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# *House of Representatives*

The House was not in session today. Its next meeting will be held on Wednesday, September 4, 2002, at 2 p.m.

# *Senate*

WEDNESDAY, JULY 31, 2002

The Senate met at 9:30 a.m. and was called to order by the Honorable HILLARY RODHAM CLINTON, a Senator from the State of New York.

PRAYER

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

Almighty God, Source of strength for those who seek to serve You, we praise You for that second wind of Your power that comes when we feel pressure or stress. You have promised that, ''As your days so shall your strength be.'' Well, Lord, You know what these days are like before the August recess. The Senators and all who work with them feel the pressure of the work and the little time to accomplish it. In days like these, stress mounts and our reserves are drained. Physical tiredness can invade our effectiveness and relationships can be strained. In this quiet moment, we open ourselves to the infilling of Your strength. We admit our dependence on You, submit to Your guidance, and commit our work to You. Give us that healing assurance that You will provide strength to do what You guide and that there will always be enough time in any one day to do what You have planned for us to do. In Your all-powerful name. Amen.

## PLEDGE OF ALLEGIANCE

The Honorable HILLARY RODHAM CLINTON 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. BYRD).

The legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
*Washington, DC, July 31, 2002.*

*To the Senate:*

Under the provisions of rule I, paragraph 3, of the Standing Rules of the Senate, I hereby appoint the Honorable HILLARY RODHAM CLINTON, a Senator from the State of New York, to perform the duties of the Chair.

ROBERT C. BYRD,
*President pro tempore.*

Mrs. CLINTON thereupon assumed the Chair as Acting President pro tempore.

## RECOGNITION OF THE ACTING MAJORITY LEADER

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

## SCHEDULE

Mr. REID. Madam President, this morning the Senate will immediately resume consideration of S. 812, the generic drug bill. Under an order entered yesterday evening, there will be up to 90 minutes of debate on the motion to waive the Budget Act with respect to the Graham and Smith of Oregon prescription drug amendment. A vote on that motion to waive is expected to occur around 11 o'clock this morning.

If the motion to waive is not successful, the Senate will immediately act on the Dorgan amendment, as amended, and then go directly to a cloture vote on the underlying bill. Should cloture be invoked on S. 812, then a vote on final passage will occur immediately. Following disposition of the generic drug bill, the Senate will vote on confirming the nomination of D. Brooks Smith to be U.S. Circuit Judge. Debate on that was completed last night.

The succeeding votes in this series will be 10 minutes, and there will be up to 2 minutes of discussion time available between each vote, except that prior to the Smith vote there will be 2½ minutes on each side.

The Senate is expected to begin consideration of the Defense appropriations bill following the vote on Judge Smith. It is anticipated we will finish the Defense bill tonight.

Therefore, Senators should be prepared to remain on the floor following the first vote today so that the succeeding votes can be expedited. Senators should expect rollcall votes occurring around 11 a.m. and into the evening.

It should be a very busy day. Even if we complete this schedule, which I am confident we will do, we still have a lot of work to do before we take our August break.

## RESERVATION OF LEADER TIME

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

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

GREATER ACCESS TO AFFORDABLE PHARMACEUTICALS ACT OF 2001

The ACTING PRESIDENT pro tempore. Under the previous order, the Senate will now resume consideration of S. 812, which the clerk will report.

The legislative clerk read as follows:

A bill (S. 812) to amend the Federal Food, Drug, and Cosmetic Act to provide greater access to affordable pharmaceuticals.

Pending:

Reid (for Dorgan) amendment No. 4299, to permit commercial importation of prescription drugs from Canada.

Graham amendment No. 4345 (to amendment No. 4299), to amend title XVIII of the Social Security Act to provide protection for all Medicare beneficiaries against the cost of prescription drugs.

AMENDMENT NO. 4345

The ACTING PRESIDENT pro tempore. Under the previous order, there will now be 90 minutes for debate, equally divided, on the motion to waive the Budget Act with respect to the Graham amendment No. 4345.

The Senator from Massachusetts.

Mr. KENNEDY. Madam President, I yield myself 8 minutes.

The history of the American people is one of a never-ending journey toward the goal of a more perfect Union. Americans believe in the ideal of equal opportunity so that individuals can achieve their fullest potential. We also believe that we are members of a great national family which seeks to protect all of its members. We understand that if one of us is hurting, all of us are hurting.

