection, the term ''emergency ambulance services'' means ambulance services (as defined for purposes of section 1861(s)(7) of the Social Security Act) furnished to transport an individual who has an emergency medical condition (as defined in subsection (a)(2)(A)) to a hospital for the receipt of emergency services (as defined in subsection (a)(2)(B)) in a case in which the emergency services are covered under the plan or coverage pursuant to subsection (a)(1) and a prudent layperson, with an average knowledge of health and medicine, could reasonably expect that the absence of such transport would result in placing the health of the individual in serious jeopardy, serious

impairment of bodily function, or serious dysfunction of any bodily organ or part.

SEC. 114. TIMELY ACCESS TO SPECIALISTS.

(a) TIMELY ACCESS.—

(1) IN GENERAL.—A group health plan or health insurance issuer offering health insurance coverage shall ensure that participants, beneficiaries, and enrollees receive timely access to specialists who are appropriate to the condition of, and accessible to, the participant, beneficiary, or enrollee, when such specialty care is a covered benefit under the plan or coverage.

(2) RULE OF CONSTRUCTION.—Nothing in paragraph (1) shall be construed—

(A) to require the coverage under a group health plan or health insurance coverage of benefits or services;

(B) to prohibit a plan or issuer from including providers in the network only to the extent necessary to meet the needs of the plan's or issuer's participants, beneficiaries, or enrollees; or

(C) to override any State licensure or scope-of-practice law.

(3) ACCESS TO CERTAIN PROVIDERS.—

(A) IN GENERAL.—With respect to specialty care under this section, if a participating specialist is not available and qualified to provide such care to the participant, beneficiary, or enrollee, the plan or issuer shall provide for coverage of such care by a nonparticipating specialist.

(B) TREATMENT OF NONPARTICIPATING PROVIDERS.—If a participant, beneficiary, or enrollee receives care from a nonparticipating specialist pursuant to subparagraph (A), such specialty care shall be provided at no additional cost to the participant, beneficiary, or enrollee beyond what the participant, beneficiary, or enrollee would otherwise pay for such specialty care if provided by a participating specialist.

(b) REFERRALS.—

(1) AUTHORIZATION.—A group health plan or health insurance issuer may require an authorization in order to obtain coverage for specialty services under this section. Any such authorization—

(A) shall be for an appropriate duration of time or number of referrals; and

(B) may not be refused solely because the authorization involves services of a nonparticipating specialist (described in subsection (a)(3)).

(2) REFERRALS FOR ONGOING SPECIAL CONDITIONS.—

(A) IN GENERAL.—A group health plan or health insurance issuer shall permit a participant, beneficiary, or enrollee who has an ongoing special condition (as defined in subparagraph (B)) to receive a referral to a specialist for the treatment of such condition and such specialist may authorize such referrals, procedures, tests, and other medical services with respect to such condition, or coordinate the care for such condition, subject to the terms of a treatment plan (if any) referred to in subsection (c) with respect to the condition.

(B) ONGOING SPECIAL CONDITION DEFINED.—In this subsection, the term ''ongoing special condition'' means a condition or disease that—

(i) is life-threatening, degenerative, potentially disabling, or congenital; and

(ii) requires specialized medical care over a prolonged period of time.

(c) TREATMENT PLANS.—

(1) IN GENERAL.—A group health plan or health insurance issuer may require that the specialty care be provided—

(A) pursuant to a treatment plan, but only if the treatment plan—

(i) is developed by the specialist, in consultation with the case manager or primary care provider, and the participant, beneficiary, or enrollee, and

(ii) is approved by the plan or issuer in a timely manner, if the plan or issuer requires such approval; and

(B) in accordance with applicable quality assurance and utilization review standards of the plan or issuer.

(2) NOTIFICATION.—Nothing in paragraph (1) shall be construed as prohibiting a plan or issuer from requiring the specialist to provide the plan or issuer with regular updates on the specialty care provided, as well as all other reasonably necessary medical information.

(d) SPECIALIST DEFINED.—For purposes of this section, the term ''specialist'' means, with respect to the condition of the participant, beneficiary, or enrollee, a health care professional, facility, or center that has adequate expertise through appropriate training and experience (including, in the case of a child, appropriate pediatric expertise) to provide high quality care in treating the condition.

SEC. 115. PATIENT ACCESS TO OBSTETRIC AND GYNECOLOGICAL CARE.

(a) GENERAL RIGHTS.—

(1) DIRECT ACCESS.—A group health plan, or health insurance issuer offering health insurance coverage, described in subsection (b) may not require authorization or referral by the plan, issuer, or any person (including a primary care provider described in subsection (b)(2)) in the case of a female participant, beneficiary, or enrollee who seeks coverage for obstetrical or gynecological care provided by a participating health care professional who specializes in obstetrics or gynecology.

(2) OBSTETRICAL AND GYNECOLOGICAL CARE.—A group health plan or health insurance issuer described in subsection (b) shall treat the provision of obstetrical and gynecological care, and the ordering of related obstetrical and gynecological items and services, pursuant to the direct access described under paragraph (1), by a participating health care professional who specializes in obstetrics or gynecology as the authorization of the primary care provider.

(b) APPLICATION OF SECTION.—A group health plan, or health insurance issuer offering health insurance coverage, described in this subsection is a group health plan or coverage that—

(1) provides coverage for obstetric or gynecologic care; and

(2) requires the designation by a participant, beneficiary, or enrollee of a participating primary care provider.

(c) CONSTRUCTION.—Nothing in subsection (a) shall be construed to—

(1) waive any exclusions of coverage under the terms and conditions of the plan or health insurance coverage with respect to coverage of obstetrical or gynecological care; or

(2) preclude the group health plan or health insurance issuer involved from requiring that the obstetrical or gynecological provider notify the primary care health care professional or the plan or issuer of treatment decisions.

SEC. 116. ACCESS TO PEDIATRIC CARE.

(a) PEDIATRIC CARE.—In the case of a person who has a child who is a participant, beneficiary, or enrollee under a group health plan, or health insurance coverage offered by a health insurance issuer, if the plan or issuer requires or provides for the designation of a participating primary care provider for the child, the plan or issuer shall permit such person to designate a physician (allopathic or osteopathic) who specializes in pediatrics as the child's primary care provider if such provider participates in the network of the plan or issuer.

(b) CONSTRUCTION.—Nothing in subsection (a) shall be construed to waive any exclusions of coverage under the terms and conditions of the plan or health insurance coverage with respect to coverage of pediatric care.

SEC. 117. CONTINUITY OF CARE.

(a) TERMINATION OF PROVIDER.—

(1) IN GENERAL.—If—

(A) a contract between a group health plan, or a health insurance issuer offering health insurance coverage, and a treating health care provider is terminated (as defined in paragraph (e)(4)), or

(B) benefits or coverage provided by a health care provider are terminated because of a change in the terms of provider participation in such plan or coverage,

the plan or issuer shall meet the requirements of paragraph (3) with respect to each continuing care patient.

(2) TREATMENT OF TERMINATION OF CONTRACT WITH HEALTH INSURANCE ISSUER.—If a contract for the provision of health insurance coverage between a group health plan and a health insurance issuer is terminated and, as a result of such termination, coverage of services of a health care provider is terminated with respect to an individual, the provisions of paragraph (1) (and the succeeding provisions of this section) shall apply under the plan in the same manner as if there had been a contract between the plan and the provider that had been terminated, but only with respect to benefits that are covered under the plan after the contract termination.

(3) REQUIREMENTS.—The requirements of this paragraph are that the plan or issuer—

(A) notify the continuing care patient involved, or arrange to have the patient notified pursuant to subsection (d)(2), on a timely basis of the termination described in paragraph (1) (or paragraph (2), if applicable) and the right to elect continued transitional care from the provider under this section;

(B) provide the patient with an opportunity to notify the plan or issuer of the patient's need for transitional care; and

(C) subject to subsection (c), permit the patient to elect to continue to be covered with respect to the course of treatment by such provider with the provider's consent during a transitional period (as provided for under subsection (b)).

(4) CONTINUING CARE PATIENT.—For purposes of this section, the term ''continuing care patient'' means a participant, beneficiary, or enrollee who—

(A) is undergoing a course of treatment for a serious and complex condition from the provider at the time the plan or issuer receives or provides notice of provider, benefit, or coverage termination described in paragraph (1) (or paragraph (2), if applicable);

(B) is undergoing a course of institutional or inpatient care from the provider at the time of such notice;

(C) is scheduled to undergo non-elective surgery from the provider at the time of such notice;

(D) is pregnant and undergoing a course of treatment for the pregnancy from the provider at the time of such notice; or

(E) is or was determined to be terminally ill (as determined under section 1861(dd)(3)(A) of the Social Security Act) at the time of such notice, but only with respect to a provider that was treating the terminal illness before the date of such notice.

(b) TRANSITIONAL PERIODS.—

(1) SERIOUS AND COMPLEX CONDITIONS.—The transitional period under this subsection with respect to a continuing care patient described in subsection (a)(4)(A) shall extend for up to 90 days (as determined by the treating health care professional) from the date of the notice described in subsection (a)(3)(A).

(2) INSTITUTIONAL OR INPATIENT CARE.—The transitional period under this subsection for

a continuing care patient described in subsection (a)(4)(B) shall extend until the earlier of—

(A) the expiration of the 90-day period beginning on the date on which the notice under subsection (a)(3)(A) is provided; or

(B) the date of discharge of the patient from such care or the termination of the period of institutionalization, or, if later, the date of completion of reasonable follow-up care.

(3) SCHEDULED NON-ELECTIVE SURGERY.—The transitional period under this subsection for a continuing care patient described in subsection (a)(4)(C) shall extend until the completion of the surgery involved and post-surgical follow-up care relating to the surgery and occurring within 90 days after the date of the surgery.

(4) PREGNANCY.—The transitional period under this subsection for a continuing care patient described in subsection (a)(4)(D) shall extend through the provision of post-partum care directly related to the delivery.

(5) TERMINAL ILLNESS.—The transitional period under this subsection for a continuing care patient described in subsection (a)(4)(E) shall extend for the remainder of the patient's life for care that is directly related to the treatment of the terminal illness or its medical manifestations.

(c) PERMISSIBLE TERMS AND CONDITIONS.—A group health plan or health insurance issuer may condition coverage of continued treatment by a provider under this section upon the provider agreeing to the following terms and conditions:

(1) The treating health care provider agrees to accept reimbursement from the plan or issuer and continuing care patient involved (with respect to cost-sharing) at the rates applicable prior to the start of the transitional period as payment in full (or, in the case described in subsection (a)(2), at the rates applicable under the replacement plan or coverage after the date of the termination of the contract with the group health plan or health insurance issuer) and not to impose cost-sharing with respect to the patient in an amount that would exceed the cost-sharing that could have been imposed if the contract referred to in subsection (a)(1) had not been terminated.

(2) The treating health care provider agrees to adhere to the quality assurance standards of the plan or issuer responsible for payment under paragraph (1) and to provide to such plan or issuer necessary medical information related to the care provided.

(3) The treating health care provider agrees otherwise to adhere to such plan's or issuer's policies and procedures, including procedures regarding referrals and obtaining prior authorization and providing services pursuant to a treatment plan (if any) approved by the plan or issuer.

(d) RULES OF CONSTRUCTION.—Nothing in this section shall be construed—

(1) to require the coverage of benefits which would not have been covered if the provider involved remained a participating provider; or

(2) with respect to the termination of a contract under subsection (a) to prevent a group health plan or health insurance issuer from requiring that the health care provider—

(A) notify participants, beneficiaries, or enrollees of their rights under this section; or

(B) provide the plan or issuer with the name of each participant, beneficiary, or enrollee who the provider believes is a continuing care patient.

(e) DEFINITIONS.—In this section:

(1) CONTRACT.—The term ''contract'' includes, with respect to a plan or issuer and a treating health care provider, a contract between such plan or issuer and an organized network of providers that includes the treating health care provider, and (in the case of such a contract) the contract between the treating health care provider and the organized network.

(2) HEALTH CARE PROVIDER.—The term ''health care provider'' or ''provider'' means—

(A) any individual who is engaged in the delivery of health care services in a State and who is required by State law or regulation to be licensed or certified by the State to engage in the delivery of such services in the State; and

(B) any entity that is engaged in the delivery of health care services in a State and that, if it is required by State law or regulation to be licensed or certified by the State to engage in the delivery of such services in the State, is so licensed.

(3) SERIOUS AND COMPLEX CONDITION.—The term ''serious and complex condition'' means, with respect to a participant, beneficiary, or enrollee under the plan or coverage—

(A) in the case of an acute illness, a condition that is serious enough to require specialized medical treatment to avoid the reasonable possibility of death or permanent harm; or

(B) in the case of a chronic illness or condition, is an ongoing special condition (as defined in section 114(b)(2)(B)).

(4) TERMINATED.—The term ''terminated'' includes, with respect to a contract, the expiration or nonrenewal of the contract, but does not include a termination of the contract for failure to meet applicable quality standards or for fraud.

SEC. 118. ACCESS TO NEEDED PRESCRIPTION DRUGS.

(a) IN GENERAL.—To the extent that a group health plan, or health insurance coverage offered by a health insurance issuer, provides coverage for benefits with respect to prescription drugs, and limits such coverage to drugs included in a formulary, the plan or issuer shall—

(1) ensure the participation of physicians and pharmacists in developing and reviewing such formulary;

(2) provide for disclosure of the formulary to providers; and

(3) in accordance with the applicable quality assurance and utilization review standards of the plan or issuer, provide for exceptions from the formulary limitation when a non-formulary alternative is medically necessary and appropriate and, in the case of such an exception, apply the same cost-sharing requirements that would have applied in the case of a drug covered under the formulary.

(b) COVERAGE OF APPROVED DRUGS AND MEDICAL DEVICES.—

(1) IN GENERAL.—A group health plan (or health insurance coverage offered in connection with such a plan) that provides any coverage of prescription drugs or medical devices shall not deny coverage of such a drug or device on the basis that the use is investigational, if the use—

(A) in the case of a prescription drug—

(i) is included in the labeling authorized by the application in effect for the drug pursuant to subsection (b) or (j) of section 505 of the Federal Food, Drug, and Cosmetic Act, without regard to any postmarketing requirements that may apply under such Act; or

(ii) is included in the labeling authorized by the application in effect for the drug under section 351 of the Public Health Service Act, without regard to any postmarketing requirements that may apply pursuant to such section; or

(B) in the case of a medical device, is included in the labeling authorized by a regulation under subsection (d) or (3) of section 513 of the Federal Food, Drug, and Cosmetic Act, an order under subsection (f) of such section, or an application approved under section 515 of such Act, without regard to any postmarketing requirements that may apply under such Act.

(2) CONSTRUCTION.—Nothing in this subsection shall be construed as requiring a group health plan (or health insurance coverage offered in connection with such a plan) to provide any coverage of prescription drugs or medical devices.

SEC. 119. COVERAGE FOR INDIVIDUALS PARTICIPATING IN APPROVED CLINICAL TRIALS.

(a) COVERAGE.—

(1) IN GENERAL.—If a group health plan, or health insurance issuer that is providing health insurance coverage, provides coverage to a qualified individual (as defined in subsection (b)), the plan or issuer—

(A) may not deny the individual participation in the clinical trial referred to in subsection (b)(2);

(B) subject to subsection (c), may not deny (or limit or impose additional conditions on) the coverage of routine patient costs for items and services furnished in connection with participation in the trial; and

(C) may not discriminate against the individual on the basis of the enrollee's participation in such trial.

(2) EXCLUSION OF CERTAIN COSTS.—For purposes of paragraph (1)(B), routine patient costs do not include the cost of the tests or measurements conducted primarily for the purpose of the clinical trial involved.

(3) USE OF IN-NETWORK PROVIDERS.—If one or more participating providers is participating in a clinical trial, nothing in paragraph (1) shall be construed as preventing a plan or issuer from requiring that a qualified individual participate in the trial through such a participating provider if the provider will accept the individual as a participant in the trial.

(b) QUALIFIED INDIVIDUAL DEFINED.—For purposes of subsection (a), the term ''qualified individual'' means an individual who is a participant or beneficiary in a group health plan, or who is an enrollee under health insurance coverage, and who meets the following conditions:

(1)(A) The individual has a life-threatening or serious illness for which no standard treatment is effective.

(B) The individual is eligible to participate in an approved clinical trial according to the trial protocol with respect to treatment of such illness.

(C) The individual's participation in the trial offers meaningful potential for significant clinical benefit for the individual.

(2) Either—

(A) the referring physician is a participating health care professional and has concluded that the individual's participation in such trial would be appropriate based upon the individual meeting the conditions described in paragraph (1); or

(B) the participant, beneficiary, or enrollee provides medical and scientific information establishing that the individual's participation in such trial would be appropriate based upon the individual meeting the conditions described in paragraph (1).

(c) PAYMENT.—

(1) IN GENERAL.—Under this section a group health plan or health insurance issuer shall provide for payment for routine patient costs described in subsection (a)(2) but is not required to pay for costs of items and services that are reasonably expected (as determined by the appropriate Secretary) to be paid for by the sponsors of an approved clinical trial.

(2) PAYMENT RATE.—In the case of covered items and services provided by—

(A) a participating provider, the payment rate shall be at the agreed upon rate; or

(B) a nonparticipating provider, the payment rate shall be at the rate the plan or issuer would normally pay for comparable services under subparagraph (A).

(d) APPROVED CLINICAL TRIAL DEFINED.—

(1) IN GENERAL.—In this section, the term ''approved clinical trial'' means a clinical research study or clinical investigation approved and funded (which may include funding through in-kind contributions) by one or more of the following:

(A) The National Institutes of Health.

(B) A cooperative group or center of the National Institutes of Health.

(C) The Food and Drug Administration.

(D) Either of the following if the conditions described in paragraph (2) are met:

(i) The Department of Veterans Affairs.

(ii) The Department of Defense.

(2) CONDITIONS FOR DEPARTMENTS.—The conditions described in this paragraph, for a study or investigation conducted by a Department, are that the study or investigation has been reviewed and approved through a system of peer review that the appropriate Secretary determines—

(A) to be comparable to the system of peer review of studies and investigations used by the National Institutes of Health; and

(B) assures unbiased review of the highest scientific standards by qualified individuals who have no interest in the outcome of the review.

(e) CONSTRUCTION.—Nothing in this section shall be construed to limit a plan's or issuer's coverage with respect to clinical trials.

SEC. 120. REQUIRED COVERAGE FOR MINIMUM HOSPITAL STAY FOR MASTECTOMIES AND LYMPH NODE DISSECTIONS FOR THE TREATMENT OF BREAST CANCER AND COVERAGE FOR SECONDARY CONSULTATIONS.

(a) INPATIENT CARE.—

(1) IN GENERAL.—A group health plan, and a health insurance issuer providing health insurance coverage, that provides medical and surgical benefits shall ensure that inpatient coverage with respect to the treatment of breast cancer is provided for a period of time as is determined by the attending physician, in consultation with the patient, to be medically necessary and appropriate following—

(A) a mastectomy;

(B) a lumpectomy; or

(C) a lymph node dissection for the treatment of breast cancer.

(2) EXCEPTION.—Nothing in this section shall be construed as requiring the provision of inpatient coverage if the attending physician and patient determine that a shorter period of hospital stay is medically appropriate.

(b) PROHIBITION ON CERTAIN MODIFICATIONS.—In implementing the requirements of this section, a group health plan, and a health insurance issuer providing health insurance coverage, may not modify the terms and conditions of coverage based on the determination by a participant, beneficiary, or enrollee to request less than the minimum coverage required under subsection (a).