In this quest for a more perfect Union, we have encountered and overcome obstacle after obstacle. At the turn of the last century, we passed antitrust laws to begin the long process of controlling corporate abuse and asserting that the public interest must take precedence over the selfish interests of wealthy corporations.

We passed minimum wage laws to assert that a worker's right to a living wage took precedence over business rights to maximize profits.

We passed the Social Security Act and the Medicare Act to guarantee a secure and dignified retirement to every American who works hard and pays into the system.

Just 2 weeks ago, we passed landmark legislation to curb the modern-day robber barons whose dishonesty and greed have done so much to damage our economy and to defraud so many workers and investors of their hard-earned savings.

Today, Americans face a crisis in health care. The miracle medicines that can save and prolong life more and more are beyond the reach of average Americans. The prescription drugs we need to stay healthy and alive are just too expensive, and their costs go up and up with each passing day.

For the last week, we have been grappling with two more obstacles to a more perfect Union and a better life for all of our people: The exploding costs of prescription drugs and the failure of Medicare to cover those costs. The rapid rise in the cost of drugs burdens families, businesses, and patients, and our economy.

For the last 6 years, prescription drug costs have been escalating at double-digit rates: 10 percent in 1996, 14 percent in 1997, 15 percent in 1998, 16 percent in 1999, 17 percent in 2000 and 2001.

It is unacceptable when older Americans struggle to afford their heart medicines and diabetes medicines. It is reprehensible when hard-working families are impoverished trying to pay for the drugs that keep their children in the classroom and out of the hospital, but it is intolerable when much of their burden has been created by the wealthiest corporations in America, the brand-name drug companies, deploying an army of lawyers, lobbyists, and campaign contributions to exploit and maintain loopholes in the law to block competition and unfairly boost prices.

Today, the Senate is on trial. We will vote on whether to end those abuses, and just as the Senate has voted resoundingly to close accounting loopholes abused by Enron and WorldCom, we must also close the loopholes in our drug patent laws that are exploited by big drug companies and are hurting patients each and every day.

Ending the abuses of the law that have contributed to escalating drug prices will help every family. But the most important step we can take in this Congress towards the goal of a more perfect Union is to act at long last to provide prescription drug coverage under Medicare.

Last week, the Senate failed to fulfill its responsibility to senior citizens and their families. This week, we have the opportunity and the obligation to do better and to provide a downpayment on our commitment to provide a prescription drug benefit in the Medicare Program.

Medicare is a solemn promise between our Government and our citizens. It says: Play by the rules, contribute to the system during your working years, and you will be guaranteed health security in your retirement years. Because of Medicare, the elderly have long had insurance for their hospital bills and doctor bills. But the promise of health security at the core of Medicare is broken every single day because Medicare does not cover the soaring price of prescription drugs. We can no longer ignore the sad fact that too many senior citizens are living in pain because they cannot afford prescription drugs.

Too many elderly citizens must choose between food on the table and the medicine their doctors prescribe. Too many elderly are taking half the drugs their doctors prescribe or none at all because they cannot afford them.

Senior citizens built our country. They fought in our wars. They created our economic growth and prosperity. They worked hard. They supported their families. They played by the rules. And they stood up for America. Now is the time for America to stand up for them.

Last week, a majority of the Senate voted for the Graham-Miller-Kennedy amendment, a comprehensive program to provide prescription drug coverage under Medicare and mend its broken promise. A minority stood against the seniors and with powerful special interests, but under the rules of the Senate that minority was able to block action. Just as the Republican Party opposed the creation of the Medicare Program in 1965, it opposed the enactment of a comprehensive Medicare prescription drug benefit today.

The Senate is once again confronted with a choice: Is our priority prescription drugs for the elderly or more tax breaks for the wealthy? Will we give senior citizens the same loyalty that they gave our country or will we continue to offer an open hand to the powerful special interests and the back of our hand to the elderly and their families?

Over the coming years, Americans will spend $1.8 trillion on prescription drugs. So far, our Republican colleagues have said no to amendments that would cover only a third of those costs. Yet under the Senate health plan, Senators have 75 percent of their prescription drugs covered. How many of us are willing to face our constituents when we go home in August knowing we have secure coverage for 75 percent of our drug coverage but we reject proposals that do even less for our fellow citizens?

The Graham-Smith amendment is a bipartisan compromise. It is not the comprehensive program that I want or that a majority of the Senate wants, but it is an important downpayment on the kind of program senior citizens need and deserve. Under this proposal, every senior citizen will receive assistance and those with the greatest need will receive the most help.

I ask that during the quorum call, the time be charged equally against both sides.

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

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

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

The legislative clerk proceeded to call the roll.

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

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

Mr. KENNEDY. I yield 4 minutes to the Senator from Florida.

The ACTING PRESIDENT pro tempore. The Senator from Florida.

Mr. GRAHAM. Madam President, I have a somewhat longer statement I will deliver later, but at this point I

will indicate clearly to my colleagues what exactly we are going to be doing in approximately an hour and 15 minutes. We will be voting on waiving the point of order that we anticipate will be raised against this amendment based on noncompliance with the budget resolution.

Let's look at a few facts. In 2001, the Senate established, as the amount of money to be expended for a prescription drug benefit for 10 years, from 2001 to 2011, the number of $300 billion. That is the last budget resolution the Senate has enacted. The Senate Budget Committee, in 2002, reexamined what would be required for an adequate prescription drug benefit, and they recommended up to $500 billion, but that resolution has never been adopted.

So 18 months later, we are being constrained by a $300 billion number, which has been found to be inadequate by the Budget Committee. The irony is that both the Republican proposal, the proposal of Senator GRASSLEY and others, and the Graham-Smith proposal have a total expenditure of $400 billion minus. There is probably not a 2- or 3-percent difference in the amount of money the Grassley bill and the Graham-Smith bill have found to be necessary in order to provide our seniors an adequate prescription drug benefit.

The issue of whether we are going to need to waive the Budget Act in order to get to the substance of this issue is one upon which both sides have agreed. So why do we not say yes, we have agreed that it is going to take more than $300 billion to have an adequate prescription drug benefit? Let's vote today to waive the Budget Act, and then we can have the full debate with amendments and all of the means by which Members of the Senate can express their specific policy positions on a variety of issues on this complex subject. If we cannot get past the Budget Act, the whole effort to provide 40 million Americans with some better access to a key component of their life and health will be again, for the seventh straight year, denied.

I do not believe that is the record this Senate wants to go on. Let's have a vote to do what we have all agreed—that it will cost more than $300 billion to provide a benefit. Then let's move on to a discussion that justifies the title of this institution as being the world's greatest deliberative body. Let us deliberate. Let us not quibble over the issues of dollars for which there is no quibbling because we both agree as to what it is going to cost to provide this benefit.

This is the last opportunity we are likely to have in 2002 to provide America's seniors this benefit. A vote against waiving the Budget Act is a vote for another year of denial. It is also a vote that when we come back next year, we are not going to be talking about the $400 billion that both sides have now agreed is necessary, we are going to be talking about a substantially higher number because of another year of prescription drug inflation and another year of that baby boom surge of entrants into the Medicare Program.

If we think it is difficult today to vote to provide a prescription drug benefit, be assured it will be only more difficult every year into the future.

I urge my colleagues to look at the reality of what we are doing and at least vote to waive the Budget Act so we can get on to a full debate on this issue.

Mr. KENNEDY. Madam President, I yield 10 minutes to the Senator from Oregon.

The ACTING PRESIDENT pro tempore. The Senator from Oregon.

Mr. SMITH of Oregon. I thank Senator KENNEDY, the manager of this bill, and my cosponsor of this legislation, Senator GRAHAM, for the time.

I say to the American people, what few may be up this morning watching these proceedings, that this is probably our last best chance to pass prescription drugs in the 107th Congress, and I think it is critical we do so.

I am optimistic we are going to succeed, but if we do not, it will be because of that old maxim that the perfect is the enemy of the good. What Senator GRAHAM and I have is the best we can produce for the greatest number of people, particularly the neediest, but for everyone in terms of discount cards and in terms of a catastrophic coverage. We have the best we can do with the financial constraints faced by this Government.

We have produced a plan that is affordable for seniors and it is affordable for the U.S. Government. It is a plan at a minimum that we ought to pass.