(c) SECONDARY CONSULTATIONS.—

(1) IN GENERAL.—A group health plan, and a health insurance issuer providing health insurance coverage, that provides coverage with respect to medical and surgical services provided in relation to the diagnosis and treatment of cancer shall ensure that full coverage is provided for secondary consultations by specialists in the appropriate medical fields (including pathology, radiology, and oncology) to confirm or refute such diagnosis. Such plan or issuer shall ensure that full coverage is provided for such secondary consultation whether such consultation is based on a positive or negative initial diagnosis. In any case in which the attending physician certifies in writing that services necessary for such a secondary consultation are not sufficiently available from specialists operating under the plan or coverage with respect to whose services coverage is otherwise provided under such plan or by such issuer, such plan or issuer shall ensure that coverage is provided with respect to the services necessary for the secondary consultation with any other specialist selected by the attending physician for such purpose at no additional cost to the individual beyond that which the individual would have paid if the specialist was participating in the network of the plan or issuer.

(2) EXCEPTION.—Nothing in paragraph (1) shall be construed as requiring the provision of secondary consultations where the patient determines not to seek such a consultation.

(d) PROHIBITION ON PENALTIES OR INCENTIVES.—A group health plan, and a health insurance issuer providing health insurance coverage, may not—

(1) penalize or otherwise reduce or limit the reimbursement of a provider or specialist because the provider or specialist provided care to a participant, beneficiary, or enrollee in accordance with this section;

(2) provide financial or other incentives to a physician or specialist to induce the physician or specialist to keep the length of inpatient stays of patients following a mastectomy, lumpectomy, or a lymph node dissection for the treatment of breast cancer below certain limits or to limit referrals for secondary consultations; or

(3) provide financial or other incentives to a physician or specialist to induce the physician or specialist to refrain from referring a participant, beneficiary, or enrollee for a secondary consultation that would otherwise be covered by the plan or coverage involved under subsection (c).

Subtitle C—Access to Information

SEC. 121. PATIENT ACCESS TO INFORMATION.

(a) REQUIREMENT—

(1) DISCLOSURE.—

(A) IN GENERAL.—A group health plan, and a health insurance issuer that provides coverage in connection with health insurance coverage, shall provide for the disclosure to participants, beneficiaries, and enrollees—

(i) of the information described in subsection (b) at the time of the initial enrollment of the participant, beneficiary, or enrollee under the plan or coverage;

(ii) of such information on an annual basis—

(I) in conjunction with the election period of the plan or coverage if the plan or coverage has such an election period; or

(II) in the case of a plan or coverage that does not have an election period, in conjunction with the beginning of the plan or coverage year; and

(iii) of information relating to any material reduction to the benefits or information described in such subsection or subsection (c), in the form of a notice provided not later than 30 days before the date on which the reduction takes effect.

(B) PARTICIPANTS, BENEFICIARIES, AND ENROLLEES.—The disclosure required under subparagraph (A) shall be provided—

(i) jointly to each participant, beneficiary, and enrollee who reside at the same address; or

(ii) in the case of a beneficiary or enrollee who does not reside at the same address as the participant or another enrollee, separately to the participant or other enrollees and such beneficiary or enrollee.

(2) PROVISION OF INFORMATION.—Information shall be provided to participants, beneficiaries, and enrollees under this section at the last known address maintained by the plan or issuer with respect to such participants, beneficiaries, or enrollees, to the extent that such information is provided to participants, beneficiaries, or enrollees via the United States Postal Service or other private delivery service.

(b) REQUIRED INFORMATION.—The informational materials to be distributed under this section shall include for each option available under the group health plan or health insurance coverage the following:

(1) BENEFITS.—A description of the covered benefits, including—

(A) any in- and out-of-network benefits;

(B) specific preventive services covered under the plan or coverage if such services are covered;

(C) any specific exclusions or express limitations of benefits described in section 104(b)(3)(C);

(D) any other benefit limitations, including any annual or lifetime benefit limits and any monetary limits or limits on the number of visits, days, or services, and any specific coverage exclusions; and

(E) any definition of medical necessity used in making coverage determinations by the plan, issuer, or claims administrator.

(2) COST SHARING.—A description of any cost-sharing requirements, including—

(A) any premiums, deductibles, coinsurance, copayment amounts, and liability for balance billing, for which the participant, beneficiary, or enrollee will be responsible under each option available under the plan;

(B) any maximum out-of-pocket expense for which the participant, beneficiary, or enrollee may be liable;

(C) any cost-sharing requirements for out-of-network benefits or services received from nonparticipating providers; and

(D) any additional cost-sharing or charges for benefits and services that are furnished without meeting applicable plan or coverage requirements, such as prior authorization or precertification.

(3) SERVICE AREA.—A description of the plan or issuer's service area, including the provision of any out-of-area coverage.

(4) PARTICIPATING PROVIDERS.—A directory of participating providers (to the extent a plan or issuer provides coverage through a network of providers) that includes, at a minimum, the name, address, and telephone number of each participating provider, and information about how to inquire whether a participating provider is currently accepting new patients.

(5) CHOICE OF PRIMARY CARE PROVIDER.—A description of any requirements and procedures to be used by participants, beneficiaries, and enrollees in selecting, accessing, or changing their primary care provider, including providers both within and outside of the network (if the plan or issuer permits out-of-network services), and the right to select a pediatrician as a primary care provider under section 116 for a participant, beneficiary, or enrollee who is a child if such section applies.

(6) PREAUTHORIZATION REQUIREMENTS.—A description of the requirements and procedures to be used to obtain preauthorization for health services, if such preauthorization is required.

(7) EXPERIMENTAL AND INVESTIGATIONAL TREATMENTS.—A description of the process for determining whether a particular item, service, or treatment is considered experimental or investigational, and the circumstances under which such treatments are covered by the plan or issuer.

(8) SPECIALTY CARE.—A description of the requirements and procedures to be used by

participants, beneficiaries, and enrollees in accessing specialty care and obtaining referrals to participating and nonparticipating specialists, including any limitations on choice of health care professionals referred to in section 112(b)(2) and the right to timely access to specialists care under section 114 if such section applies.

(9) CLINICAL TRIALS.—A description the circumstances and conditions under which participation in clinical trials is covered under the terms and conditions of the plan or coverage, and the right to obtain coverage for approved clinical trials under section 119 if such section applies.

(10) PRESCRIPTION DRUGS.—To the extent the plan or issuer provides coverage for prescription drugs, a statement of whether such coverage is limited to drugs included in a formulary, a description of any provisions and cost-sharing required for obtaining on- and off-formulary medications, and a description of the rights of participants, beneficiaries, and enrollees in obtaining access to access to prescription drugs under section 118 if such section applies.

(11) EMERGENCY SERVICES.—A summary of the rules and procedures for accessing emergency services, including the right of a participant, beneficiary, or enrollee to obtain emergency services under the prudent layperson standard under section 113, if such section applies, and any educational information that the plan or issuer may provide regarding the appropriate use of emergency services.

(12) CLAIMS AND APPEALS.—A description of the plan or issuer's rules and procedures pertaining to claims and appeals, a description of the rights (including deadlines for exercising rights) of participants, beneficiaries, and enrollees under subtitle A in obtaining covered benefits, filing a claim for benefits, and appealing coverage decisions internally and externally (including telephone numbers and mailing addresses of the appropriate authority), and a description of any additional legal rights and remedies available under section 502 of the Employee Retirement Income Security Act of 1974 and applicable State law.

(13) ADVANCE DIRECTIVES AND ORGAN DONATION.—A description of procedures for advance directives and organ donation decisions if the plan or issuer maintains such procedures.

(14) INFORMATION ON PLANS AND ISSUERS.—The name, mailing address, and telephone number or numbers of the plan administrator and the issuer to be used by participants, beneficiaries, and enrollees seeking information about plan or coverage benefits and services, payment of a claim, or authorization for services and treatment. Notice of whether the benefits under the plan or coverage are provided under a contract or policy of insurance issued by an issuer, or whether benefits are provided directly by the plan sponsor who bears the insurance risk.

(15) TRANSLATION SERVICES.—A summary description of any translation or interpretation services (including the availability of printed information in languages other than English, audio tapes, or information in Braille) that are available for non-English speakers and participants, beneficiaries, and enrollees with communication disabilities and a description of how to access these items or services.

(16) ACCREDITATION INFORMATION.—Any information that is made public by accrediting organizations in the process of accreditation if the plan or issuer is accredited, or any additional quality indicators (such as the results of enrollee satisfaction surveys) that the plan or issuer makes public or makes available to participants, beneficiaries, and enrollees.

(17) NOTICE OF REQUIREMENTS.—A description of any rights of participants, beneficiaries, and enrollees that are established by the Bipartisan Patient Protection Act of 2001 (excluding those described in paragraphs (1) through (16)) if such sections apply. The description required under this paragraph may be combined with the notices of the type described in sections 711(d), 713(b), or 606(a)(1) of the Employee Retirement Income Security Act of 1974 and with any other notice provision that the appropriate Secretary determines may be combined, so long as such combination does not result in any reduction in the information that would otherwise be provided to the recipient.

(18) AVAILABILITY OF ADDITIONAL INFORMATION.—A statement that the information described in subsection (c), and instructions on obtaining such information (including telephone numbers and, if available, Internet websites), shall be made available upon request.

(c) ADDITIONAL INFORMATION.—The informational materials to be provided upon the request of a participant, beneficiary, or enrollee shall include for each option available under a group health plan or health insurance coverage the following:

(1) STATUS OF PROVIDERS.—The State licensure status of the plan or issuer's participating health care professionals and participating health care facilities, and, if available, the education, training, specialty qualifications or certifications of such professionals.

(2) COMPENSATION METHODS.—A summary description by category of the applicable methods (such as capitation, fee-for-service, salary, bundled payments, per diem, or a combination thereof) used for compensating prospective or treating health care professionals (including primary care providers and specialists) and facilities in connection with the provision of health care under the plan or coverage.

(3) PRESCRIPTION DRUGS.—Information about whether a specific prescription medication is included in the formulary of the plan or issuer, if the plan or issuer uses a defined formulary.

(4) EXTERNAL APPEALS INFORMATION.—Aggregate information on the number and outcomes of external medical reviews, relative to the sample size (such as the number of covered lives) under the plan or under the coverage of the issuer.

(d) MANNER OF DISCLOSURE.—The information described in this section shall be disclosed in an accessible medium and format that is calculated to be understood by an average participant or enrollee.

(e) RULES OF CONSTRUCTION.—Nothing in this section shall be construed to prohibit a group health plan, or a health insurance issuer in connection with health insurance coverage, from—

(1) distributing any other additional information determined by the plan or issuer to be important or necessary in assisting participants, beneficiaries, and enrollees in the selection of a health plan or health insurance coverage; and

(2) complying with the provisions of this section by providing information in brochures, through the Internet or other electronic media, or through other similar means, so long as—

(A) the disclosure of such information in such form is in accordance with requirements as the appropriate Secretary may impose, and

(B) in connection with any such disclosure of information through the Internet or other electronic media—

(i) the recipient has affirmatively consented to the disclosure of such information in such form,

(ii) the recipient is capable of accessing the information so disclosed on the recipient's individual workstation or at the recipient's home,

(iii) the recipient retains an ongoing right to receive paper disclosure of such information and receives, in advance of any attempt at disclosure of such information to him or her through the Internet or other electronic media, notice in printed form of such ongoing right and of the proper software required to view information so disclosed, and

(iv) the plan administrator appropriately ensures that the intended recipient is receiving the information so disclosed and provides the information in printed form if the information is not received..

Subtitle D—Protecting the Doctor-Patient Relationship

SEC. 131. PROHIBITION OF INTERFERENCE WITH CERTAIN MEDICAL COMMUNICATIONS.

(a) GENERAL RULE.—The provisions of any contract or agreement, or the operation of any contract or agreement, between a group health plan or health insurance issuer in relation to health insurance coverage (including any partnership, association, or other organization that enters into or administers such a contract or agreement) and a health care provider (or group of health care providers) shall not prohibit or otherwise restrict a health care professional from advising such a participant, beneficiary, or enrollee who is a patient of the professional about the health status of the individual or medical care or treatment for the individual's condition or disease, regardless of whether benefits for such care or treatment are provided under the plan or coverage, if the professional is acting within the lawful scope of practice.

(b) NULLIFICATION.—Any contract provision or agreement that restricts or prohibits medical communications in violation of subsection (a) shall be null and void.

SEC. 132. PROHIBITION OF DISCRIMINATION AGAINST PROVIDERS BASED ON LICENSURE.

(a) IN GENERAL.—A group health plan, and a health insurance issuer with respect to health insurance coverage, shall not discriminate with respect to participation or indemnification as to any provider who is acting within the scope of the provider's license or certification under applicable State law, solely on the basis of such license or certification.

(b) CONSTRUCTION.—Subsection (a) shall not be construed—

(1) as requiring the coverage under a group health plan or health insurance coverage of a particular benefit or service or to prohibit a plan or issuer from including providers only to the extent necessary to meet the needs of the plan's or issuer's participants, beneficiaries, or enrollees or from establishing any measure designed to maintain quality and control costs consistent with the responsibilities of the plan or issuer;

(2) to override any State licensure or scope-of-practice law; or

(3) as requiring a plan or issuer that offers network coverage to include for participation every willing provider who meets the terms and conditions of the plan or issuer.

SEC. 133. PROHIBITION AGAINST IMPROPER INCENTIVE ARRANGEMENTS.

(a) IN GENERAL.—A group health plan and a health insurance issuer offering health insurance coverage may not operate any physician incentive plan (as defined in subparagraph (B) of section 1876(i)(8) of the Social Security Act) unless the requirements described in clauses (i), (ii)(I), and (iii) of subparagraph (A) of such section are met with respect to such a plan.

(b) APPLICATION.—For purposes of carrying out paragraph (1), any reference in section 1876(i)(8) of the Social Security Act to the Secretary, an eligible organization, or an individual enrolled with the organization shall be treated as a reference to the applicable authority, a group health plan or health insurance issuer, respectively, and a participant, beneficiary, or enrollee with the plan or organization, respectively.

(c) CONSTRUCTION.—Nothing in this section shall be construed as prohibiting all capitation and similar arrangements or all provider discount arrangements.

SEC. 134. PAYMENT OF CLAIMS.

A group health plan, and a health insurance issuer offering group health insurance coverage, shall provide for prompt payment of claims submitted for health care services or supplies furnished to a participant, beneficiary, or enrollee with respect to benefits covered by the plan or issuer, in a manner consistent with the provisions of section 1842(c)(2) of the Social Security Act (42 U.S.C. 1395u(c)(2)).

SEC. 135. PROTECTION FOR PATIENT ADVOCACY.

(a) PROTECTION FOR USE OF UTILIZATION REVIEW AND GRIEVANCE PROCESS.—A group health plan, and a health insurance issuer with respect to the provision of health insurance coverage, may not retaliate against a participant, beneficiary, enrollee, or health care provider based on the participant's, beneficiary's, enrollee's or provider's use of, or participation in, a utilization review process or a grievance process of the plan or issuer (including an internal or external review or appeal process) under this title.

(b) PROTECTION FOR QUALITY ADVOCACY BY HEALTH CARE PROFESSIONALS.—

(1) IN GENERAL.—A group health plan or health insurance issuer may not retaliate or discriminate against a protected health care professional because the professional in good faith—

(A) discloses information relating to the care, services, or conditions affecting one or more participants, beneficiaries, or enrollees of the plan or issuer to an appropriate public regulatory agency, an appropriate private accreditation body, or appropriate management personnel of the plan or issuer; or

(B) initiates, cooperates, or otherwise participates in an investigation or proceeding by such an agency with respect to such care, services, or conditions.

If an institutional health care provider is a participating provider with such a plan or issuer or otherwise receives payments for benefits provided by such a plan or issuer, the provisions of the previous sentence shall apply to the provider in relation to care, services, or conditions affecting one or more patients within an institutional health care provider in the same manner as they apply to the plan or issuer in relation to care, services, or conditions provided to one or more participants, beneficiaries, or enrollees; and for purposes of applying this sentence, any reference to a plan or issuer is deemed a reference to the institutional health care provider.

(2) GOOD FAITH ACTION.—For purposes of paragraph (1), a protected health care professional is considered to be acting in good faith with respect to disclosure of information or participation if, with respect to the information disclosed as part of the action—

(A) the disclosure is made on the basis of personal knowledge and is consistent with that degree of learning and skill ordinarily possessed by health care professionals with the same licensure or certification and the same experience;

(B) the professional reasonably believes the information to be true;

(C) the information evidences either a violation of a law, rule, or regulation, of an applicable accreditation standard, or of a generally recognized professional or clinical standard or that a patient is in imminent hazard of loss of life or serious injury; and

(D) subject to subparagraphs (B) and (C) of paragraph (3), the professional has followed reasonable internal procedures of the plan, issuer, or institutional health care provider established for the purpose of addressing quality concerns before making the disclosure.

(3) EXCEPTION AND SPECIAL RULE.—

(A) GENERAL EXCEPTION.—Paragraph (1) does not protect disclosures that would violate Federal or State law or diminish or impair the rights of any person to the continued protection of confidentiality of communications provided by such law.

(B) NOTICE OF INTERNAL PROCEDURES.—Subparagraph (D) of paragraph (2) shall not apply unless the internal procedures involved are reasonably expected to be known to the health care professional involved. For purposes of this subparagraph, a health care professional is reasonably expected to know of internal procedures if those procedures have been made available to the professional through distribution or posting.

(C) INTERNAL PROCEDURE EXCEPTION.—Subparagraph (D) of paragraph (2) also shall not apply if—

(i) the disclosure relates to an imminent hazard of loss of life or serious injury to a patient;

(ii) the disclosure is made to an appropriate private accreditation body pursuant to disclosure procedures established by the body; or

(iii) the disclosure is in response to an inquiry made in an investigation or proceeding of an appropriate public regulatory agency and the information disclosed is limited to the scope of the investigation or proceeding.

(4) ADDITIONAL CONSIDERATIONS.—It shall not be a violation of paragraph (1) to take an adverse action against a protected health care professional if the plan, issuer, or provider taking the adverse action involved demonstrates that it would have taken the same adverse action even in the absence of the activities protected under such paragraph.

(5) NOTICE.—A group health plan, health insurance issuer, and institutional health care provider shall post a notice, to be provided or approved by the Secretary of Labor, setting forth excerpts from, or summaries of, the pertinent provisions of this subsection and information pertaining to enforcement of such provisions.

(6) CONSTRUCTIONS.—

(A) DETERMINATIONS OF COVERAGE.—Nothing in this subsection shall be construed to prohibit a plan or issuer from making a determination not to pay for a particular medical treatment or service or the services of a type of health care professional.

(B) ENFORCEMENT OF PEER REVIEW PROTOCOLS AND INTERNAL PROCEDURES.—Nothing in this subsection shall be construed to prohibit a plan, issuer, or provider from establishing and enforcing reasonable peer review or utilization review protocols or determining whether a protected health care professional has complied with those protocols or from establishing and enforcing internal procedures for the purpose of addressing quality concerns.

(C) RELATION TO OTHER RIGHTS.—Nothing in this subsection shall be construed to abridge rights of participants, beneficiaries, enrollees, and protected health care professionals under other applicable Federal or State laws.

(7) PROTECTED HEALTH CARE PROFESSIONAL DEFINED.—For purposes of this subsection, the term ''protected health care professional'' means an individual who is a licensed or certified health care professional and who—

(A) with respect to a group health plan or health insurance issuer, is an employee of the plan or issuer or has a contract with the plan or issuer for provision of services for which benefits are available under the plan or issuer; or

(B) with respect to an institutional health care provider, is an employee of the provider or has a contract or other arrangement with the provider respecting the provision of health care services.

Subtitle E—Definitions

SEC. 151. DEFINITIONS.

(a) INCORPORATION OF GENERAL DEFINITIONS.—Except as otherwise provided, the provisions of section 2791 of the Public Health Service Act shall apply for purposes of this title in the same manner as they apply for purposes of title XXVII of such Act.

(b) SECRETARY.—Except as otherwise provided, the term ''Secretary'' means the Secretary of Health and Human Services, in consultation with the Secretary of Labor and the term ''appropriate Secretary'' means the Secretary of Health and Human Services in relation to carrying out this title under sections 2706 and 2751 of the Public Health Service Act and the Secretary of Labor in relation to carrying out this title under section 713 of the Employee Retirement Income Security Act of 1974.

(c) ADDITIONAL DEFINITIONS.—For purposes of this title:

(1) APPLICABLE AUTHORITY.—The term ''applicable authority'' means—

(A) in the case of a group health plan, the Secretary of Health and Human Services and the Secretary of Labor; and

(B) in the case of a health insurance issuer with respect to a specific provision of this title, the applicable State authority (as defined in section 2791(d) of the Public Health Service Act), or the Secretary of Health and Human Services, if such Secretary is enforcing such provision under section 2722(a)(2) or 2761(a)(2) of the Public Health Service Act.

(3) ENROLLEE.—The term ''enrollee'' means, with respect to health insurance coverage offered by a health insurance issuer, an individual enrolled with the issuer to receive such coverage.

(4) GROUP HEALTH PLAN.—The term ''group health plan'' has the meaning given such term in section 733(a) of the Employee Retirement Income Security Act of 1974, except that such term includes a employee welfare benefit plan treated as a group health plan under section 732(d) of such Act or defined as such a plan under section 607(1) of such Act.

(5) HEALTH CARE PROFESSIONAL.—The term ''health care professional'' means an individual who is licensed, accredited, or certified under State law to provide specified health care services and who is operating within the scope of such licensure, accreditation, or certification.

(6) HEALTH CARE PROVIDER.—The term ''health care provider'' includes a physician or other health care professional, as well as an institutional or other facility or agency that provides health care services and that is licensed, accredited, or certified to provide health care items and services under applicable State law.

(7) NETWORK.—The term ''network'' means, with respect to a group health plan or health insurance issuer offering health insurance coverage, the participating health care professionals and providers through whom the plan or issuer provides health care items and services to participants, beneficiaries, or enrollees.

(8) NONPARTICIPATING.—The term ''nonparticipating'' means, with respect to a

health care provider that provides health care items and services to a participant, beneficiary, or enrollee under group health plan or health insurance coverage, a health care provider that is not a participating health care provider with respect to such items and services.

(9) PARTICIPATING.—The term ''participating'' means, with respect to a health care provider that provides health care items and services to a participant, beneficiary, or enrollee under group health plan or health insurance coverage offered by a health insurance issuer, a health care provider that furnishes such items and services under a contract or other arrangement with the plan or issuer.

(10) PRIOR AUTHORIZATION.—The term ''prior authorization'' means the process of obtaining prior approval from a health insurance issuer or group health plan for the provision or coverage of medical services.

(11) TERMS AND CONDITIONS.—The term ''terms and conditions'' includes, with respect to a group health plan or health insurance coverage, requirements imposed under this title with respect to the plan or coverage.

SEC. 152. PREEMPTION; STATE FLEXIBILITY; CONSTRUCTION.

(a) CONTINUED APPLICABILITY OF STATE LAW WITH RESPECT TO HEALTH INSURANCE ISSUERS.—

(1) IN GENERAL.—Subject to paragraph (2), this title shall not be construed to supersede any provision of State law which establishes, implements, or continues in effect any standard or requirement solely relating to health insurance issuers (in connection with group health insurance coverage or otherwise) except to the extent that such standard or requirement prevents the application of a requirement of this title.

(2) CONTINUED PREEMPTION WITH RESPECT TO GROUP HEALTH PLANS.—Nothing in this title shall be construed to affect or modify the provisions of section 514 of the Employee Retirement Income Security Act of 1974 with respect to group health plans.

(3) CONSTRUCTION.—In applying this section, a State law that provides for equal access to, and availability of, all categories of licensed health care providers and services shall not be treated as preventing the application of any requirement of this title.

(b) APPLICATION OF SUBSTANTIALLY EQUIVALENT STATE LAWS.—

(1) IN GENERAL.—In the case of a State law that imposes, with respect to health insurance coverage offered by a health insurance issuer and with respect to a group health plan that is a non-Federal governmental plan, a requirement that is substantially equivalent (within the meaning of subsection (c)) to a patient protection requirement (as defined in paragraph (3)) and does not prevent the application of other requirements under this Act (except in the case of other substantially equivalent requirements), in applying the requirements of this title under section 2707 and 2753 (as applicable) of the Public Health Service Act (as added by title II), subject to subsection (a)(2)—

(A) the State law shall not be treated as being superseded under subsection (a); and

(B) the State law shall apply instead of the patient protection requirement otherwise applicable with respect to health insurance coverage and non-Federal governmental plans.

(2) LIMITATION.—In the case of a group health plan covered under title I of the Employee Retirement Income Security Act of 1974, paragraph (1) shall be construed to apply only with respect to the health insurance coverage (if any) offered in connection with the plan.

(3) PATIENT PROTECTION REQUIREMENT DEFINED.—For purposes of this section, the term ''patient protection requirement'' means a requirement under this title, and includes (as a single requirement) a group or related set of requirements under a section or similar unit under this title.

(c) DETERMINATIONS OF SUBSTANTIAL EQUIVALENCE.—

(1) CERTIFICATION BY STATES.—A State may submit to the Secretary a certification that a State law provides for patient protections that are at least substantially equivalent to one or more patient protection requirements. Such certification shall be accompanied by such information as may be required to permit the Secretary to make the determination described in paragraph (2)(A).

(2) REVIEW.—

(A) IN GENERAL.—The Secretary shall promptly review a certification submitted under paragraph (1) with respect to a State law to determine if the State law provides for at least substantially equivalent and effective patient protections to the patient protection requirement (or requirements) to which the law relates.

(B) APPROVAL DEADLINES.—

(i) INITIAL REVIEW.—Such a certification is considered approved unless the Secretary notifies the State in writing, within 90 days after the date of receipt of the certification, that the certification is disapproved (and the reasons for disapproval) or that specified additional information is needed to make the determination described in subparagraph (A).

(ii) ADDITIONAL INFORMATION.—With respect to a State that has been notified by the Secretary under clause (i) that specified additional information is needed to make the determination described in subparagraph (A), the Secretary shall make the determination within 60 days after the date on which such specified additional information is received by the Secretary.

(3) APPROVAL.—

(A) IN GENERAL.—The Secretary shall approve a certification under paragraph (1) unless—

(i) the State fails to provide sufficient information to enable the Secretary to make a determination under paragraph (2)(A); or

(ii) the Secretary determines that the State law involved does not provide for patient protections that are at least substantially equivalent to and as effective as the patient protection requirement (or requirements) to which the law relates.

(B) STATE CHALLENGE.—A State that has a certification disapproved by the Secretary under subparagraph (A) may challenge such disapproval in the appropriate United States district court.

(4) CONSTRUCTION.—Nothing in this subsection shall be construed as preventing the certification (and approval of certification) of a State law under this subsection solely because it provides for greater protections for patients than those protections otherwise required to establish substantial equivalence.

(d) DEFINITIONS.—For purposes of this section:

(1) STATE LAW.—The term ''State law'' includes all laws, decisions, rules, regulations, or other State action having the effect of law, of any State. A law of the United States applicable only to the District of Columbia shall be treated as a State law rather than a law of the United States.

(2) STATE.—The term ''State'' includes a State, the District of Columbia, Puerto Rico, the Virgin Islands, Guam, American Samoa, the Northern Mariana Islands, any political subdivisions of such, or any agency or instrumentality of such.

SEC. 153. EXCLUSIONS.

(a) NO BENEFIT REQUIREMENTS.—Nothing in this title shall be construed to require a group health plan or a health insurance issuer offering health insurance coverage to include specific items and services under the terms of such a plan or coverage, other than those provided under the terms and conditions of such plan or coverage.

(b) EXCLUSION FROM ACCESS TO CARE MANAGED CARE PROVISIONS FOR FEE-FOR-SERVICE COVERAGE.—

(1) IN GENERAL.—The provisions of sections 111 through 117 shall not apply to a group health plan or health insurance coverage if the only coverage offered under the plan or coverage is fee-for-service coverage (as defined in paragraph (2)).

(2) FEE-FOR-SERVICE COVERAGE DEFINED.—For purposes of this subsection, the term ''fee-for-service coverage'' means coverage under a group health plan or health insurance coverage that—

(A) reimburses hospitals, health professionals, and other providers on a fee-for-service basis without placing the provider at financial risk;

(B) does not vary reimbursement for such a provider based on an agreement to contract terms and conditions or the utilization of health care items or services relating to such provider;

(C) allows access to any provider that is lawfully authorized to provide the covered services and that agrees to accept the terms and conditions of payment established under the plan or by the issuer; and

(D) for which the plan or issuer does not require prior authorization before providing for any health care services.

SEC. 154. COVERAGE OF LIMITED SCOPE PLANS.

Only for purposes of applying the requirements of this title under sections 2707 and 2753 of the Public Health Service Act and section 714 of the Employee Retirement Income Security Act of 1974, section 2791(c)(2)(A), and section 733(c)(2)(A) of the Employee Retirement Income Security Act of 1974 shall be deemed not to apply.

SEC. 155. REGULATIONS.

The Secretaries of Health and Human Services and Labor shall issue such regulations as may be necessary or appropriate to carry out this title. Such regulations shall be issued consistent with section 104 of Health Insurance Portability and Accountability Act of 1996. Such Secretaries may promulgate any interim final rules as the Secretaries determine are appropriate to carry out this title.

SEC. 156. INCORPORATION INTO PLAN OR COVERAGE DOCUMENTS.

The requirements of this title with respect to a group health plan or health insurance coverage are deemed to be incorporated into, and made a part of, such plan or the policy, certificate, or contract providing such coverage and are enforceable under law as if directly included in the documentation of such plan or such policy, certificate, or contract.

TITLE II—APPLICATION OF QUALITY CARE STANDARDS TO GROUP HEALTH PLANS AND HEALTH INSURANCE COVERAGE UNDER THE PUBLIC HEALTH SERVICE ACT

SEC. 201. APPLICATION TO GROUP HEALTH PLANS AND GROUP HEALTH INSURANCE COVERAGE.

(a) IN GENERAL.—Subpart 2 of part A of title XXVII of the Public Health Service Act is amended by adding at the end the following new section:

''SEC. 2707. PATIENT PROTECTION STANDARDS.

''Each group health plan shall comply with patient protection requirements under title I of the Bipartisan Patient Protection Act of

2001, and each health insurance issuer shall comply with patient protection requirements under such title with respect to group health insurance coverage it offers, and such requirements shall be deemed to be incorporated into this subsection.''.

(b) CONFORMING AMENDMENT.—Section 2721(b)(2)(A) of such Act (42 U.S.C. 300gg–21(b)(2)(A)) is amended by inserting ''(other than section 2707)'' after ''requirements of such subparts''.

SEC. 202. APPLICATION TO INDIVIDUAL HEALTH INSURANCE COVERAGE.

Part B of title XXVII of the Public Health Service Act is amended by inserting after section 2752 the following new section:

''SEC. 2753. PATIENT PROTECTION STANDARDS.

''Each health insurance issuer shall comply with patient protection requirements under title I of the Bipartisan Patient Protection Act of 2001 with respect to individual health insurance coverage it offers, and such requirements shall be deemed to be incorporated into this subsection.''.

TITLE III—AMENDMENTS TO THE EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974

SEC. 301. APPLICATION OF PATIENT PROTECTION STANDARDS TO GROUP HEALTH PLANS AND GROUP HEALTH INSURANCE COVERAGE UNDER THE EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974.

Subpart B of part 7 of subtitle B of title I of the Employee Retirement Income Security Act of 1974 is amended by adding at the end the following new section:

''SEC. 714. PATIENT PROTECTION STANDARDS.

''(a) IN GENERAL.—Subject to subsection (b), a group health plan (and a health insurance issuer offering group health insurance coverage in connection with such a plan) shall comply with the requirements of title I of the Bipartisan Patient Protection Act of 2001 (as in effect as of the date of the enactment of such Act), and such requirements shall be deemed to be incorporated into this subsection.

''(b) PLAN SATISFACTION OF CERTAIN REQUIREMENTS.—

''(1) SATISFACTION OF CERTAIN REQUIREMENTS THROUGH INSURANCE.—For purposes of subsection (a), insofar as a group health plan provides benefits in the form of health insurance coverage through a health insurance issuer, the plan shall be treated as meeting the following requirements of title I of the Bipartisan Patient Protection Act of 2001 with respect to such benefits and not be considered as failing to meet such requirements because of a failure of the issuer to meet such requirements so long as the plan sponsor or its representatives did not cause such failure by the issuer:

''(A) Section 111 (relating to consumer choice option).

''(B) Section 112 (relating to choice of health care professional).

''(C) Section 113 (relating to access to emergency care).

''(D) Section 114 (relating to timely access to specialists).

''(E) Section 115 (relating to patient access to obstetrical and gynecological care).

''(F) Section 116 (relating to access to pediatric care).

''(G) Section 117 (relating to continuity of care), but only insofar as a replacement issuer assumes the obligation for continuity of care.

''(H) Section 118 (relating to access to needed prescription drugs).

''(I) Section 119 (relating to coverage for individuals participating in approved clinical trials).

''(J) Section 120 (relating to required coverage for minimum hospital stay for mastectomies and lymph node dissections for the treatment of breast cancer and coverage for secondary consultations).

''(K) Section 134 (relating to payment of claims).

''(2) INFORMATION.—With respect to information required to be provided or made available under section 121 of the Bipartisan Patient Protection Act of 2001, in the case of a group health plan that provides benefits in the form of health insurance coverage through a health insurance issuer, the Secretary shall determine the circumstances under which the plan is not required to provide or make available the information (and is not liable for the issuer's failure to provide or make available the information), if the issuer is obligated to provide and make available (or provides and makes available) such information.

''(3) INTERNAL APPEALS.—With respect to the internal appeals process required to be established under section 103 of such Act, in the case of a group health plan that provides benefits in the form of health insurance coverage through a health insurance issuer, the Secretary shall determine the circumstances under which the plan is not required to provide for such process and system (and is not liable for the issuer's failure to provide for such process and system), if the issuer is obligated to provide for (and provides for) such process and system.

''(4) EXTERNAL APPEALS.—Pursuant to rules of the Secretary, insofar as a group health plan enters into a contract with a qualified external appeal entity for the conduct of external appeal activities in accordance with section 104 of such Act, the plan shall be treated as meeting the requirement of such section and is not liable for the entity's failure to meet any requirements under such section.

''(5) APPLICATION TO PROHIBITIONS.—Pursuant to rules of the Secretary, if a health insurance issuer offers health insurance coverage in connection with a group health plan and takes an action in violation of any of the following sections of the Bipartisan Patient Protection Act of 2001, the group health plan shall not be liable for such violation unless the plan caused such violation:

''(A) Section 131 (relating to prohibition of interference with certain medical communications).

''(B) Section 132 (relating to prohibition of discrimination against providers based on licensure).

''(C) Section 133 (relating to prohibition against improper incentive arrangements).

''(D) Section 135 (relating to protection for patient advocacy).

''(6) CONSTRUCTION.—Nothing in this subsection shall be construed to affect or modify the responsibilities of the fiduciaries of a group health plan under part 4 of subtitle B.

''(7) TREATMENT OF SUBSTANTIALLY EQUIVALENT STATE LAWS.—For purposes of applying this subsection, any reference in this subsection to a requirement in a section or other provision in the Bipartisan Patient Protection Act of 2001 with respect to a health insurance issuer is deemed to include a reference to a requirement under a State law that is substantially equivalent (as determined under section 152(c) of such Act) to the requirement in such section or other provisions.

''(8) APPLICATION TO CERTAIN PROHIBITIONS AGAINST RETALIATION.—With respect to compliance with the requirements of section 135(b)(1) of the Bipartisan Patient Protection Act of 2001, for purposes of this subtitle the term 'group health plan' is deemed to include a reference to an institutional health care provider.

''(c) ENFORCEMENT OF CERTAIN REQUIREMENTS.—

''(1) COMPLAINTS.—Any protected health care professional who believes that the professional has been retaliated or discriminated against in violation of section 135(b)(1) of the Bipartisan Patient Protection Act of 2001 may file with the Secretary a complaint within 180 days of the date of the alleged retaliation or discrimination.

''(2) INVESTIGATION.—The Secretary shall investigate such complaints and shall determine if a violation of such section has occurred and, if so, shall issue an order to ensure that the protected health care professional does not suffer any loss of position, pay, or benefits in relation to the plan, issuer, or provider involved, as a result of the violation found by the Secretary.

''(d) CONFORMING REGULATIONS.—The Secretary shall issue regulations to coordinate the requirements on group health plans and health insurance issuers under this section with the requirements imposed under the other provisions of this title. In order to reduce duplication and clarify the rights of participants and beneficiaries with respect to information that is required to be provided, such regulations shall coordinate the information disclosure requirements under section 121 of the Bipartisan Patient Protection Act of 2001 with the reporting and disclosure requirements imposed under part 1, so long as such coordination does not result in any reduction in the information that would otherwise be provided to participants and beneficiaries.''.

(b) SATISFACTION OF ERISA CLAIMS PROCEDURE REQUIREMENT.—Section 503 of such Act (29 U.S.C. 1133) is amended by inserting ''(a)'' after ''SEC. 503.'' and by adding at the end the following new subsection:

''(b) In the case of a group health plan (as defined in section 733) compliance with the requirements of subtitle A of title I of the Bipartisan Patient Protection Act of 2001, and compliance with regulations promulgated by the Secretary, in the case of a claims denial shall be deemed compliance with subsection (a) with respect to such claims denial.''.

(c) CONFORMING AMENDMENTS.—(1) Section 732(a) of such Act (29 U.S.C. 1185(a)) is amended by striking ''section 711'' and inserting ''sections 711 and 714''.

(2) The table of contents in section 1 of such Act is amended by inserting after the item relating to section 713 the following new item:

''Sec. 714. Patient protection standards.''.

(3) Section 502(b)(3) of such Act (29 U.S.C. 1132(b)(3)) is amended by inserting ''(other than section 135(b))'' after ''part 7''.

SEC. 302. AVAILABILITY OF CIVIL REMEDIES.

(a) AVAILABILITY OF FEDERAL CIVIL REMEDIES IN CASES NOT INVOLVING MEDICALLY REVIEWABLE DECISIONS.—

(1) IN GENERAL.—Section 502 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1132) is amended by adding at the end the following new subsection:

''(n) CAUSE OF ACTION RELATING TO PROVISION OF HEALTH BENEFITS.—

''(1) IN GENERAL.—In any case in which—

''(A) a person who is a fiduciary of a group health plan, a health insurance issuer offering health insurance coverage in connection with the plan, or an agent of the plan, issuer, or plan sponsor—

''(i) upon consideration of a claim for benefits of a participant or beneficiary under section 102 of the Bipartisan Patient Protection Act of 2001 (relating to procedures for initial claims for benefits and prior authorization determinations) or upon review of a denial of such a claim under section 103 of such Act (relating to internal appeal of a denial of a claim for benefits), fails to exercise ordinary care in making a decision—

''(I) regarding whether an item or service is covered under the terms and conditions of the plan or coverage,

''(II) regarding whether an individual is a participant or beneficiary who is enrolled under the terms and conditions of the plan or coverage (including the applicability of any waiting period under the plan or coverage), or

''(III) as to the application of cost-sharing requirements or the application of a specific exclusion or express limitation on the amount, duration, or scope of coverage of items or services under the terms and conditions of the plan or coverage, or

''(ii) otherwise fails to exercise ordinary care in the performance of a duty under the terms and conditions of the plan with respect to a participant or beneficiary, and

''(B) such failure is a proximate cause of personal injury to, or the death of, the participant or beneficiary,

such person shall be liable to the participant or beneficiary (or the estate of such participant or beneficiary) for economic and noneconomic damages (but not exemplary or punitive damages) in connection with such personal injury or death.