I thought what I would do in my remarks today was to try to give a comparison between our bill and the competing bill. Both of these bills can work. I have, in fact, voted for a version of the Grassley-Breaux bill. However, I am now on this bill because I think this is more in the realm of what is possible and workable.

I will spend some time focusing on the health and financial security aspect, which is what is available to every American under our plan who is under Medicare, and then focus on the sickest and the poorest, the protection for the most vulnerable in our society. Let me start first with the most vulnerable in our society.

Let's compare the low-income benefit. Under Grassley-Breaux, the low-income folks are covered at 150 percent of poverty; under the Graham-Smith bill, people 200 percent of poverty are covered. Under Grassley-Breaux, it includes an assets test which will drop 40 percent of otherwise income-eligible elderly; under Graham-Smith, there is no asset test. Under their proposal, beneficiaries below 200 percent of poverty can pay up to $3,700 due to copays, deductibles, and premiums. Under ours, beneficiaries out of pocket are limited to drug copays of $2 for generic and $5 for brands. That is an enormous difference in terms of what they will have to pay and who will be included.

Under their plan, they provide more limited coverage than some elderly get in current employer programs or State pharmacy assistance programs. Under our plan, coverage for low-income elderly is as comprehensive as State pharmacy assistance programs. CBO estimates that no employer will drop coverage because of what we have.

As to the catastrophic limit, their proposal kicks in at $3,700. Our proposal kicks in at $3,300, a very big difference, a 12-percent difference. That matters a great deal at the low end of the economic scale in our country.

Some may say this does not cover enough people. Let me give a few examples of a few States and how much this plan helps. These are percentages of people in various States falling below 200 percent of poverty: In Vermont, 42 percent of their elderly fall below that; in the State of Mississippi, 46 percent; in the State of Maine, 37 percent; in the State of Ohio, 41 percent; in the State of Nevada, 41 percent; the State of Illinois, 41 percent also; the State of Nebraska, 43 percent; the State of Iowa, 38 percent; in the State of Louisiana, 52 percent; in the State of Indiana, 46 percent; in the State of Alabama, 56 percent; in the State of Pennsylvania, 43 percent; and the State of Rhode Island, 48 percent.

These are dramatic numbers. There is hardly a State in the Union that falls below 40 percent of people who will be covered 100 percent by the Graham-Smith proposal. That is significant. That is an incredible start on a prescription drug program.

Let me turn to the health and financial security aspects and compare both bills. The premiums and fees: Under Grassley-Breaux, the elderly will pay $288 per year or more. The premiums imposed are imposed monthly, despite periods when the beneficiary receives no benefit. Unknown premium amounts that can vary by area dramatically, year by year. Under ours, there is no monthly premium.

Now to the deductible. Under theirs there is a $250 per year deductible. Under Graham-Smith there is no deductible.

Universal coverage: Under Grassley-Breaux, only low-income and those choosing to pay monthly premiums are covered. Under ours, all seniors and covered disabled are covered after a $25 annual fee.

As to employer coverage and crowding out private plans, the CBO estimates a third of current employer benefits will be dropped if Grassley-Breaux goes through. They estimate that under the Graham-Smith proposal all seniors and disabled will be covered, and they estimate no loss of current employer coverage. I think that is terribly significant. Ours overlays the existing program much better than the Grassley-Breaux proposal.

Now as to guarantee of current coverage levels: Under Grassley-Breaux,

some low-income elderly would receive reduced coverage than under the current State pharmacy programs. But under ours, low-income elderly are guaranteed a comprehensive benefit with a nominal cost sharing. CBO estimates under Grassley-Breaux one-third loss of current employer coverage, and coverage could be far worse than the elderly currently receive. CBO estimates under ours, no loss of current employer coverage.

Now, the stability of the delivery system. Grassley-Breaux imposes an untried and untested insurance model on our Nation's elderly and disabled and results in employer crowd-out. I assume this insurance program in the private sector could be developed, but it does not exist right now. So we are betting that it can be developed and that people would like it.

In the State of Oregon, if you ask how they like their private insurance, it is not much; they do not like it much. While they complain about Medicare, they certainly want us to support it.