''(2) CAUSE OF ACTION MUST NOT INVOLVE MEDICALLY REVIEWABLE DECISION.—

''(A) IN GENERAL.—A cause of action is established under paragraph (1)(A) only if the decision referred to in clause (i) or the failure described in clause (ii) does not include a medically reviewable decision.

''(B) MEDICALLY REVIEWABLE DECISION.—For purposes of subparagraph (A), the term 'medically reviewable decision' means a denial of a claim for benefits under the plan which is described in section 104(d)(2) of the Bipartisan Patient Protection Act of 2001 (relating to medically reviewable decisions).

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

''(A) ORDINARY CARE.—The term 'ordinary care' means—

''(i) with respect to a determination on a claim for benefits, that degree of care, skill, and diligence that a reasonable and prudent individual would exercise in making a fair determination on a claim for benefits of like kind to the claim involved; and

''(ii) with respect to the performance of a duty, that degree of care, skill, and diligence that a reasonable and prudent individual would exercise in performing the duty or a duty of like character.

''(B) PERSONAL INJURY.—The term 'personal injury' means a physical injury and includes an injury arising out of the treatment (or failure to treat) a mental illness or disease.

''(C) CLAIM FOR BENEFITS; DENIAL.—The terms 'claim for benefits' and 'denial of a claim for benefits' have the meanings provided such terms in section 102(e) of the Bipartisan Patient Protection Act of 2001.

''(D) TERMS AND CONDITIONS.—The term 'terms and conditions' includes, with respect to a group health plan or health insurance coverage, requirements imposed under title I of the Bipartisan Patient Protection Act of 2001 or under part 6 or 7.

''(E) GROUP HEALTH PLAN AND OTHER RELATED TERMS.—The provisions of sections 732(d) and 733 apply for purposes of this subsection in the same manner as they apply for purposes of part 7, except that the term 'group health plan' includes a group health plan (as defined in section 607(1)).

''(4) EXCLUSION OF EMPLOYERS AND OTHER PLAN SPONSORS.—

''(A) CAUSES OF ACTION AGAINST EMPLOYERS AND PLAN SPONSORS PRECLUDED.—Subject to subparagraph (B), paragraph (1)(A) does not authorize a cause of action against an employer or other plan sponsor maintaining the plan (or against an employee of such an employer or sponsor acting within the scope of employment).

''(B) CERTAIN CAUSES OF ACTION PERMITTED.—Notwithstanding subparagraph (A), a cause of action may arise against an employer or other plan sponsor (or against an employee of such an employer or sponsor acting within the scope of employment)—

''(i) under clause (i) of paragraph (1)(A), to the extent there was direct participation by the employer or other plan sponsor (or employee) in the decision of the plan under section 102 of the Bipartisan Patient Protection Act of 2001 upon consideration of a claim for benefits or under section 103 of such Act upon review of a denial of a claim for benefits, or

''(ii) under clause (ii) of paragraph (1)(A), to the extent there was direct participation by the employer or other plan sponsor (or employee) in the failure described in such clause.

''(C) DIRECT PARTICIPATION.—

''(i) DIRECT PARTICIPATION IN DECISIONS.—For purposes of subparagraph (B), the term 'direct participation' means, in connection with a decision described in clause (i) of paragraph (1)(A) or a failure described in clause (ii) of such paragraph, the actual making of such decision or the actual exercise of control in making such decision or in the conduct constituting the failure.

''(ii) RULES OF CONSTRUCTION.—For purposes of clause (i), the employer or plan sponsor (or employee) shall not be construed to be engaged in direct participation because of any form of decisionmaking or other conduct that is merely collateral or precedent to the decision described in clause (i) of paragraph (1)(A) on a particular claim for benefits of a participant or beneficiary or that is merely collateral or precedent to the conduct constituting a failure described in clause (ii) of paragraph (1)(A) with respect to a particular participant or beneficiary, including (but not limited to)—

''(I) any participation by the employer or other plan sponsor (or employee) in the selection of the group health plan or health insurance coverage involved or the third party administrator or other agent;

''(II) any engagement by the employer or other plan sponsor (or employee) in any cost-benefit analysis undertaken in connection with the selection of, or continued maintenance of, the plan or coverage involved;

''(III) any participation by the employer or other plan sponsor (or employee) in the process of creating, continuing, modifying, or terminating the plan or any benefit under the plan, if such process was not substantially focused solely on the particular situation of the participant or beneficiary referred to in paragraph (1)(A); and

''(IV) any participation by the employer or other plan sponsor (or employee) in the design of any benefit under the plan, including the amount of copayment and limits connected with such benefit.

''(iv) IRRELEVANCE OF CERTAIN COLLATERAL EFFORTS MADE BY EMPLOYER OR PLAN SPONSOR.—For purposes of this subparagraph, an employer or plan sponsor shall not be treated as engaged in direct participation in a decision with respect to any claim for benefits or denial thereof in the case of any particular participant or beneficiary solely by reason of—

''(I) any efforts that may have been made by the employer or plan sponsor to advocate for authorization of coverage for that or any other participant or beneficiary (or any group of participants or beneficiaries), or

''(II) any provision that may have been made by the employer or plan sponsor for benefits which are not covered under the terms and conditions of the plan for that or any other participant or beneficiary (or any group of participants or beneficiaries).

''(5) REQUIREMENT OF EXHAUSTION.—

''(A) IN GENERAL.—Except as provided in this paragraph, a cause of action may not be brought under paragraph (1) in connection with any denial of a claim for benefits of any individual until all administrative processes under sections 102 and 103 of the Bipartisan Patient Protection Act of 2001 (if applicable) have been exhausted.

''(B) LATE MANIFESTATION OF INJURY.—The requirements under subparagraph (A) for a cause of action in connection with any denial of a claim for benefits shall be deemed satisfied, notwithstanding any failure to timely commence review under section 103 with respect to the denial, if the personal injury is first known (or first reasonably should have been known) to the individual (or the death occurs) after the latest date by which the applicable requirements of subparagraph (A) can be met in connection with such denial.

''(C) OCCURRENCE OF IMMEDIATE AND IRREPARABLE HARM OR DEATH PRIOR TO COMPLETION OF PROCESS.—

''(i) IN GENERAL.—The requirements of subparagraph (A) shall not apply if the action involves an allegation that immediate and irreparable harm or death was, or would be, caused by the denial of a claim for benefits prior to the completion of the administrative processes referred to in subparagraph (A) with respect to such denial.

''(ii) CONSTRUCTION.—Nothing in clause (i) shall be construed to preclude—

''(I) continuation of such processes to their conclusion if so moved by any party, and

''(II) consideration in such action of the final decisions issued in such processes.

''(iii) DEFINITION.—In clause (i), the term 'irreparable harm', with respect to an individual, means an injury or condition that, regardless of whether the individual receives the treatment that is the subject of the denial, cannot be repaired in a manner that would restore the individual to the individual's pre-injured condition.

''(D) RECEIPT OF BENEFITS DURING APPEALS PROCESS.—Receipt by the participant or beneficiary of the benefits involved in the claim for benefits during the pendency of any administrative processes referred to in subparagraph (A) or of any action commenced under this subsection—

''(i) shall not preclude continuation of all such administrative processes to their conclusion if so moved by any party, and

''(ii) shall not preclude any liability under subsection (a)(1)(C) and this subsection in connection with such claim.

The court in any action commenced under this subsection shall take into account any receipt of benefits during such administrative processes or such action in determining the amount of the damages awarded.

''(6) STATUTORY DAMAGES.—

''(A) IN GENERAL.—The remedies set forth in this subsection (n) shall be the exclusive remedies for causes of action brought under this subsection.

''(B) ASSESSMENT OF CIVIL PENALTIES.—In addition to the remedies provided for in paragraph (1) (relating to the failure to provide contract benefits in accordance with the plan), a civil assessment, in an amount not to exceed $5,000,000, payable to the claimant may be awarded in any action under such paragraph if the claimant establishes by clear and convincing evidence that the alleged conduct carried out by the defendant demonstrated bad faith and flagrant disregard for the rights of the participant or beneficiary under the plan and was a proximate cause of the personal injury or death that is the subject of the claim.

''(7) LIMITATION OF ACTION.—Paragraph (1) shall not apply in connection with any action commenced after 3 years after the later of—

''(A) the date on which the plaintiff first knew, or reasonably should have known, of the personal injury or death resulting from the failure described in paragraph (1), or

''(B) the date as of which the requirements of paragraph (5) are first met.

''(8) TOLLING PROVISION.—The statute of limitations for any cause of action arising under State law relating to a denial of a claim for benefits that is the subject of an action brought in Federal court under this subsection shall be tolled until such time as the Federal court makes a final disposition, including all appeals, of whether such claim should properly be within the jurisdiction of the Federal court. The tolling period shall be determined by the applicable Federal or State law, whichever period is greater.

''(10) PURCHASE OF INSURANCE TO COVER LIABILITY.—Nothing in section 410 shall be construed to preclude the purchase by a group health plan of insurance to cover any liability or losses arising under a cause of action under subsection (a)(1)(C) and this subsection.

''(11) EXCLUSION OF DIRECTED RECORDKEEPERS.—

''(A) IN GENERAL.—Subject to subparagraph (C), paragraph (1) shall not apply with respect to a directed recordkeeper in connection with a group health plan.

''(B) DIRECTED RECORDKEEPER.—For purposes of this paragraph, the term 'directed recordkeeper' means, in connection with a group health plan, a person engaged in directed recordkeeping activities pursuant to the specific instructions of the plan or the employer or other plan sponsor, including the distribution of enrollment information and distribution of disclosure materials under this Act or title I of the Bipartisan Patient Protection Act of 2001 and whose duties do not include making decisions on claims for benefits.

''(C) LIMITATION.—Subparagraph (A) does not apply in connection with any directed recordkeeper to the extent that the directed recordkeeper fails to follow the specific instruction of the plan or the employer or other plan sponsor.

''(12) NO EFFECT ON STATE LAW.—No provision of State law (as defined in section 514(c)(1)) shall be treated as superseded or otherwise altered, amended, modified, invalidated, or impaired by reason of the provisions of subsection (a)(1)(C) and this subsection.''.

(2) CONFORMING AMENDMENT.—Section 502(a)(1) of such Act (29 U.S.C. 1132(a)(1)) is amended—

(A) by striking ''or'' at the end of subparagraph (A);

(B) in subparagraph (B), by striking ''plan;'' and inserting ''plan, or''; and

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

''(C) for the relief provided for in subsection (n) of this section.''.

(b) RULES RELATING TO ERISA PREEMPTION.—Section 514 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1144) is amended—

(1) by redesignating subsection (d) as subsection (f); and

(2) by inserting after subsection (c) the following new subsections:

''(d) PREEMPTION NOT TO APPLY TO CAUSES OF ACTION UNDER STATE LAW INVOLVING MEDICALLY REVIEWABLE DECISION.—

''(1) NON-PREEMPTION OF CERTAIN CAUSES OF ACTION.—

''(A) IN GENERAL.—Except as provided in this subsection, nothing in this title (including section 502) shall be construed to supersede or otherwise alter, amend, modify, invalidate, or impair any cause of action under State law of a participant or beneficiary under a group health plan (or the estate of such a participant or beneficiary) to recover damages resulting from personal injury or for wrongful death against any person if such cause of action arises by reason of a medically reviewable decision.

''(B) MEDICALLY REVIEWABLE DECISION.—For purposes of subparagraph (A), the term 'medically reviewable decision' means a denial of a claim for benefits under the plan which is described in section 104(d)(2) of the Bipartisan Patient Protection Act of 2001 (relating to medically reviewable decisions).

''(C) LIMITATION ON PUNITIVE DAMAGES.—

''(i) IN GENERAL.—Except as provided in clauses (ii) and (iii), with respect to a cause of action described in subparagraph (A) brought with respect to a participant or beneficiary, State law is superseded insofar as it provides any punitive, exemplary, or similar damages if, as of the time of the personal injury or death, all the requirements of the following sections of the Bipartisan Patient Protection Act of 2001 were satisfied with respect to the participant or beneficiary:

''(I) Section 102 (relating to procedures for initial claims for benefits and prior authorization determinations).

''(II) Section 103 of such Act (relating to internal appeals of claims denials).

''(III) Section 104 of such Act (relating to independent external appeals procedures).

''(ii) EXCEPTION FOR CERTAIN ACTIONS FOR WRONGFUL DEATH.—Clause (i) shall not apply with respect to an action for wrongful death if the applicable State law provides (or has been construed to provide) for damages in such an action which are only punitive or exemplary in nature.

''(iii) EXCEPTION FOR WILLFUL OR WANTON DISREGARD FOR THE RIGHTS OR SAFETY OF OTHERS.—Clause (i) shall not apply with respect to any cause of action described in subparagraph (A) if, in such action, the plaintiff establishes by clear and convincing evidence that conduct carried out by the defendant with willful or wanton disregard for the rights or safety of others was a proximate cause of the personal injury or wrongful death that is the subject of the action.

''(3) DEFINITIONS.—For purposes of this subsection and subsection (e)—

''(A) GROUP HEALTH PLAN AND OTHER RELATED TERMS.—The provisions of sections 732(d) and 733 apply for purposes of this subsection in the same manner as they apply for purposes of part 7, except that the term 'group health plan' includes a group health plan (as defined in section 607(1)).

''(B) PERSONAL INJURY.—The term 'personal injury' means a physical injury and includes an injury arising out of the treatment (or failure to treat) a mental illness or disease.

''(C) CLAIM FOR BENEFIT; DENIAL.—The terms 'claim for benefits' and 'denial of a claim for benefits' shall have the meaning provided such terms under section 102(e) of the Bipartisan Patient Protection Act of 2001.

''(4) EXCLUSION OF EMPLOYERS AND OTHER PLAN SPONSORS.—

''(A) CAUSES OF ACTION AGAINST EMPLOYERS AND PLAN SPONSORS PRECLUDED.—Subject to subparagraph (B), paragraph (1) does not apply with respect to—

''(i) any cause of action against an employer or other plan sponsor maintaining the plan (or against an employee of such an employer or sponsor acting within the scope of employment), or

''(ii) a right of recovery, indemnity, or contribution by a person against an employer or other plan sponsor (or such an employee) for damages assessed against the person pursuant to a cause of action to which paragraph (1) applies.

''(B) CERTAIN CAUSES OF ACTION PERMITTED.—Notwithstanding subparagraph (A), paragraph (1) applies with respect to any cause of action described in paragraph (1) maintained by a participant or beneficiary against an employer or other plan sponsor (or against an employee of such an employer or sponsor acting within the scope of employment)—

''(i) in the case of any cause of action based on a decision of the plan under section 102 of the Bipartisan Patient Protection Act of 2001 upon consideration of a claim for benefits or under section 103 of such Act upon review of a denial of a claim for benefits, to the extent there was direct participation by the employer or other plan sponsor (or employee) in the decision, or

''(ii) in the case of any cause of action based on a failure to otherwise perform a duty under the terms and conditions of the plan with respect to a claim for benefits of a participant or beneficiary, to the extent there was direct participation by the employer or other plan sponsor (or employee) in the failure.

''(C) DIRECT PARTICIPATION.—

''(i) DIRECT PARTICIPATION IN DECISIONS.—For purposes of subparagraph (B), the term 'direct participation' means, in connection with a decision described in subparagraph (B)(i) or a failure described in subparagraph (B)(ii), the actual making of such decision or the actual exercise of control in making such decision or in the conduct constituting the failure.

''(ii) RULES OF CONSTRUCTION.—For purposes of clause (i), the employer or plan sponsor (or employee) shall not be construed to be engaged in direct participation because of any form of decisionmaking or other conduct that is merely collateral or precedent to the decision described in subparagraph (B)(i) on a particular claim for benefits of a particular participant or beneficiary or that is merely collateral or precedent to the conduct constituting a failure described in subparagraph (B)(ii) with respect to a particular participant or beneficiary, including (but not limited to)—

''(I) any participation by the employer or other plan sponsor (or employee) in the selection of the group health plan or health insurance coverage involved or the third party administrator or other agent;

''(II) any engagement by the employer or other plan sponsor (or employee) in any cost-benefit analysis undertaken in connection with the selection of, or continued maintenance of, the plan or coverage involved;

''(III) any participation by the employer or other plan sponsor (or employee) in the process of creating, continuing, modifying, or terminating the plan or any benefit under the plan, if such process was not substantially focused solely on the particular situation of the participant or beneficiary referred to in paragraph (1)(A); and

''(IV) any participation by the employer or other plan sponsor (or employee) in the design of any benefit under the plan, including the amount of copayment and limits connected with such benefit.

''(iv) IRRELEVANCE OF CERTAIN COLLATERAL EFFORTS MADE BY EMPLOYER OR PLAN SPONSOR.—For purposes of this subparagraph, an employer or plan sponsor shall not be treated as engaged in direct participation in a decision with respect to any claim for benefits or denial thereof in the case of any particular participant or beneficiary solely by reason of—

''(I) any efforts that may have been made by the employer or plan sponsor to advocate for authorization of coverage for that or any

other participant or beneficiary (or any group of participants or beneficiaries), or

''(II) any provision that may have been made by the employer or plan sponsor for benefits which are not covered under the terms and conditions of the plan for that or any other participant or beneficiary (or any group of participants or beneficiaries).

''(5) REQUIREMENT OF EXHAUSTION.—

''(A) IN GENERAL.—Except as provided in this paragraph, paragraph (1) shall not apply with respect to a cause of action described in such paragraph in connection with any denial of a claim for benefits of any individual until all administrative processes under sections 102, 103, and 104 of the Bipartisan Patient Protection Act of 2001 (if applicable) have been exhausted.

''(B) LATE MANIFESTATION OF INJURY.—The requirements under subparagraph (A) for a cause of action in connection with any denial of a claim for benefits shall be deemed satisfied, notwithstanding any failure to timely commence review under section 103 or 104 with respect to the denial, if the personal injury is first known (or first should have been known) to the individual (or the death occurs) after the latest date by which the applicable requirements of subparagraph (A) can be met in connection with such denial.

''(C) OCCURRENCE OF IMMEDIATE AN IRREPARABLE HARM OR DEATH PRIOR TO COMPLETION OF PROCESS.—

''(i) IN GENERAL.—The requirements of subparagraph (A) shall not apply if the action involves an allegation that immediate and irreparable harm or death was, or would be, caused by the denial of a claim for benefits prior to the completion of the administrative processes referred to in subparagraph (A) with respect to such denial.

''(ii) CONSTRUCTION.—Nothing in clause (i) shall be construed to preclude—

''(I) continuation of such processes to their conclusion if so moved by any party, and

''(II) consideration in such action of the final decisions issued in such processes.

''(iii) DEFINITION.—In clause (i), the term 'irreparable harm', with respect to an individual, means an injury or condition that, regardless of whether the individual receives the treatment that is the subject of the denial, cannot be repaired in a manner that would restore the individual to the individual's pre-injured condition.

''(D) RECEIPT OF BENEFITS DURING APPEALS PROCESS.—Receipt by the participant or beneficiary of the benefits involved in the claim for benefits during the pendency of any administrative processes referred to in subparagraph (A) or of any action commenced under this subsection—

''(i) shall not preclude continuation of all such administrative processes to their conclusion if so moved by any party, and

''(ii) shall not preclude any liability under subsection (a)(1)(C) and this subsection in connection with such claim.

''(6) TOLLING PROVISION.—The statute of limitations for any cause of action arising under section 502(n) relating to a denial of a claim for benefits that is the subject of an action brought in State court shall be tolled until such time as the State court makes a final disposition, including all appeals, of whether such claim should properly be within the jurisdiction of the State court. The tolling period shall be determined by the applicable Federal or State law, whichever period is greater.

''(7) EXCLUSION OF DIRECTED RECORDKEEPERS.—

''(A) IN GENERAL.—Subject to subparagraph (C), paragraph (1) shall not apply with respect to a directed recordkeeper in connection with a group health plan.

''(B) DIRECTED RECORDKEEPER.—For purposes of this paragraph, the term 'directed recordkeeper' means, in connection with a group health plan, a person engaged in directed recordkeeping activities pursuant to the specific instructions of the plan or the employer or other plan sponsor, including the distribution of enrollment information and distribution of disclosure materials under this Act or title I of the Bipartisan Patient Protection Act of 2001 and whose duties do not include making decisions on claims for benefits.

''(C) LIMITATION.—Subparagraph (A) does not apply in connection with any directed recordkeeper to the extent that the directed recordkeeper fails to follow the specific instruction of the plan or the employer or other plan sponsor.

''(8) CONSTRUCTION.—Nothing in this subsection shall be construed as—

''(A) saving from preemption a cause of action under State law for the failure to provide a benefit for an item or service which is specifically excluded under the group health plan involved, except to the extent that—

''(i) the application or interpretation of the exclusion involves a determination described in section 104(d)(2) of the Bipartisan Patient Protection Act of 2001, or

''(ii) the provision of the benefit for the item or service is required under Federal law or under applicable State law consistent with subsection (b)(2)(B);

''(B) preempting a State law which requires an affidavit or certificate of merit in a civil action;

''(C) affecting a cause of action or remedy under State law in connection with the provision or arrangement of excepted benefits (as defined in section 733(c)), other than those described in section 733(c)(2)(A); or

''(D) affecting a cause of action under State law other than a cause of action described in paragraph (1)(A).

''(9) PURCHASE OF INSURANCE TO COVER LIABILITY.—Nothing in section 410 shall be construed to preclude the purchase by a group health plan of insurance to cover any liability or losses arising under a cause of action described in paragraph (1)(A).

''(e) RULES OF CONSTRUCTION RELATING TO HEALTH CARE.—Nothing in this title shall be construed as—

''(1) affecting any State law relating to the practice of medicine or the provision of medical care, or affecting any action based upon such a State law,

''(2) superseding any State law permitted under section 152(b)(1)(A) of the Bipartisan Patient Protection Act of 2001, or

''(3) affecting any applicable State law with respect to limitations on monetary damages.''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to acts and omissions (from which a cause of action arises) occurring on or after the date of the enactment of this Act.

SEC. 303. LIMITATIONS ON ACTIONS.

Section 502 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1132) (as amended by section 302(a)) is amended further by adding at the end the following new subsection:

''(o) LIMITATIONS ON ACTIONS RELATING TO GROUP HEALTH PLANS.—

''(1) IN GENERAL.—Except as provided in paragraph (2), no action may be brought under subsection (a)(1)(B), (a)(2), or (a)(3) by a participant or beneficiary seeking relief based on the application of any provision in section 101, subtitle B, or subtitle D of title I of the Bipartisan Patient Protection Act of 2001 (as incorporated under section 714).

''(2) CERTAIN ACTIONS ALLOWABLE.—An action may be brought under subsection (a)(1)(B), (a)(2), or (a)(3) by a participant or beneficiary seeking relief based on the application of section 101, 113, 114, 115, 116, 117, 118(a)(3), 119, or 120 of the Bipartisan Patient Protection Act of 2001 (as incorporated under section 714) to the individual circumstances of that participant or beneficiary, except that—

''(A) such an action may not be brought or maintained as a class action; and

''(B) in such an action, relief may only provide for the provision of (or payment of) benefits, items, or services denied to the individual participant or beneficiary involved (and for attorney's fees and the costs of the action, at the discretion of the court) and shall not provide for any other relief to the participant or beneficiary or for any relief to any other person.

''(3) OTHER PROVISIONS UNAFFECTED.—Nothing in this subsection shall be construed as affecting subsections (a)(1)(C) and (n) or section 514(d).

''(4) ENFORCEMENT BY SECRETARY UNAFFECTED.—Nothing in this subsection shall be construed as affecting any action brought by the Secretary.''.

TITLE IV—AMENDMENTS TO THE INTERNAL REVENUE CODE OF 1986

SEC. 401. APPLICATION TO GROUP HEALTH PLANS UNDER THE INTERNAL REVENUE CODE OF 1986.

Subchapter B of chapter 100 of the Internal Revenue Code of 1986 is amended—

(1) in the table of sections, by inserting after the item relating to section 9812 the following new item:

''Sec. 9813. Standard relating to patients' bill of rights.'';

and

(2) by inserting after section 9812 the following:

''SEC. 9813. STANDARD RELATING TO PATIENTS' BILL OF RIGHTS.

''A group health plan shall comply with the requirements of title I of the Bipartisan Patient Protection Act of 2001 (as in effect as of the date of the enactment of such Act), and such requirements shall be deemed to be incorporated into this section.''.

SEC. 402. CONFORMING ENFORCEMENT FOR WOMEN'S HEALTH AND CANCER RIGHTS.

Subchapter B of chapter 100 of the Internal Revenue Code of 1986, as amended by section 401, is further amended—

(1) in the table of sections, by inserting after the item relating to section 9813 the following new item:

''Sec. 9814. Standard relating to women's health and cancer rights.'';

and

(2) by inserting after section 9813 the following:

''SEC. 9814. STANDARD RELATING TO WOMEN'S HEALTH AND CANCER RIGHTS.

''The provisions of section 713 of the Employee Retirement Income Security Act of 1974 (as in effect as of the date of the enactment of this section) shall apply to group health plans as if included in this subchapter.''.

TITLE V—EFFECTIVE DATES; COORDINATION IN IMPLEMENTATION

SEC. 501. EFFECTIVE DATES.

(a) GROUP HEALTH COVERAGE.—

(1) IN GENERAL.—Subject to paragraph (2) and subsection (d), the amendments made by sections 201(a), 301, 303, and 401 and 402 (and title I insofar as it relates to such sections) shall apply with respect to group health plans, and health insurance coverage offered in connection with group health plans, for plan years beginning on or after January 1, 2002 (in this section referred to as the ''general effective date'').

(2) TREATMENT OF COLLECTIVE BARGAINING AGREEMENTS.—In the case of a group health

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 sections 201(a), 301, 303, and 401 and 402 (and title I insofar as it relates to such sections) shall not apply to plan years beginning before the later of—

(A) the date on which the last collective bargaining agreements relating to the plan terminates (determined without regard to any extension thereof agreed to after the date of the enactment of this Act); or

(B) the general effective date.

For purposes of subparagraph (A), any plan amendment made pursuant to a collective bargaining agreement relating to the plan which amends the plan solely to conform to any requirement added by this division shall not be treated as a termination of such collective bargaining agreement.

(b) INDIVIDUAL HEALTH INSURANCE COVERAGE.—Subject to subsection (d), the amendments made by section 202 shall apply with respect to individual health insurance coverage offered, sold, issued, renewed, in effect, or operated in the individual market on or after the general effective date.

(c) TREATMENT OF RELIGIOUS NONMEDICAL PROVIDERS.—

(1) IN GENERAL.—Nothing in this Act (or the amendments made thereby) shall be construed to—

(A) restrict or limit the right of group health plans, and of health insurance issuers offering health insurance coverage, to include as providers religious nonmedical providers;

(B) require such plans or issuers to—

(i) utilize medically based eligibility standards or criteria in deciding provider status of religious nonmedical providers;

(ii) use medical professionals or criteria to decide patient access to religious nonmedical providers;

(iii) utilize medical professionals or criteria in making decisions in internal or external appeals regarding coverage for care by religious nonmedical providers; or

(iv) compel a participant or beneficiary to undergo a medical examination or test as a condition of receiving health insurance coverage for treatment by a religious nonmedical provider; or

(C) require such plans or issuers to exclude religious nonmedical providers because they do not provide medical or other required data, if such data is inconsistent with the religious nonmedical treatment or nursing care provided by the provider.

(2) RELIGIOUS NONMEDICAL PROVIDER.—For purposes of this subsection, the term ''religious nonmedical provider'' means a provider who provides no medical care but who provides only religious nonmedical treatment or religious nonmedical nursing care.

(d) TRANSITION FOR NOTICE REQUIREMENT.—The disclosure of information required under section 121 of this Act shall first be provided pursuant to—

(1) subsection (a) with respect to a group health plan that is maintained as of the general effective date, not later than 30 days before the beginning of the first plan year to which title I applies in connection with the plan under such subsection; or

(2) subsection (b) with respect to a individual health insurance coverage that is in effect as of the general effective date, not later than 30 days before the first date as of which title I applies to the coverage under such subsection.

SEC. 502. COORDINATION IN IMPLEMENTATION.

The Secretary of Labor, the Secretary of Health and Human Services, and the Secretary of the Treasury shall ensure, through the execution of an interagency memorandum of understanding among such Secretaries, that—

(1) regulations, rulings, and interpretations issued by such Secretaries relating to the same matter over which such Secretaries have responsibility under the provisions of this division (and the amendments made thereby) are administered so as to have the same effect at all times; and

(2) coordination of policies relating to enforcing the same requirements through such Secretaries in order to have a coordinated enforcement strategy that avoids duplication of enforcement efforts and assigns priorities in enforcement.

SEC. 503. SEVERABILITY.

If any provision of this Act, an amendment made by this Act, or the application of such provision or amendment to any person or circumstance is held to be unconstitutional, the remainder of this Act, the amendments made by this Act, and the application of the provisions of such to any person or circumstance shall not be affected thereby.

S. 284

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 ''Bipartisan Patient Protection Act of 2001—Part II''.

SEC. 2. EXPANDED AVAILABILITY OF ARCHER MSAS.

(a) EXTENSION OF PROGRAM.—Paragraphs (2) and (3)(B) of section 220(i) of the Internal Revenue Code of 1986 (defining cut-off year) are each amended by striking ''2002'' each place it appears and inserting ''2004''.

(b) INCREASE IN NUMBER OF PERMITTED ACCOUNT PARTICIPANTS.—

(1) IN GENERAL.—Subsection (j) of section 220 of such Code is amended by redesignating paragraphs (3), (4), and (5) as paragraphs (4), (5), and (6) and by inserting after paragraph (2) the following new paragraph:

''(3) DETERMINATION OF WHETHER LIMIT EXCEEDED FOR YEARS AFTER 2001.—

''(A) IN GENERAL.—The numerical limitation for any year after 2001 is exceeded if the sum of—

''(i) the number of Archer MSA returns filed on or before April 15 of such calendar year for taxable years ending with or within the preceding calendar year, plus

''(ii) the Secretary's estimate (determined on the basis of the returns described in clause (i)) of the number of Archer MSA returns for such taxable years which will be filed after such date, exceeds 1,000,000. For purposes of the preceding sentence, the term 'Archer MSA return' means any return on which any exclusion is claimed under section 106(b) or any deduction is claimed under this section.

''(B) ALTERNATIVE COMPUTATION OF LIMITATION.—The numerical limitation for any year after 2001 is also exceeded if the sum of—

''(i) 90 percent of the sum determined under subparagraph (A) for such calendar year, plus

''(ii) the product of 2.5 and the number of medical savings accounts established during the portion of such year preceding July 1 (based on the reports required under paragraph (5)) for taxable years beginning in such year,

exceeds 1,000,000.''

(2) CONFORMING AMENDMENTS.—

(A) Clause (ii) of section 220(j)(2)(B) of such Code is amended by striking ''paragraph (4)'' and inserting ''paragraph (5)''.

(B) Subparagraph (A) of section 220(j)(4) of such Code is amended by striking ''and 2001'' and inserting ''2001, 2002, and 2003''.

(c) INCREASE IN SIZE OF ELIGIBLE EMPLOYERS.—Subparagraph (A) of section 220(c)(4) of such Code is amended by striking ''50 or fewer employees'' and inserting ''100 or fewer employees''.

(d) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of the enactment of this Act.

(e) GAO STUDY.—Not later than 1 year after the date of the enactment of this Act, the Comptroller General of the United States shall prepare and submit a report to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate on the impact of Archer MSAs on the cost of conventional insurance (especially in those areas where there are higher numbers of such accounts) and on adverse selection and health care costs.

SEC. 3. DEDUCTION FOR 100 PERCENT OF HEALTH INSURANCE COSTS OF SELF-EMPLOYED INDIVIDUALS.

(a) IN GENERAL.—Paragraph (1) of section 162(l) of the Internal Revenue Code of 1986 is amended to read as follows:

''(1) ALLOWANCE OF DEDUCTION.—In the case of an individual who is an employee within the meaning of section 401(c)(1), there shall be allowed as a deduction under this section an amount equal to 100 percent of the amount paid during the taxable year for insurance which constitutes medical care for the taxpayer and the taxpayer's spouse and dependents.''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to taxable years beginning after December 31, 2001.

SEC. 4. CREDIT FOR HEALTH INSURANCE EXPENSES OF SMALL BUSINESSES.

(a) IN GENERAL.—Subpart D of part IV of subchapter A of chapter 1 of the Internal Revenue Code of 1986 (relating to business-related credits) is amended by adding at the end the following:

''SEC. 45E. SMALL BUSINESS HEALTH INSURANCE EXPENSES.

''(a) GENERAL RULE.—For purposes of section 38, in the case of a small employer, the health insurance credit determined under this section for the taxable year is an amount equal to the applicable percentage of the expenses paid by the taxpayer during the taxable year for health insurance coverage for such year provided under a new health plan for employees of such employer.

''(b) APPLICABLE PERCENTAGE.—For purposes of subsection (a), the applicable percentage is—

''(1) in the case of insurance purchased as a member of a qualified health benefit purchasing coalition (as defined in section 9841), 30 percent, and

''(2) in the case of insurance not described in paragraph (1), 20 percent.

''(c) LIMITATIONS.—

''(1) PER EMPLOYEE DOLLAR LIMITATION.—The amount of expenses taken into account under subsection (a) with respect to any employee for any taxable year shall not exceed—

''(A) $2,000 in the case of self-only coverage, and

''(B) $5,000 in the case of family coverage.

In the case of an employee who is covered by a new health plan of the employer for only a portion of such taxable year, the limitation under the preceding sentence shall be an amount which bears the same ratio to such limitation (determined without regard to this sentence) as such portion bears to the entire taxable year.

''(2) PERIOD OF COVERAGE.—Expenses may be taken into account under subsection (a) only with respect to coverage for the 4-year period beginning on the date the employer establishes a new health plan.

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

''(1) HEALTH INSURANCE COVERAGE.—The term 'health insurance coverage' has the

meaning given such term by section 9832(b)(1).

''(2) NEW HEALTH PLAN.—

''(A) IN GENERAL.—The term 'new health plan' means any arrangement of the employer which provides health insurance coverage to employees if—

''(i) such employer (and any predecessor employer) did not establish or maintain such arrangement (or any similar arrangement) at any time during the 2 taxable years ending prior to the taxable year in which the credit under this section is first allowed, and

''(ii) such arrangement provides health insurance coverage to at least 70 percent of the qualified employees of such employer.

''(B) QUALIFIED EMPLOYEE.—

''(i) IN GENERAL.—The term 'qualified employee' means any employee of an employer if the annual rate of such employee's compensation (as defined in section 414(s)) exceeds $10,000.

''(ii) TREATMENT OF CERTAIN EMPLOYEES.—The term 'employee' shall include a leased employee within the meaning of section 414(n).

''(3) SMALL EMPLOYER.—The term 'small employer' has the meaning given to such term by section 4980D(d)(2); except that only qualified employees shall be taken into account.

''(e) SPECIAL RULES.—

''(1) CERTAIN RULES MADE APPLICABLE.—For purposes of this section, rules similar to the rules of section 52 shall apply.

''(2) AMOUNTS PAID UNDER SALARY REDUCTION ARRANGEMENTS.—No amount paid or incurred pursuant to a salary reduction arrangement shall be taken into account under subsection (a).

''(f) TERMINATION.—This section shall not apply to expenses paid or incurred by an employer with respect to any arrangement established on or after January 1, 2010.''.

(b) CREDIT TO BE PART OF GENERAL BUSINESS CREDIT.—Section 38(b) of such Code (relating to current year business credit) is amended by striking ''plus'' at the end of paragraph (12), by striking the period at the end of paragraph (13) and inserting '', plus'', and by adding at the end the following:

''(14) in the case of a small employer (as defined in section 45E(d)(3)), the health insurance credit determined under section 45E(a).''

(c) NO CARRYBACKS.—Subsection (d) of section 39 of such Code (relating to carryback and carryforward of unused credits) is amended by adding at the end the following:

''(10) NO CARRYBACK OF SECTION 45E CREDIT BEFORE EFFECTIVE DATE.—No portion of the unused business credit for any taxable year which is attributable to the employee health insurance expenses credit determined under section 45E may be carried back to a taxable year ending before the date of the enactment of section 45E.''

(d) DENIAL OF DOUBLE BENEFIT.—Section 280C of such Code is amended by adding at the end the following new subsection:

''(d) CREDIT FOR SMALL BUSINESS HEALTH INSURANCE EXPENSES.—

''(1) IN GENERAL.—No deduction shall be allowed for that portion of the expenses (otherwise allowable as a deduction) taken into account in determining the credit under section 45E for the taxable year which is equal to the amount of the credit determined for such taxable year under section 45E(a).

''(2) CONTROLLED GROUPS.—Persons treated as a single employer under subsection (a) or (b) of section 52 shall be treated as 1 person for purposes of this section.''

(e) CLERICAL AMENDMENT.—The table of sections for subpart D of part IV of subchapter A of chapter 1 of such Code is amended by adding at the end the following:

''Sec. 45E. Small business health insurance expenses.''

(f) EFFECTIVE DATE.—The amendments made by this section shall apply to amounts paid or incurred in taxable years beginning after December 31, 2001, for arrangements established after the date of the enactment of this Act.

SEC. 5. CERTAIN GRANTS BY PRIVATE FOUNDATIONS TO QUALIFIED HEALTH BENEFIT PURCHASING COALITIONS.

(a) IN GENERAL.—Section 4942 of the Internal Revenue Code of 1986 (relating to taxes on failure to distribute income) is amended by adding at the end the following:

''(k) CERTAIN QUALIFIED HEALTH BENEFIT PURCHASING COALITION DISTRIBUTIONS.—

''(1) IN GENERAL.—For purposes of subsection (g), sections 170, 501, 507, 509, and 2522, and this chapter, a qualified health benefit purchasing coalition distribution by a private foundation shall be considered to be a distribution for a charitable purpose.

''(2) QUALIFIED HEALTH BENEFIT PURCHASING COALITION DISTRIBUTION.—For purposes of paragraph (1)—

''(A) IN GENERAL.—The term 'qualified health benefit purchasing coalition distribution' means any amount paid or incurred by a private foundation to or on behalf of a qualified health benefit purchasing coalition (as defined in section 9841) for purposes of payment or reimbursement of amounts paid or incurred in connection with the establishment and maintenance of such coalition.

''(B) EXCLUSIONS.—Such term shall not include any amount used by a qualified health benefit purchasing coalition (as so defined)—

''(i) for the purchase of real property,

''(ii) as payment to, or for the benefit of, members (or employees or affiliates of such members) of such coalition, or

''(iii) for any expense paid or incurred more than 48 months after the date of establishment of such coalition.

''(3) TERMINATION.—This subsection shall not apply—

''(A) to qualified health benefit purchasing coalition distributions paid or incurred after December 31, 2009, and

''(B) with respect to start-up costs of a coalition which are paid or incurred after December 31, 2010.''.

(b) QUALIFIED HEALTH BENEFIT PURCHASING COALITION.—

(1) IN GENERAL.—Chapter 100 of such Code (relating to group health plan requirements) is amended by adding at the end the following new subchapter:

''Subchapter D—Qualified Health Benefit Purchasing Coalition

''Sec. 9841. Qualified health benefit purchasing coalition.

''SEC. 9841. QUALIFIED HEALTH BENEFIT PURCHASING COALITION.

''(a) IN GENERAL.—A qualified health benefit purchasing coalition is a private not-for-profit corporation which—

''(1) sells health insurance through State licensed health insurance issuers in the State in which the employers to which such coalition is providing insurance are located, and

''(2) establishes to the Secretary, under State certification procedures or other procedures as the Secretary may provide by regulation, that such coalition meets the requirements of this section.