Then on this issue of a stable delivery system: Senator GRAHAM and I build upon current State and market-based delivery models, and we do not result in an employer crowd-out. What is the overall cost? The Grassley-Breaux approach is scored at somewhere between $375 and $400 billion over 10 years. Ours is scored at $390 billion over 10 years. So they are comparable in that regard.

I conclude my remarks by saying we will hear this morning about the ''cliff''—that after 200 percent of poverty the people do not get anything; if you make $24,000 as a couple, you fall off a cliff. I wish we had a more graduated program, I grant that. There are many things about what Senator GRAHAM and I have that I would change if I could, but I can't, and get something passed and into conference. So let's start here.

Let me simply say to those who would describe this as a cliff, that you get nothing if you make more than $24,000 a year, to me it is not nothing to say that for $25 a year you get a discount card that, at a minimum, gives you 5 percent off all your prescriptions, but probably, because you get the benefit of pricing discounts, you get as much as 30 percent off every prescription drug, and, moreover, you add to that the fact that you never have to worry again as a senior in America that when you lose your health, you have to lose your home—you do not have to choose between food and medicine. That is significant. Tell me where in the private sector you can find an insurance policy that, for $25 a year, will do all of that.

Have we done enough? No. Have we done a tremendous amount of good? Absolutely.

I plead with my colleagues to vote to waive this point of order. We should not fail today. We should get this to the floor. People have ideas. We can perhaps make it better. But we can get on with the business that the seniors and citizens of this country are expecting. Let us get beyond the war of words and get to a prescription of wellness for the seniors and provide them a benefit that is workable, tried and true, affordable for them and our Government.

I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from Tennessee.

Mr. FRIST. Madam President, I yield myself 10 minutes, to be followed by the Senator from Maine, 10 minutes.

Madam President, I rise in opposition of the Graham drug Medicare proposal. I will make four points regarding my opposition in the few minutes I will speak.

The first point is, the bills we are considering on the Senate floor have not gone through the committee process. That is important for the American people to understand. It makes it incredibly challenging to receive an amendment yesterday such as this and having the opportunity only to read it for the first time. This legislation is very complicated.

In looking at the this bill compared to the bill passed by the House of Representatives, the tripartisan proposal or the bi-partisan Hagel-Ensign bill, the major substantive objection I have is that the bill costs more and yet fewer people benefit.

We do have huge gaps of coverage. We have huge gaps in terms of being able to look seniors in the eye and say, yes, we understand your problem is affordable access to prescription drugs, and then walk away because they don't fall into the category. There are cliffs and gaps and chasms, and these vacuums exist for that individual who falls into one of these gaps or chasms because we do not cover everybody in the sense of addressing their problem; that is, health care security for prescription drugs.

Of all the bills we have considered, this is not really a compromise bill. It is a very different bill that costs more and covers fewer and fewer people.

The tripartisan comprehensive plan the Senator from Maine put on the table—and we will hear from her shortly, along with Senators GRASSLEY and BREAUX and JEFFORDS is a much more comprehensive bill that I argue gives more secure comprehensive coverage and helps a broader swathe of people. If you look at individuals with disabilities, it doesn't have these categories of exclusion. Where there are some areas that you do not get as complete coverage, it is gradual, and you do not have these cliffs, these drop-offs. If you make one dollar more, all of a sudden you do not get the coverage.

In terms of how many people are covered, it is hard to factor it out. We have about 38 million Medicare beneficiaries, seniors and individuals with disabilities around this country. Of the 38 million, there are an estimated 18 million who are above 200 percent of poverty. We heard yesterday and last night about this drop-off, this cliff. Once you get to 200 percent of the poverty level for an individual or for a couple, all of a sudden you do not get benefits. There is a huge hole, a huge chasm, a gap that is there, this drop-off. Above 200 percent you get a minimum benefit of 5 percent. That does not give me the security to look in somebody's eye and say we are really helping you. We need to make affordable access to prescription drugs, which is our goal, a reality.

Only about 2 million of those 18 million will ever qualify for the catastrophic benefit. So you have 18 million above the cutoff level of 200 percent of poverty with very minimal benefit. But people say: Yes, for catastrophic coverage they will be helped. At the end of the day, only 2 million out of the 18 million will fall into that catastrophic category, again leaving essentially no benefit for 16 million seniors today.