''(b) BOARD OF DIRECTORS.—

''(1) IN GENERAL.—Each purchasing coalition under this section shall be governed by a Board of Directors.

''(2) ELECTION.—The Secretary shall establish procedures governing election of such Board.

''(3) MEMBERSHIP.—The Board of Directors shall—

''(A) be composed of representatives of the members of the coalition, in equal number, including small employers and employee representatives of such employers, but

''(B) not include other interested parties, such as service providers, health insurers, or insurance agents or brokers which may have a conflict of interest with the purposes of the coalition.

''(c) MEMBERSHIP OF COALITION.—

''(1) IN GENERAL.—A purchasing coalition shall accept all small employers residing within the area served by the coalition as members if such employers request such membership.

''(2) OTHER MEMBERS.—The coalition, at the discretion of its Board of Directors, may be open to individuals and large employers.

''(3) VOTING.—Members of a purchasing coalition shall have voting rights consistent with the rules established by the State.

''(d) DUTIES OF PURCHASING COALITIONS.—Each purchasing coalition shall—

''(1) enter into agreements with small employers (and, at the discretion of its Board, with individuals and other employers) to provide health insurance benefits to employees and retirees of such employers,

''(2) where feasible, enter into agreements with 3 or more unaffiliated, qualified licensed health plans, to offer benefits to members,

''(3) offer to members at least 1 open enrollment period of at least 30 days per calendar year,

''(4) serve a significant geographical area and market to all eligible members in that area, and

''(5) carry out other functions provided for under this section.

''(e) LIMITATION ON ACTIVITIES.—A purchasing coalition shall not—

''(1) perform any activity (including certification or enforcement) relating to compliance or licensing of health plans,

''(2) assume insurance or financial risk in relation to any health plan, or

''(3) perform other activities identified by the State as being inconsistent with the performance of its duties under this section.

''(f) ADDITIONAL REQUIREMENTS FOR PURCHASING COALITIONS.—As provided by the Secretary in regulations, a purchasing coalition shall be subject to requirements similar to the requirements of a group health plan under this chapter.

''(g) RELATION TO OTHER LAWS.—

''(1) PREEMPTION OF STATE FICTITIOUS GROUP LAWS.—Requirements (commonly referred to as fictitious group laws) relating to grouping and similar requirements for health insurance coverage are preempted to the extent such requirements impede the establishment and operation of qualified health benefit purchasing coalitions.

''(2) ALLOWING SAVINGS TO BE PASSED THROUGH.—Any State law that prohibits health insurance issuers from reducing premiums on health insurance coverage sold through a qualified health benefit purchasing coalition to reflect administrative savings is preempted. This paragraph shall not be construed to preempt State laws that impose restrictions on premiums based on health status, claims history, industry, age, gender, or other underwriting factors.

''(3) NO WAIVER OF HIPAA REQUIREMENTS.—Nothing in this section shall be construed to change the obligation of health insurance issuers to comply with the requirements of title XXVII of the Public Health Service Act with respect to health insurance coverage offered to small employers in the small group market through a qualified health benefit purchasing coalition.

''(h) DEFINITION OF SMALL EMPLOYER.—For purposes of this section—

''(1) IN GENERAL.—The term 'small employer' means, with respect to any calendar year, any employer if such employer employed an average of at least 2 and not more than 50 qualified employees on business days during either of the 2 preceding calendar years. For purposes of the preceding sentence, a preceding calendar year may be taken into account only if the employer was in existence throughout such year.

''(2) EMPLOYERS NOT IN EXISTENCE IN PRECEDING YEAR.—In the case of an employer which was not in existence throughout the 1st preceding calendar year, the determination under paragraph (1) shall be based on the average number of qualified employees that it is reasonably expected such employer will employ on business days in the current calendar year.''.

(2) CONFORMING AMENDMENT.—The table of subchapters for chapter 100 of such Code is amended by adding at the end the following item:

''Subchapter D. Qualified health benefit purchasing coalition.''.

(c) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to taxable years beginning after December 31, 2001.

SEC. 6. STATE GRANT PROGRAM FOR MARKET INNOVATION.

(a) IN GENERAL.—The Secretary of Health and Human Services (in this section referred to as the ''Secretary'') shall establish a program (in this section referred to as the ''program'') to award demonstration grants under this section to States to allow States to demonstrate the effectiveness of innovative ways to increase access to health insurance through market reforms and other innovative means. Such innovative means may include (and are not limited to) any of the following:

(1) Alternative group purchasing or pooling arrangements, such as a purchasing cooperatives for small businesses, reinsurance pools, or high risk pools.

(2) Individual or small group market reforms.

(3) Consumer education and outreach.

(4) Subsidies to individuals, employers, or both, in obtaining health insurance.

(b) SCOPE; DURATION.—The program shall be limited to not more than 10 States and to a total period of 5 years, beginning on the date the first demonstration grant is made.

(c) CONDITIONS FOR DEMONSTRATION GRANTS.—

(1) IN GENERAL.—The Secretary may not provide for a demonstration grant to a State under the program unless the Secretary finds that under the proposed demonstration grant—

(A) the State will provide for demonstrated increase of access for some portion of the existing uninsured population through a market innovation (other than merely through a financial expansion of a program initiated before the date of the enactment of this Act);

(B) the State will comply with applicable Federal laws;

(C) the State will not discriminate among participants on the basis of any health status-related factor (as defined in section 2791(d)(9) of the Public Health Service Act), except to the extent a State wishes to focus on populations that otherwise would not obtain health insurance because of such factors; and

(D) the State will provide for such evaluation, in coordination with the evaluation required under subsection (d), as the Secretary may specify.

(2) APPLICATION.—The Secretary shall not provide a demonstration grant under the program to a State unless—

(A) the State submits to the Secretary such an application, in such a form and manner, as the Secretary specifies;

(B) the application includes information regarding how the demonstration grant will address issues such as governance, targeted population, expected cost, and the continuation after the completion of the demonstration grant period; and

(B) the Secretary determines that the demonstration grant will be used consistent with this section.

(3) FOCUS.—A demonstration grant proposal under section need not cover all uninsured individuals in a State or all health care benefits with respect to such individuals.

(d) EVALUATION.—The Secretary shall enter into a contract with an appropriate entity outside the Department of Health and Human Services to conduct an overall evaluation of the program at the end of the program period. Such evaluation shall include an analysis of improvements in access, costs, quality of care, or choice of coverage, under different demonstration grants.

(e) OPTION TO PROVIDE FOR INITIAL PLANNING GRANTS.—Notwithstanding the previous provisions of this section, under the program the Secretary may provide for a portion of the amounts appropriated under subsection (f) (not to exceed $5,000,000) to be made available to any State for initial planning grants to permit States to develop demonstration grant proposals under the previous provisions of this section.

(f) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated $100,000,000 for each fiscal year to carry out this section. Amounts appropriated under this subsection shall remain available until expended.

(g) STATE DEFINED.—For purposes of this section, the term ''State'' has the meaning given such term for purposes of title XIX of the Social Security Act.

Mr. KENNEDY. Mr. President, I'm honored to join my colleagues in introducing the Bipartisan Patient Protection Act. This bill is a true bipartisan compromise, and I am confident it will receive the support of the majority of the Senate.

We believe that our proposal is just what the doctor ordered to end abuses by HMOs and managed care health plans. Doctors and patients should be making medical decisions, not insurance company accountants. It is long past time for Congress to start protecting patients, instead of HMO profits.

Prompt passage of this legislation is vital for the 161 million Americans with private health insurance coverage. This is the fifth year that Congress has considered patient protection—and too many patients have been subject to unacceptable abuses as the result of our inaction. Every day that Congress fails to act, more patients suffer.

A survey by the School of Public Health at the University of California found that every day—each and every day—50,000 patients experience added pain and suffering because of actions by their health plan. Thirty-five thousand patients have needed care delayed—or denied all together. Thirty-five thousand other patients have a referral to a specialist delayed or denied. Thirty-one thousand patients are forced to change their doctors. Eighteen thousand patients are forced to change their medications.

A survey of physicians by the Kaiser Family Foundation and the Harvard School of Public Health found similar results. Every day, tens of thousands of patients across the country suffer serious declines in their health as the result of the action—or inaction—of their health plan.

Whether the issue is diagnostic tests, specialty care, emergency care, access to clinical trials, availability of needed drugs, protection of doctors who give patients their best possible advice, or women's ability to obtain gynecological services—too often, in all of these cases. HMOs and managed care plans treat the company's bottom line as more important than the patient's vital signs. These abuses have no place in American medicine. Every doctor knows it. Every patient knows it. And in their hearts, every member of Congress knows it.

Every American also knows that it is wrong for the current legal system to give immunity to health insurance companies and HMOs that kill or injure patients. No other industry in America has immunity from liability when it acts irresponsibly, and HMOs and health insurance companies shouldn't have it either.

The legislation we are offering today is bipartisan. Whether the issue is liability, the appeals process, or state flexibility, we have made significant modifications to respond to legitimate concerns. but we have preserved the basic principle that when serious illness strikes, every American deserves the protection they were promised.

President Bush campaigned on a pledge to pass an effective patients' bill of rights. We are ready to work with him to bring the American people the protection they deserve. Ending the current abuses should be a priority for the new Congress and the new Administration, and I am hopeful that we can work together to past this legislation as soon as possible this year.

ADDITIONAL COSPONSORS

S. 29

At the request of Mr. BOND, the names of the Senator from Pennsylvania (Mr. SANTORUM) and the Senator from Connecticut (Mr. DODD) were added as cosponsors of S. 29, a bill to amend the Internal Revenue Code of 1986 to allow a deduction for 100 percent of the health insurance costs of self-employed individuals.

S. 31

At the request of Mr. CAMPBELL, the name of the Senator from Mississippi (Mr. COCHRAN) was added as a cosponsor of S. 31, a bill to amend the Internal Revenue Code of 1986 to phase out the estate and gift taxes over a 10-year period.

S. 41

At the request of Mr. HAGEL, the names of the Senator from California (Mrs. FEINSTEIN) and the Senator from North Dakota (Mr. DORGAN) were added

as cosponsors of S. 41, a bill to amend the Internal Revenue Code of 1986 to permanently extend the research credit and to increase the rates of the alternative incremental credit.

S. 88

At the request of Mr. ROCKEFELLER, the names of the Senator from New Hampshire (Mr. SMITH), the Senator from Pennsylvania (Mr. SANTORUM), and the Senator from Idaho (Mr. CRAPO) were added as cosponsors of S. 88, a bill to amend the Internal Revenue Code of 1986 to provide an incentive to ensure that all Americans gain timely and equitable access to the Internet over current and future generations of broadband capability.

S. 124

At the request of Mr. BROWNBACK, the names of the Senator from West Virginia (Mr. BYRD) and the Senator from North Carolina (Mr. HELMS) were added as cosponsors of S. 124, a bill to exempt agreements relating to voluntary guidelines governing telecast material, movies, video games, Internet content, and music lyrics from the applicability of the antitrust laws, and for other purposes.

S. 126

At the request of Mr. CLELAND, the name of the Senator from Delaware (Mr. CARPER) was added as a cosponsor of S. 126, a bill to authorize the President to present a gold medal on behalf of Congress to former President Jimmy Carter and his wife Rosalynn Carter in recognition of their service to the Nation.

S. 131

At the request of Mr. JOHNSON, the name of the Senator from Arkansas (Mr. HUTCHINSON) was added as a cosponsor of S. 131, a bill to amend title 38, United States Code, to modify the annual determination of the rate of the basic benefit of active duty educational assistance under the Montgomery GI Bill, and for other purposes.

S. 148

At the request of Mr. CRAIG, the name of the Senator from New Hampshire (Mr. SMITH) was added as a cosponsor of S. 148, a bill to amend the Internal Revenue Code of 1986 to expand the adoption credit, and for other purposes.

S. 161

At the request of Mr. WELLSTONE, the names of the Senator from Hawaii (Mr. INOUYE), the Senator from Illinois (Mr. DURBIN), the Senator from Rhode Island (Mr. REED), and the Senator from New Jersey (Mr. CORZINE) were added as cosponsors of S. 161, a bill to establish the Violence Against Women Office within the Department of Justice.

S. 205

At the request of Mrs. HUTCHISON, the names of the Senator from Colorado (Mr. ALLARD), the Senator from Louisiana (Ms. LANDRIEU) and the Senator from Arizona (Mr. KYL) were added as cosponsors of S. 205, a bill to amend the Internal Revenue Code of 1986 to waive the income inclusion on a distribution from an individual retirement account to the extent that the distribution is contributed for charitable purposes.

S. 208

At the request of Mr. FRIST, the names of the Senator from New York (Mrs. CLINTON) and the Senator from New Jersey (Mr. CORZINE) were added as cosponsors of S. 208, a bill to reduce health care costs and promote improved health care by providing supplemental grants for additional preventive health services for women.

S. 214

At the request of Mr. MCCAIN, the name of the Senator from South Dakota (Mr. JOHNSON) was added as a cosponsor of S. 214, a bill to elevate the position of Director of the Indian Health Service within the Department of Health and Human Services to Assistant Secretary for Indian Health, and for other purposes.

S. 225

At the request of Mr. WARNER, the name of the Senator from Mississippi (Mr. COCHRAN) was added as a cosponsor of S. 225, a bill to amend the Internal Revenue Code of 1986 to provide incentives to public elementary and secondary school teachers by providing a tax credit for teaching expenses, professional development expenses, and student education loans.

S. 234

At the request of Mr. GRASSLEY, the names of the Senator from Colorado (Mr. ALLARD), the Senator from South Dakota (Mr. JOHNSON), and the Senator from Arkansas (Mrs. LINCOLN) were added as cosponsors of S. 234, a bill to amend the Internal Revenue Code of 1986 to repeal the excise tax on telephone and other communications services.

S. CON. RES. 6

At the request of Mr. TORRICELLI, the names of the Senator from New Jersey (Mr. CORZINE), the Senator from Connecticut (Mr. DODD) and the Senator from Maryland (Mr. SARBANES) were added as cosponsors of S. Con. Res. 6, a concurrent resolution expressing the sympathy for the victims of the devastating earthquake that struck India on January 26, 2001, and support for ongoing aid efforts.

SENATE CONCURRENT RESOLUTION 8—EXPRESSING THE SENSE OF CONGRESS REGARDING SUBSIDIZED CANADIAN LUMBER EXPORTS

Ms. SNOWE (for herself, Mr. LOTT, Mrs. LINCOLN, Mr. COCHRAN, Mr. HUTCHINSON, Mr. THURMOND, Mr. CRAPO, and Mr. CRAIG) submitted the following concurrent resolution; which was referred to the Committee on Finance:

S. CON. RES. 8

Whereas the Canadian provinces use government timber to subsidize lumber production and employment by providing timber to Canadian lumber companies through non-competitive, administered pricing arrangements for a fraction of the timber's market value;

Whereas unfair subsidy practices have resulted in shipments of lumber to the United States to the point that subsidized Canadian lumber is being imported into the United States at record levels and now accounts for over one-third of the United States softwood lumber market;

Whereas highly subsidized Canadian lumber imported into the United States has resulted in lost sales for United States lumber companies, depressed United States lumber values, jeopardized thousands of United States jobs, and contributed to a collapse in lumber prices;

Whereas Canadian lumber subsidy practices have been identified by a variety of independent analyses;

Whereas United States Government officials in the Reagan, Bush, and Clinton Administrations, United States industry, timberland owners, and labor unions have called for an end to the subsidies and for fair trade; and

Whereas an agreement between the United States and Canada on lumber trade is scheduled to expire on March 31, 2001: Now, therefore, be it

Resolved by the Senate (the House of Representatives concurring), That the President, the United States Trade Representative, and the Secretary of Commerce should—

(1) make the problem of subsidized Canadian lumber imports a top trade priority to be addressed immediately;

(2) take every possible action to end Canadian lumber subsidy practices through open and competitive sales of timber and logs in Canada for fair market value, or if Canada will not agree to end the subsidies immediately, provide that the subsidies be offset in the United States; and

(3) if Canada does not agree to end subsidies for lumber—

(A) enforce vigorously, promptly, and fully the trade laws with respect to subsidized and dumped imports;

(B) explore all options to stop unfairly traded imports; and

(C) limit injury to the United States industry.

Ms. SNOWE. Mr. President, I rise today to introduce a Senate concurrent resolution that urges the administration to realize that an immediate trade priority should be to address the problem of subsidized Canadian softwood lumber imports. I am pleased to be joined in this effort by Senators LOTT, LINCOLN, COCHRAN, HUTCHINSON, THURMOND, CRAPO, and CRAIG.

The U.S.-Canada Softwood Lumber Agreement of 1996 will expire on March 31, 2001—just 53 short days from now—and there are no government-to-government negotiations taking place. We do not know just what will happen if the Agreement is allowed to expire with no alternative solution in place, but without restrictions, the subsidized lumber from Canada will flood over the border further impacting our U.S. sawmills. This to me is unacceptable.

It is safe to say that we who represent our respective states here in the Senate share the same goals for our constituents—economic growth and prosperity through secure businesses and jobs, a healthy environment, including the ability to purchase reasonably priced homes and lumber with which to remodel. I cannot stand by,

however, and watch someone's dream become another's nightmare.

The United States has over four million forest landowners, with approximately 20,000 logging facilities, sawmills and planing mills, which employ over 700,000 employees. In the past year, lumber prices in the United States have plummeted by 33 percent while Canadian imports have grown to record levels. Approximately 3,500 mills have already closed, and I have heard from those with sawmills in Maine that are still open that they are close to laying off their hard-working employees and using their lumber to board up their businesses. Their message, as is mine, is for free trade that is also fair trade.

I would like to note that, the problem of the subsidized lumber is not coming from Maine's good neighbors to the North—those small sawmills of the Canadian Maritimes—as they do not have vast amounts of crown, or government-owned, forest, but also get their wood from private forests, and they do not fall under the current quotas of the Agreement. There are only four provinces that actually fall under the quota system, Quebec, Ontario, Alberta and British Columbia, and the large integrated sawmills—those that have both pulp and sawmill operations, are doing very well. On the other hand, the small sawmills in the Maritimes are hurting just as much as our sawmills in the United States. This is a trade problem that we must negotiate with Canada in the interests of the United States while they also work to solve their own inequities.

The U.S. timber prices for lumber are set by the market for both public and private forests, while the Canadian Government sets the price of timber from Quebec to British Columbia at a level that is one half to one-quarter the actual market value of timber. Some of the Canadian provinces with vast crown forests use government timber to subsidize lumber production and employment by providing timber to Canadian lumber companies through noncompetitive, administered pricing arrangements for a fraction of the timber's market value.

These unfair subsidy practices have fueled shipments to the United States to the point that subsidized Canadian imports are at record levels and now control over one-third of the U.S. softwood lumber market. The highly subsidized Canadian lumber imports have gained sales volume from U.S. lumber companies, depressed U.S. timber values, and jeopardized thousands of U.S. jobs, and contributed to a collapse in lumber prices.

Canadian lumber subsidy practices have been identified by a variety of independent analyses. U.S. Government officials in the Reagan, Bush and Clinton administrations, the U.S. industry and timberland owners, and labor unions all have called for an end to the subsidies and for fair trade.

We are calling upon the President, the Office of the U.S. Trade Representative, and the Secretary of Commerce to take every possible action to end Canadian lumber subsidy practices through open and competitive sales of timber and logs in Canada for fair market value, or if Canada will not agree to end the subsidies immediately, the subsidies must be offset pending some sort of reform.

In addition, if Canada will not reach an agreement to vigorously, promptly, and fully enforce the trade laws against subsidized and dumped imports and explore all options to stop unfairly traded imports, and to limit injury to the U.S. industry pending further action, the administration should be prepared to vigorously and fully enforce the trade laws against subsidized and dumped imports from Canada.