I think it is important for our seniors to understand. I do not want to leave this body 2 days from now saying we passed prescription drugs, we took care of your problem, you will have affordable access to prescription drugs—which seems to be the implication. It has been said that we cannot leave here on recess without passing a package. This package is a shell, and it does not give seniors affordable access to prescription drugs.

If we pass it, we are not being honest going home saying we passed a real prescription drug package. It costs more, covers fewer people than what we have had on the floor, what we have been discussing. If we go back to the Finance Committee, I think we can come up with a very good bill. Under this bill, at least 15 million to 16 million seniors are left behind. That is, they do not get a substantial benefit; they only get that 5-percent discount. Fifteen million to 16 million people we are leaving behind.

Second, I think from our standpoint it is irresponsible to pass a bill and pretend we are doing something that we are not really doing when we have alternatives. If we did not have alternatives, we could say this is our best shot, and we can build on it in the future. But, really, the two bills that came to the floor each had different approaches. The initial Graham bill was much more Government run. The tripartisan bill involved the public and private sector, but both of those bills had more comprehensive coverage. For the seniors who are listening, for the dollar value, they had more benefits than the bill before us today. Therefore, we should not, by default, end up passing a bill today just to say that we have passed something.

Politically, people might be able to claim a victory saying we passed prescription drugs, but this particular bill never addresses the ''affordable'' problem, affordable prescription drugs.

The response to that is we are taking a good first step, and we have to do something. If we do something, maybe

we can work on it later. If we knew what that ''later'' was, I would say yes, we should have a one-two punch and come back. I have a great deal of confidence if we pass this, we will not come back and visit this in September or October and put together a truly comprehensive plan. We are not addressing the fundamental problem of seniors not being able to afford lifesaving drugs.

The third point I want to make is this bill fails to recognize that prescription drugs are, and need to be, considered a part of the overall modernization of Medicare. Yes, I admit all the bills we have considered over the last 2 weeks have not fully addressed the fact that prescription drugs need to be a part of the full armamentarium of what a physician has to deal with, what a hospital has to deal with, that doctor-patient relationship and outpatient care.

We are treating prescription drugs sort of on the outside, as if it is an appendage to Medicare, without in any way addressing the fundamental problems of Medicare. In truth, the sustainability, long-term, of whatever we promise—whether it is acute or long-term or preventive care—has to be part of a more comprehensive approach which we addressed. I mention that because the tripartisan bill, of all the bills we mention on the floor, is the only one that is health care security for our seniors, like the surgeon's knife, like acute care, chronic care, or preventive medicine. Remember, the tripartisan bill costs $370 billion, and the more limited bill we are considering on the floor is even more than that because the tripartisan bill at least reached out and said we understand prescription drugs are a part of overall Medicare. This bill does not address that. It has no element of modernization at all.

Thus, I think the bill on the floor, of all the bills we have considered, is the least effective in accomplishing what seniors expect. It does not guarantee seniors comprehensive prescription drug coverage. It locks into place a limited stopgap proposal. Everybody says this is not the answer but this is sort of a stopgap, something to do now. But it locks it in place at a far higher cost than it needs to. The taxpayers are paying for this—the people who are listening to me now. It is, my colleagues, constituents. All over the country, people are paying into this as taxpayers. So we need to give them an effective product as we go forward. The product itself, I think, is insufficient.

As I mentioned, it leaves a gaping hole in coverage. This is my final point. We have talked about doughnuts earlier in the debate. All last week we talked about a doughnut, which is a gap of people who simply do not get the benefits that other people get. This has a much larger gap than, again, any other bills; than the tripartisan proposal or the proposal that passed the House of Representatives, for example, several months ago.

It fails to provide Medicare beneficiaries with either an effective drug prescription benefit or some of the other much needed improvements that are present in the tripartisan bill.

I will close by simply saying that I think at this juncture the most prudent thing to do is to table this bill because of the reasons I have outlined and to recognize we have made huge progress compared to even a year ago. It was 3 years ago that we had the Medicare Commission. It basically proposed a public-private approach. That approach has been built upon by a series of bills. We have made great progress over the last 2 weeks. The Medicare debate is on the floor. People have talked about it. We recognize deficiencies. We recognize some advantages in some of the bills. I think the best thing to do is to go back through regular order that is usually in this body, and that is to go through the Finance Committee.