I hope that these efforts today will jump start the administration as soon as tomorrow to start working towards negotiations with Canada. There are no surprises here, as the issue has been around since the 1930s. There have been years of investigations, assessments, petitions, rulings, imposed duties, and a 1986 Memorandum of Understanding to address the inequities.

As a matter of fact, a major reason for bringing Canada to the negotiating table for the 1996 Agreement, along with a lawsuit by the Coalition for Fair Lumber Imports, was the implementing legislation for the GATT Uruguay Round Agreements. Congress approved the President's ''statement of administrative action'' that stated that lumber imports from Canada could be subject to countervailing duties under the Uruguay Round.

Every possible action must be taken immediately, to end Canadian lumber subsidy practices through open and competitive sales of timber and logs in Canada at fair market value. This trade must be both free and fair. I thank the Chair.

AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS

Mr. HELMS. Mr. President, I ask unanimous consent that the Committee on Banking, Housing, and Urban Affairs be authorized to meet during the session of the Senate on Wednesday, February 7, 2001, to conduct a hearing on ''Establishing an Effective, Modern Framework for Export Controls.''

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

COMMITTEE ON FOREIGN RELATIONS

Mr. HELMS. Mr. President, I ask unanimous consent that the Committee on Foreign Relations be authorized to meet during the session of the Senate on Wednesday, February 7, 2001, at 10:30 a.m., to hold a business meeting.

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

COMMITTEE ON THE JUDICIARY

Mr. HELMS. Mr. President, I ask unanimous consent that the Committee on the Judiciary be authorized to meet to conduct a hearing on Wednesday, February 7, 2001, at 9:30 a.m., in Dirksen 226.

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

SELECT COMMITTEE ON INTELLIGENCE

Mr. HELMS. Mr. President, I ask unanimous consent that the Select Committee on Intelligence be authorized to meet during the session of the Senate on Wednesday, February 7, 2001 at 10 a.m., to hold a hearing on intelligence matters, and at 2:30 p.m., to hold a closed hearing on intelligence matters.

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

PRIVILEGES OF THE FLOOR

Mr. HELMS. Mr. President, I ask unanimous consent, on behalf of Senator BIDEN, that Paul Foldi, a State Department fellow on the staff of the Foreign Relations Committee, be granted floor privileges during the consideration of S. 248.

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

FOREIGN CURRENCY REPORTS

In accordance with the appropriate provisions of law, the Secretary of the Senate herewith submits the following report(s) of standing committees of the Senate, certain joint committees of the Congress, delegations and groups, and select and special committees of the Senate, relating to expenses incurred in the performance of authorized foreign travel:

CONSOLIDATED REPORT OF EXPENDITURE OF FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95–384—22 U.S.C. 1754(b), COMMITTEE ON AGRICULTURE, NUTRITION, AND FORESTRY FOR TRAVEL FROM OCT. 1, TO DEC. 31, 2000

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
Sara Roberts:									
United States	Dollar				8,048.26				8,048.26
Taiwan	New T. Dollar		789.24						789.24
China	Yaun		226.00						226.00
Korea	Won		439.72						439.72
Australia	Aud		468.24						468.24
Stephanie Mercier:									
United States	Dollar				1,098.28				1,098.28
Netherlands	Guilder		1,204.55						1,204.55
Jeffry Burnam:									
United States	Dollar				995.28				995.28
Netherlands	Guilder		1,362.47						1,362.47
Total			4,490.22		10,141.82				14,632.04

DICK LUGAR,
Chairman, Committee on Agriculture, Nutrition and Forestry, Jan. 31, 2001.

CONSOLIDATED REPORT OF EXPENDITURE OF FOREIGN CURRENCIES AND APPROPRIATED FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95–384—22 U.S.C. 1754(b), COMMITTEE ON APPROPRIATIONS FOR TRAVEL FROM OCT. 1 TO DEC. 31, 2000.

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
Senator Daniel K. Inouye:									
Japan	Yen		2,030.00						2,030.00
Charlie Houy:									
Japan	Yen		2,030.00						2,030.00
James Morhard:									
France	Franc		976.00		5,976.31				6,952.31
Senator Judd Gregg:									
France	Franc		976.00		5,976.31				6,952.31
Senator Patrick Leahy:									
United States	Dollar				741.12				741.12
Canada	Dollar		454.00						454.00
Tim Rieser:									
United States	Dollar				734.25				734.25
Canada	Dollar		227.00						227.00
Senator Ernest F. Hollings:									
Panama	Dollar		428.00						428.00
Lila Helms:									
Panama	Dollar		428.00						428.00
Susan Hogan:									
United States	Dollar				8,806.99				8,806.99
Australia	Dollar		1,729.78						1,729.78
Total			9,278.78		22,234.98				31,513.76

TED STEVENS,
Chairman, Committee on Appropriations, Jan. 15, 2001.

AMENDMENT TO THE 3RD QUARTER 2000 CONSOLIDATED REPORT OF EXPENDITURE OF FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95–384—22 U.S.C. 1754(b), COMMITTEE ON APPROPRIATIONS FOR TRAVEL FROM JULY 1, TO SEPT. 30, 2000

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
Steve Cortese:									
United States	Dollar				4,399.00				4,399.00
Greece	Dollar		402.00						402.00
Bosnia	Dollar		351.00						351.00
Croatia	Dollar		274.00						274.00
Italy	Dollar		1,002.00						1,002.00
Portugal	Escudo		375.00						375.00
Sid Ashworth:									
United States	Dollar				4,399.00				4,399.00
Greece	Dollar		402.00						402.00
Bosnia	Dollar		351.00						351.00
Croatia	Dollar		274.00						274.00
Italy	Lire		1,002.00						1,002.00
Portugal	Escudo		375.00						375.00
Kraig Siracuse:									
United States	Dollar				4,399.00				4,399.00
Greece	Dollar		402.00						402.00
Bosnia	Dollar		351.00						351.00
Croatia	Dollar		274.00						274.00
Italy	Lire		1,002.00						1,002.00
Portugal	Escudo		250.00						250.00
Jennifer Chartrand:									
United States	Dollar				4,399.00				4,399.00
Greece	Dollar		402.00						402.00
Bosnia	Dollar		351.00						351.00
Croatia	Dollar		274.00						274.00
Italy	Lire		1,002.00						1,002.00
Portugal	Escudo		375.00						375.00
Paul Doerrer:									
South Africa	Rand		650.00		5,679.00				6,329.00
Robin Cleveland:									
Singapore	Dollar		1,500.00		5,856.46				7,356.46
Christine Drager:									
Canada	Dollar		385.37						385.37
Total			12,026.37		29,131.46				41,157.83

TED STEVENS,
Chairman, Committee on Appropriations, Jan. 15, 2001.

AMENDMENT TO THE 3RD QUARTER 2000 CONSOLIDATED REPORT OF EXPENDITURE OF FOREIGN CURRENCIES AND APPROPRIATED FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95–384—22 U.S.C. 1754(b), ARMED SERVICES COMMITTEE, TRAVEL AUTHORIZED BY SENATOR JOHN WARNER, CHAIRMAN, COMMITTEE ON ARMED SERVICES FOR TRAVEL FROM JULY 1, TO SEPT. 30, 2000

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
Senator Max Cleland:									
Japan	Yen	88,454	818.00						818.00
Korea	Won	690,680	599.00						599.00
William S. Chapman:									
Japan	Yen	83,251	768.00						768.00
Korea	Won	649,462	583.00						583.00
Patricia Murphy:									
Japan	Yen	90,080	831.63						831.63
Korea	Won	727,887	653.40						653.40
Simon Sargent:									
Japan	Yen	73,152	674.84						674.84
Korea	Won	512,743	460.27						460.27
Andrew Vanlandingham:									
Japan	Yen	84,300	777.67						777.67
Korea	Won	531,873	477.44						477.44
Total									6,643.25

JOHN WARNER,
Chairman, Committee on Armed Services, Jan. 30, 2001.

CONSOLIDATED REPORT OF EXPENDITURE OF FOREIGN CURRENCIES AND APPROPRIATED FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95–384—22 U.S.C. 1754(b), ARMED SERVICES COMMITTEE, TRAVEL AUTHORIZED BY SENATOR JOHN WARNER FOR TRAVEL FROM OCT. 1, TO DEC. 31, 2000

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
Pamela Farrell:									
France	Franc	15,264.40	2,462.00						2,462.00
Germany	Deutsche Mark	825.72	393.20						393.20
Charles W. Alsup:									
Germany	Dollar		1,222.10						1,222.10
Daniel J. Cox:									
Germany	Dollar		1,057.49						1,057.49
Richard W. Fieldhouse:									
Russia	Dollar		1,049.72						1,049.72
United States	Dollar				4,519.20				4,519.20
Mary Alice Hayward:									
Russia	Dollar		3,910.21						3,910.21
John Barnes:									
Japan	Dollar		590.00						590.00
Korea	Dollar		1,084.96						1,084.96
Thomas L. MacKenzie:									
Japan	Dollar		590.00						590.00
Korea	Dollar		1,084.96						1,084.96
Senator James M. Inhofe:									
Kuwait	Dollar		778.00						778.00
Rwanda	Dollar		125.00						125.00
Congo	Dollar		565.00						565.00
Angola	Dollar		494.00						494.00
United States	Dollar				6,311.00				6,311.00
Cord A. Sterling:									
Kuwait	Dollar		740.00						740.00
Rwanda	Dollar		190.00						190.00
Italy	Dollar		40.00						40.00
Spain	Dollar		580.00						580.00
United States	Dollar				5,706.63				5,706.63
Senator Jack Reed:									
United States	Dollar				4,903.84				4,903.84
Total									38,397.31

JOHN WARNER,
Chairman, Committee on Armed Services, Jan. 5, 2001.

CONSOLIDATED REPORT OF EXPENDITURE OF FOREIGN CURRENCIES AND APPROPRIATED FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95–384—22 U.S.C. 1754(b), COMMITTEE ENVIRONMENT AND PUBLIC WORKS COMMITTEE TRAVEL AUTHORIZED BY ENVIRONMENT AND PUBLIC WORKS COMMITTEE FOR TRAVEL FROM OCT. 1, 2000 TO DEC. 31, 2000

Name and Country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
Christopher Miller:									
Netherlands			2,610.00		831.90				3,441.90
Louis Renjel:									
Netherlands			1,740.00		821.12				2,561.12
Total			4,350.00		1,653.02				6,003.02

BOB SMITH,
Chairman, Committee on environment and Public Works, Jan. 22, 2001.

CONSOLIDATED REPORT OF EXPENDITURE OF FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95–384—22 U.S.C. 1754(b), COMMITTEE ON GOVERNMENTAL AFFAIRS FOR TRAVEL FROM OCT. 1, TO DEC. 31, 2000

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
Elise Bean:									
United States	Dollar				1,314.80				1,314.80
Antigua/Dominica	Dollar			715.98					715.98
Robert Roach:									
United States	Dollar				1,314.80				1,314.80
Antigua/Dominica	Dollar			708.65					708.65
Total			1,424.63		2,629.60				4,054.23

FRED THOMPSON,
Chairman, Committee on Government Affairs, Jan. 2, 2001.

CONSOLIDATED REPORT OF EXPENDITURE OF FOREIGN CURRENCIES AND APPROPRIATED FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE UNDER AUTHORITY OF SEC. 22, P.L. 95–384—22 U.S.C. 1754(c), JUDICIARY COMMITTEE FOR TRAVEL FROM OCT. 1, 2000 TO DEC. 31, 2000

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
Paul Palagyi:									
Brazil			900.00		3,287.80				4,187.80
Total			900.00		3,287.80				4,187.80

ORRIN HATCH,
Chairman, Committee on Judiciary, Jan. 22, 2001.

CONSOLIDATED REPORT OF EXPENDITURE OF FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE UNDER AUTHORITY OF SEC. 22, P.L. 95–384—22 U.S.C. 1754(c), COMMITTEE ON SMALL BUSINESS FOR TRAVEL FOR TRAVEL FROM OCT. 1, TO DEC. 31, 2000

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
Patricia Forbes:									
France	Franc		886.12		39.08		90.51		1,015.71
	Dollar				883.00				883.00
Total			886.12		922.08		90.51		1,898.71

KIT BOND,
Chairman, Committee on Small Business, Dec. 18, 2000.

AMENDMENT TO THE 3RD QUARTER 2000 CONSOLIDATED REPORT OF EXPENDITURE OF FOREIGN CURRENCIES AND APPROPRIATED FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE—UNDER AUTHORITY OF SEC. 22, P.L. 95–384—22 U.S.C. 1754(b), COMMITTEE ON VETERANS' AFFAIRS FOR TRAVEL FROM JULY 1, TO SEPTEMBER 30, 2000

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
Doman O. McArthur:									
Spain			181.00				6.00		187.00
Morocco			498.00				125.00		623.00
Senegal			88.00				7.00		95.00
Mali			79.00				19.00		98.00
Ghana			136.00				10.00		146.00
Democratic Republic of the Congo			150.00				57.00		207.00
Angola			10.00				31.00		41.00
Zambia			98.00				35.00		133.00
South Africa			351.00				104.00		455.00
Uganda			161.00						161.00
Tunisia			71.00				111.00		182.00
Algeria			80.00				32.00		112.00
Portugal			178.00				46.00		224.00
Total			2,081.00				583.00		2,664.00

ARLEN SPECTER,
Chairman, Committee on Veterans Affairs, Dec. 20, 2000.

CONSOLIDATED REPORT OF EXPENDITURE OF FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95–384—22 U.S.C. 1754(b), COMMITTEE ON INTELLIGENCE FOR TRAVEL FROM OCT. 1, TO DEC. 31, 2000

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
Kenneth Myers, III			2,545.00						2,545.00
Kenneth Myers, Jr.			2,490.00						2,490.00
Senator Richard Lugar			2,490.00						2,490.00
Senator Richard Shelby			1,379.00						1,379.00
	Dollar				5,571.76				5,571.76
Senator Jon Kyl			1,360.00						1,360.00
	Dollar				5,571.76				5,571.76
Randall Bookout			1,329.00						1,329.00
	Dollar				5,571.76				5,571.76
James Barnett			790.00						790.00
	Dollar				8,806.99				8,806.99

CONSOLIDATED REPORT OF EXPENDITURE OF FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95–384—22 U.S.C. 1754(b), COMMITTEE ON INTELLIGENCE FOR TRAVEL FROM OCT. 1, TO DEC. 31, 2000—Continued

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
Senator Max Baucus			755.14						755.14
	Dollar				5,269.89				5,269.89
Lorenzo Goco			1,034.00						1,034.00
	Dollar				5,269.89				5,269.89
Zak Anderson			1,274.00						1,274.00
	Dollar				5,269.89				5,269.89
James Barnett			1,947.00						1,947.00
	Dollar				5,208.00				5,208.00
Patricia McNerney			1,947.00						1,947.00
	Dollar				3,609.30				3,609.30
Total			19,340.14		50,149.24				69,489.38

RICHARD SHELBY,
Chairman, Committee on Intelligence, Feb. 1, 2001.

CONSOLIDATED REPORT OF EXPENDITURE OF FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95–384—22 U.S.C. 1754(b), THE MAJORITY LEADER FOR TRAVEL FROM SEPT. 21, TO SEPT. 22, 2000

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
Senator Kay Bailey Hutchinson:									
Mexico	Pesos		146.25						146.25
Senator Jon Kyl:									
Mexico	Pesos		146.25						146.25
Senator Jeff Sessions:									
Mexico	Pesos		146.25						146.25
Larry DiRita:									
Mexico	Pesos		146.25						146.25
Mike Gerber:									
Mexico	Pesos		146.25						146.25
Julia Hart:									
Mexico	Pesos		146.25						146.25
Delegation expenses [1]								428.63	428.63
Total			877.50					428.63	1,306.13

[1] Delegation expenses include direct payments and reimbursements to the Department of State and the Department of Defense under authority of Sec. 502(b) of the Mutual Security Act of 1954, as amended by Sec. 22 of P.L. 95–384, and S. Res. 179 agreed to May 25, 1977.

TRENT LOTT,
Majority Leader, Nov. 15, 2000.

CONSOLIDATED REPORT OF EXPENDITURE OF FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95–384—22 U.S.C. 1754(b), DEMOCRATIC LEADER FOR TRAVEL FROM OCT. 1 TO DEC. 31, 2000

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
Franz Wuerfmannsdorbler:									
Netherlands	Dollar		3,359.28						3,359.28
Total			3,359.28						3,359.28

TOM DASCHLE,
Democratic Leader, Jan. 31, 2001.

THE FUTURE OF INDO-AMERICAN RELATIONS

Mr. KERRY. Mr. President, the powerful earthquake which recently devastated India's densely populated western state of Gujarat has focused our attention, once again, on India. Gujarat officials estimate that 28,000 to 30,000 people have died. Thousands more have been injured, and hundreds of thousands have been displaced.

In response to India's dire need for help, USAID has sent blankets, generators, water containers, plastic sheeting, food, and other relief supplies—all part of our official commitment to provide some $10 million in emergency humanitarian aid. But in my view this is not enough. We can and should do more. In the initial phase of this disaster when India particularly needed search and rescue teams and medical assistance, the United States was conspicuous in its absence. The Russians, the Brits, the Swiss and others were engaged in pulling people out of the rubble. We were not. At least half a dozen countries, including Denmark, Israel, and Sweden, sent field hospitals, doctors and medical personnel. We did not. Given our slow start, it is especially important for the United States to be particularly generous when it comes to reconstruction.

Indian-Americans, on the other hand, have moved quickly to mobilize their own relief effort—collecting sizeable donations and medical supplies as well as assembling teams of doctors. Reflecting the depth of concern among Americans for the tragedy that has struck India, President Bush, last week, made a condolence call to Indian Prime Minister Atal Bihari Vajpayee. I commend the President for making this call, not only because it was the right thing to do under the circumstances, but also because it was an important gesture by the new Administration toward a country in a region that the United States tends to ignore, except in times of crisis.

Regrettably the Clinton Administration paid little attention to developments in South Asia until May 1998, when India broke its 25 year moratorium on nuclear testing with five underground tests. Taken by surprise, the Administration tried—to no avail—to persuade Pakistan not to test in response. Confronted with escalating tensions not only in the nuclear realm but on the ground over Kashmir, the Administration was forced to focus on growing instability in the subcontinent.

Belatedly the Administration picked up the pace of its diplomacy in the region, opening a high level dialogue

with India and Pakistan on nuclear issues, interceding to reduce tensions over Kashmir, and arranging a Presidential visit last March to India, with a brief stop in Pakistan. President Clinton's trip to India—the first by a US president in 22 years—was an effort, in his words, to ''rekindle the relationship'' between the United States and India. It was a welcome initiative.

I was in India in December 1999, a few months before President Clinton's visit, to participate in the World Economic Forum's India Economic Summit. While there, I had an opportunity to meet with a number of Indian officials including the Prime Minister, his National Security Adviser and the Defense Minister. During the course of these meetings, it became very clear to me that India wanted a better relationship with the United States. In many respects, this was predictable because from India's perspective, the neighborhood in which it lives has become less friendly and more threatening, and its historical ally, the Soviet Union, no longer exists.

Pakistan is under the control of a military regime rather than a democratically elected government—a regime which New Delhi views as illegitimate and threatening. In the months before the Clinton visit, tensions with Pakistan had intensified not only over Kashmir but also over Pakistani support for terrorists. Although tensions have subsided since then, Kashmir continues to be a volatile issue that could provoke another war between India and Pakistan both armed with nuclear weapons. Pakistan, like India, has declared its intention to be in the nuclear game. Pakistan clearly poses a security problem for India but not of the magnitude of China. As one Indian told me during my visit, ''Pakistan is a nuisance but not a threat—China is a threat.''

The biggest and from the Indian viewpoint most menacing power in the neighborhood is China—a country with which India has had longstanding tensions over border and territorial issues. China's past assistance to Pakistan's nuclear program and its ongoing efforts to build influence with other smaller countries in the region, particularly those on India's border such as Burma, are proof at least in the minds of Indians that China is trying to encircle India. Whereas most of the countries in Southeast Asia see Chinese aspirations as limited to that of a regional power that wants recognition and respect, India is wary of China's aspirations both in the region and globally.

The Indian fear of China seems to me to be larger than reality but it is real nonetheless, and it is a major reason why India has been seeking improved relations with the United States. The Clinton Administration, recognizing that improved relations would be in America's interests as well as India's, wisely took advantage of this opportunity. India is the largest democracy in Asia and a potentially important partner in our efforts to promote regional stability, economic growth and more open political systems in surrounding countries. It is a fledgling nuclear power with the potential to affect the nuclear balance in South Asia as well as our nonproliferation goals on a global level. It is involved in a longstanding conflict with Pakistan which could erupt into another war possibly at the nuclear level. It is a player in a region dominated by China, with whom the US has mutual interests but also major differences.

While the United States and India have differences over serious issues related to the development of India's nuclear program, labor and the environment, Cold War politics and alliances no longer stand in the way of improved relations. In fact, as many of my Indian hosts suggested, the United States and India are ''natural allies''. Both are vibrant democracies; Indian-American family ties are strong and extensive. As India has begun to open and liberalize its economy over the past decade, American business and investment in India has grown, particularly in the high tech region of Bangalore, and America has become India's largest trading partner and source of foreign investment. And on the flip side, Indians are playing a major role in the growth of our high tech industry in California, Massachusetts, New York, and elsewhere. Together with the Taiwanese, Indians own more than 25 percent of the firms and supply more than 25 percent of the labor in this country in those technology fields. All of India's political parties have accepted the need to continue India's economic modernization. Undoubtedly there will be disagreements over how to do it but continuation of the process holds out the prospects of increased economic interaction with the United States.

The potential exists for the U.S. and India to have a strong, cooperative relationship across a broad range of issues. President Clinton's visit to India was an important step in laying the foundation for this new relationship. Working groups were set up on trade, clean energy and environment, and science and technology. A broad range of environmental, social and health agreements were signed. To strengthen economic ties, $2 billion in Eximbank support for U.S. exports to India was announced;.U.S. firms signed some $4 billion in agreements with Indian firms. The effort to institutionalize dialogue was capped by an agreement between President Clinton and Prime Minister Vajpayee for regular bilateral summits between the leaders of both countries. An invitation was extended to the Prime Minister to visit Washington, which he did last September. During that visit, the two leaders agreed to expand cooperation to the areas of arms control, terrorism and AIDS.

The seeds have been sown for a new Indo-American relationship. It is up to the Bush Administration to nurture them. The Administration must devote time and attention to the relationship—and to developments in the region—on a consistent basis, not on a crisis only basis. President Clinton and Prime Minister Vajpayee set out to regularize bilateral contacts not only at the working level but also at the highest levels. President Bush should continue this process. Personal diplomacy at the highest levels, particularly when dealing with Asian countries, is an essential element of relationship-building. I also believe that the time is long overdue for the United States to distinguish, once and for all, between India and Pakistan and to treat each differently and according to the demands of those bilateral relationships.

A constant source of irritation for Indians has been the inability or unwillingness of the United States to differentiate between India and Pakistan. From their perspective, India's commitment to democracy and economic reform dictate that the United States have a different relationship with India than with Pakistan, which has a military regime that supports terrorism. I agree that a distinction must be drawn. That the United States lumps them together or even worse is soft on Pakistan is clearly unacceptable from the Indian point of view. To a certain extent, they have a point. To a certain extent, they have made their point accurately.

Just as the passing of the Cold War has improved the atmosphere for an improvement in Indo-American relations, it has also removed the need for the United States to ignore Pakistan's transgressions both within and outside of its borders. The United States no longer needs to tilt toward Pakistan in pursuit of larger strategic objectives. We should look at our relationships with India and Pakistan separately, analyzing each in terms of mutual interests and differences and being more candid in defining areas of agreement and disagreement. President Clinton attempted to find a new balance during his trip last year, by spending several days in India and only a few hours in Islamabad. But more needs to be done. In my view, we can advance our interests and strengthen our relationship with India by immediately terminating the sanction on loans to India from international financial institutions (IFIs).

Although President Clinton waived most of the sanctions imposed on India after it tested in 1998, he chose not to exercise the waiver for IFI loans to India, amounting to some $1.7 billion, or for FMF (foreign military financing) for India. I believe that we should lift the IFI sanction at this time. The release of these funds would send an important signal to India of our ongoing commitment to improved relations while also encouraging the government of India to continue its economic modernization.

The sanction on FMF needs discussion in hopes of finding further progress regarding India's position on nuclear issues. At the moment, Indian officials have made it clear that there would be no rollback of India's nuclear program and that India intends to have a credible minimum nuclear deterrent which means nuclear weapons and delivery systems. They believe that the United States is under-emphasizing India's security needs and overemphasizing nonproliferation objectives. I believe there is a happy medium between these two. Although there has been ongoing dialogue between Indian and American officials on the Clinton Administration's four nonproliferation benchmarks set after the 1998 tests—signing and ratifying the Comprehensive Test Ban Treaty (CTBT), halting fissile material production, refraining from deploying or testing missiles or nuclear weapons, and instituting export controls on sensitive goods and technology.

Despite the fact that we set up these benchmarks, the truth is there has been little progress made with respect to them.

We must be frank and acknowledge at the same time, as we see and measure the progress, that we have to be honest about our own status, if you will. That requires us to acknowledge that our failure in the Senate to approve the Comprehensive Test-Ban Treaty has undermined our ability to influence India and many other countries. And Pakistan, obviously, is in the same equation.

Nevertheless, it is imperative that the dialog continue because too much is at stake in terms of regional stability and nonproliferation to allow it to wither. We need to understand the fears that are driving India's sense of security and insecurity. We need to ask ourselves what is realistic to expect from India in light of those fears.

For their part, the Indians must understand that much can be gained in the relationship with the United States and with progress on these issues. Arms control and regional stability are inextricably linked, and global security is inextricably linked to our resolution of these issues.

I am very hopeful we can quickly reach a mutual understanding to permit the FMF sanction to also be lifted. I believe we can make progress on these difficult issues if both parties are prepared to tackle them and to be sensitive to understanding the other's security concerns.

India and the United States have begun to build a new cooperative relationship that reflects our common ties and our common interests. A process has begun, and the administration needs to continue that progress with commitment and with zeal.

India and the United States have an enormous amount to offer each other. We both can benefit, in my judgment, from a more cooperative and friendly working relationship. I think the groundwork has been laid. I hope this administration can move rapidly to lift the current sanctions, to enter into the talks, and to move forward in this most critical relationship. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. KENNEDY. 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. KENNEDY. Mr. President, are we in morning business?

The PRESIDING OFFICER. We are in a period for morning business, with Members allowed to speak for up to 10 minutes.

Mr. KENNEDY. Mr. President, I ask unanimous consent to speak for up to 20 minutes.

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

Mr. KENNEDY. I thank the Chair.

(The remarks of Mr. KENNEDY pertaining to the introduction of S. 277 are located in today's RECORD under ''Statements on Introduced Bills and Joint Resolutions.'')

Mr. KENNEDY. I yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

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

UNANIMOUS CONSENT AGREEMENT—S. 235

Mr. DEWINE. Mr. President, on behalf of the leader, I ask unanimous consent that at 11 a.m. on Thursday, the Senate proceed to S. 235, the pipeline safety bill and all amendments be relevant to the subject matter of pipeline safety or energy policy in California or a study relative to energy.

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

Mr. DEWINE. Mr. President, in light of this agreement, I announce to the Members of the Senate that there will be no further votes today.

MODIFICATION OF S. RES. 7

Mr. DEWINE. Mr. President, on behalf of the majority leader, I ask unanimous consent that notwithstanding the adoption of S. Res. 7, the resolution be modified to reflect the following changes which I send to the desk.

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

The modification reads as follows:

MODIFICATION

Designating Senator Larry Craig as chairman of the Committee on Aging;

Designating Senator Pat Roberts as Chairman of the Committee on Ethics;

Designating Senator Harry Reid as Vice Chairman of the Committee on Ethics;

Designating Senator Inouye as Vice Chairman of the Committee on Indian Affairs.

JOINT ECONOMIC COMMITTEE REPRESENTATION

Mr. DEWINE. Mr. President, I ask unanimous consent that the Senate now proceed to the immediate consideration of S. 279 regarding the membership of the Joint Economic Committee.

Further, I ask that the bill be read the third time and passed, with the motion to reconsider laid upon the table.

There being no objection, the Senate proceeded to consider the bill.

The bill (S. 279) was read the third time and passed, as follows:

S. 279

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That notwithstanding any other provision of law, and specifically section 5(a) of the Employment Act of 1946 (15 U.S.C. 1024(a)), the Members of the Senate to be appointed by the President of the Senate shall for the duration of the One Hundred Seventh Congress, for so long as the majority party and the minority party have equal representation in the Senate, be represented by five Members of the majority party and five Members of the minority party.

APPOINTMENTS

The PRESIDING OFFICER. The Chair, on behalf of the Majority Leader, pursuant to Public Law 106–553, announces the appointment of the following Senators to serve as members of the Congressional Recognition for Excellence in Arts Education Awards Board: The Senator from Mississippi (Mr. COCHRAN) and the Senator from Utah (Mr. BENNETT).

The Chair, on behalf of the President pro tempore, pursuant to Public Law 96–388, as amended by Public Law 97–84 and Public Law 106–292, appoints the following Senators to the United States Holocaust Memorial Council for the 107th Congress: The Senator from Utah (Mr. HATCH), the Senator from Alaska (Mr. MURKOWSKI), and the Senator from Maine (Ms. COLLINS).

ORDERS FOR THURSDAY, FEBRUARY 8, 2001

Mr. DEWINE. Mr. President, on behalf of the majority leader, I ask unanimous consent that when the Senate completes its business today, it adjourn until the hour of 9:30 a.m. on Thursday, February 8. I further ask consent that on Thursday, immediately following the prayer, the Journal of proceedings be approved to date, the morning hour be deemed to have expired, the time for the two leaders be reserved for their use later in the day, and then the Senate proceed to a period for morning business until 11 a.m., to be divided in the following manner: Senator TORRICELLI, in control of the time between 9:30 a.m. and 10 a.m.; Senator DURBIN, or his designee, controlling the time between 10 a.m. and

10:15 a.m.; Senator THOMAS, or his designee, controlling the time between 10:15 and 11 a.m.

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

PROGRAM

Mr. DEWINE. Mr. President, tomorrow the Senate will begin the day with a period of morning business. At 11 a.m. the Senate will proceed to the consideration of the pipeline safety legislation. Relevant amendments are in order under a previous agreement, and Senators who have amendments are encouraged to inform the managers of that fact. It is hoped a vote on final passage can occur as early as tomorrow afternoon.

ORDER TO RECOGNIZE THE MAJORITY LEADER

Mr. DEWINE. Mr. President, I ask unanimous consent that the majority leader be recognized at 11 a.m. tomorrow for up to 15 minutes for a tribute.

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

ORDER FOR ADJOURNMENT

Mr. DEWINE. Mr. President, if there is no further business to come before the Senate, I ask unanimous consent that the Senate stand in adjournment immediately following my remarks.

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

HAITI: A HUMAN TRAGEDY

Mr. DEWINE. Mr. President, let me turn to an event occurring to our neighbor to the south, Haiti, this very day. It is an event that has impact not just for the people of that impoverished country, but also for the United States.

Today, Jean-Bertrand Aristide will be inaugurated. This is the second time that Aristide is being inaugurated as Haiti's President. Aristide, with great popularity and great expectations, will today be succeeding his hand-picked successor of Rene Preval.

For Aristide, and more importantly for the Haitian people, this is a moment of great historic import and significant opportunity. Aristide's second inauguration represents a monumental opportunity because this man has the power to save his tiny nation from its own self-destruction—destruction due in large part to the collective ideas, hopes, and dreams that both President Preval and President Aristide himself have squandered over the precious years since 1994.

When last many Americans tuned into Haiti, it was 1994. In 1994, our country sent 20,000 troops to Haiti as part of an internationally endorsed effort to restore Aristide to power. That did occur in 1994. Tragically, though, during these past 6 years, both President Aristide, and then President Preval, have failed to enact the necessary reforms to bring democracy, stability, and, yes, hope to Haiti. As a result, Haiti, today, still has a declining gross national product. Nobody knows what the unemployment is. Official estimates are between 60 and 70 percent unemployment. There is little to no foreign investment. In fact, there is less today than a number of years ago. They have the hemisphere's lowest per capita income and highest infant mortality rate. The Haitian National Police, HNP, a civilian police force, which the United States and the international community helped to establish 6 years ago, and that we worked very hard on and saw great success made, now, today, unfortunately, is declining in its expertise.

Six years ago, there was great promise for the Haitian National Police. Today, though, the HNP has become more corrupt, more engaged in politics, and is in a state of steady decline.

In 1994, when Aristide was returned to power, everyone was realistic. No one expected miracles. Haiti was, after all, a country that has been miserably governed by Haitians and non-Haitians alike for not just decades but for centuries. What could have been expected and should have been expected was the establishment of a foundation for change and the establishment of a foundation for progress that would help move that country away from its failed past and toward a hopeful and productive future.

Tragically, under both President Aristide, and then President Preval, there has been no movement in that direction. Moreover, the few Haitians who comprised the economic elite have shown no interest in becoming stakeholders in their country's overall social, political, and economic progress. For them, it seems, they think it is in their best interest to stand back from the turmoil that surrounds them so as to not risk their own wealth and security. That has been true of the economic elite, and it has been true of the political elite as well.

Despite this, in politics, as in theater and in life itself, there are second acts, second opportunities for redemption. President Aristide now has such an opportunity. His immense popularity and his political hold on the country give him the capability to reverse Haiti's destructive course. It is within his means to do the things that are necessary. Quite frankly, anyone who has spent any time looking at Haiti knows that there are four, five, six basic things that Haitians need to do to get their country moving in the right direction. It is within Aristide's grasp today to help Haiti begin to eliminate corruption, create free markets and new industries, to do basic things such as privatize Port-au-Prince port, which today, unbelievably, is the most expensive port in the entire hemisphere to ship anything into or out of. He has it within his power to improve the country's judicial system, to stabilize its political system, to respect human rights, and to learn to establish and sustain an agricultural system that can begin to feed its own people.

It is within Aristide's means to help Haiti break out of its vicious cycle of despair, a cycle in which political stalemate stops government and judicial reforms which, in turn, discourage investment and privatization. Caught in a cycle such as this, the economy stands to shrink further and further until there is no economic investment to speak of at all.

That will occur unless some action is taken. Aristide already has given some indication—at least on paper—that he is willing to make some of these changes. In a December letter to President Clinton, he said he was committed to a broad range of governmental and political reforms, including: Rapid review and rectification of 10 contested Senate seats; creation of a credible new provisional electoral council in consultation with opposition party members; substantial enhancement of cooperation with the United States to combat drug trafficking; nomination of capable and respected officials for senior security positions, including the Haitian National Police; strengthening of democratic institutions and protection of human rights; installation of a broad-based government, including members of the opposition; initiation of new dialogue with international financial institutions to enhance free markets and private investment; and negotiation of an agreement for the repatriation of illegal migrants.

All of these things were spelled out in that letter from President Aristide to then-President Clinton. All of these things are readily achievable.

Aristide's pledge is encouraging. But, unless he has the political will to actually carry out these reforms and create a stable and democratic government, Haiti has no hope of making real and lasting economic, political, and judicial progress. Quite candidly, there's nothing the United States can do to fix Haiti if its government isn't willing to fix itself. Since the mid-1990s, we've spent more than $2 billion—and the international community has poured in at least another $1.5 billion—to try to bring democracy and stability to Haiti.

Yet if we look at where Haiti is today versus where it was 6 years ago, a casual observer going through that country would come to the conclusion that virtually nothing has changed, that nothing has happened.

Candidly, Mr. President, the fact is that extraordinary amounts of financial assistance and the good intentions behind them are no substitute for the political will and leadership necessary to rescue an unstable country in an economic freefall. Unless Aristide and his Family Lavalas Party take responsibility for the situation and commit to turning things around, history will repeat itself.

Unless President Aristide, his political party, and the leadership of Haiti

take responsibility for the situation and commit to turning things around, history will once again tragically repeat itself.

Unless Aristide makes concrete changes, we will once again be seeing makeshift boats and rafts overflowing with Haitians who want a better life trying to get to Florida. We will begin to see that again—people risking their lives as they float towards Miami for a chance of freedom and democracy and food for their children.

But should Aristide begin to demonstrate a legitimate commitment to change, the United States and the international community stand ready to resume our efforts to help the Government of Haiti. But it will take action, and it will take action from the President, President Aristide, and from the Haitians. Until then, until we see that kind of commitment, U.S. commitment will remain limited to directly helping the children of Haiti, the people of Haiti, and not the Government.

The United States, irrespective of what Aristide does, must remain involved in humanitarian efforts—efforts such as Public Law 480, the Food Assistance Program, a food assistance program that is helping tens of thousands of Haitian children every day, giving them the one meal a day they have, and for many of them giving them an incentive to go to school and become educated. We must continue to do that.

One of the bright spots of what has been going on in Haiti, and one of the things of which I think this country should be very proud, is how many Americans are in Haiti every single day working to make a difference. Many of them are religious. Many of them belong to church groups. Many of them belong to other nonprofit organizations or groups. Some go for a week, some go for 2 weeks, and some have gone to live and stay. But there are thousands and thousands of Americans every day who are making a difference in Haiti.

We must continue as a U.S. Government to assist them as they try to assist the children of Haiti because it is the children who are the true casualties in Haiti. It is the children who have suffered the most from the lack of progress over the last 6 years. It is the children who have suffered the most from the inability and the unwillingness of the Haitian Government to move to make real changes in Haiti.

So the real victims have been the children. They are the victims of the turmoil. They are the victims of the instability. They are the victims of a lack of political will. We as a country and as a people simply cannot and will not turn our back on them.

This is a country where the infant mortality rate is approximately 15 times that of the United States. It has the highest infant mortality rate in our hemisphere. Of those Haitian children under 5 years of age, 129 of every 1,000 never make it to the age of 6.

Because Haiti lacks the means to produce enough food to feed its population, the vast majority of Haitian children who survive are malnourished and rely heavily on our humanitarian food aid.

Additionally, because of the lack of clean water and sanitation, only 39 percent of the population has access to clean water and 26 percent has access to decent sanitation. Because of that, diseases such as measles and tuberculosis are epidemic, and children die from the simplest thing as diarrhea. That happens every single day in Haiti.

The future of Haiti's children ultimately is in Aristide's hands. It is time for President Aristide to match his words with his deeds and uphold his recent pledge to place his country and its people on a path of significant democratic societal reform. Lip service and piecemeal efforts, actions temporarily to appease the United States and the international community, frankly, will get Haiti nowhere.

This is Aristide's second act. The curtain comes up on that act today. He and the political rulers have a simple choice: To break with recent history and create a stable political system and a free and democratic, market-driven economy, or to perpetuate the status quo and the needless bloody tragedy that confines future generations of Haitians to lives of distress, disillusionment, and despair.

It is, quite candidly and quite bluntly, up to President Aristide to make that determination. This is the second act. This is the second opportunity. History will judge whether or not he takes that opportunity for the people of Haiti or whether that opportunity is squandered.

I thank the Chair. I yield the floor.

ADJOURNMENT UNTIL 9:30 A.M. TOMORROW

The PRESIDING OFFICER. Under the previous order, the Senate stands adjourned until 9:30 a.m. tomorrow.

Thereupon, the Senate, at 4:59 p.m., adjourned until Thursday, February 8, 2001, at 9:30 a.m.