Let that process, based on what we know and what we talked about today, work so we can have that particular debate, and move forward.

I will be voting against this bill. I will be voting, if there is a point of order, to table the bill. I will support that, and I encourage my colleagues to do so.

I yield 15 minutes to my colleague from Maine.

The PRESIDING OFFICER (Mr. EDWARDS). The Senator from Maine is recognized.

Ms. SNOWE. Mr. President, I thank the Senator for yielding me the time.

I concur with what has just been suggested by the Senator from Tennessee in terms of returning to the regular process so that we can go back and resume the negotiations and discussions that were well underway over the course of the weekend with Senators from across the aisle—Senators KENNEDY, BAUCUS, and WYDEN—even through Monday to reach an agreement that would provide for comprehensive coverage for Medicare beneficiaries.

There is no reason we cannot have that discussion to develop the kind of plan that seniors deserve in the Medicare Program.

As I said yesterday, we should not have this vote. Why entrench and polarize both sides on this issue? Why make it more intractable? Why not go back and begin the process of negotiations that were well underway using the tripartisan plan as a basis? It provides comprehensive coverage. There is no reason we can't begin that process. This doesn't have to be the last vote.

With the Medicare give-back in the fall, we have an opportunity during this interim to begin this process anew so that we can achieve and craft a comprehensive plan that seniors need and deserve.

Looking over this proposal, there are many troubling features. I think that we ought to deal with the facts.

First of all, the proposal before us today, if you had told me more than a year ago—as the tripartisan group with Senator BREAUX, Senator JEFFORDS, Senator GRASSLEY, Senator HATCH, and myself, as members of the Senate Finance Committee invited all members of the Finance Committee to participate in this process—if somebody told me when we embarked on this legislative odyssey that somehow we would be considering in a serious way today a proposal that abandoned the basic precepts that had been the underpinning of the Medicare Program since its creation 37 years ago yesterday when President Johnson signed into law the Medicare Program—we never contemplated or considered during the course of this last year when we developed that tripartisan plan that we would abandon universal coverage. We never contemplated abandoning the ability to pay and resorting to a means-test program that is now before the Senate—a means-test program that places the low-income benefit in the Medicaid Program—not Medicare, in the Medicaid Program.

These are huge departures from the principles that we have embraced here in Congress year after year. In fact, the vote last week, with 97 votes on both sides of the aisle, was for the original plan that we were embracing for universal coverage—the principles that AARP and the major organizations representing seniors in America have always and consistently embraced for the 37 years of Medicare existence. Now the proposal before us abandons all of those principles.

It most certainly doesn't advance or improve the prescription drug debate. In fact, the bill before us today has not had the advantage of scrutiny by the Congressional Budget Office because the language of this amendment specifically has not been reviewed by the Congressional Budget Office in order to prepare a cost estimate on the proposal. I think we should understand that from the outset.

There is no certainty because the language in this legislative initiative has not been reviewed by the Congressional Budget Office. Are we to have confidence in the process and the Congressional Budget Office when the analysts have not even had the text of the amendment? We are creating a new Federal program at a cost presumably of a minimum of $400 billion without knowing the true fiscal impact of this legislative proposal.

Here is my first chart. One of my first major concerns about this initiative before us, which I think all Members of the Senate should readily understand, is that most seniors do not get a basic drug coverage under this plan because it is not a universal benefit. I think that needs to be understood.

The Graham proposal does not offer a basic drug benefit for 70 percent of seniors who have incomes above $17,720 for an individual and $23,880 for a couple. This is according to the AARP data: The number of seniors who have incomes above 200 percent of the Federal

poverty level. Seventy percent of seniors above 70 percent would not get basic coverage. They will have to spend $3,300 before they get any basic coverage. That is an important point.

In fact, in the New York Times the other day there was an op-ed piece written by the Urban Institute—that is not a conservative think tank—discussing the fact that most individuals usually have drug expenses between $2,000 and $3,300; and that many people are spending in that middle range, particularly on chronic illnesses such as high cholesterol, high blood pressure, and arthritis. But with a low-income catastrophic approach, that will provide very little help for most Medicare recipients with chronic illnesses. The chronically ill cannot get enough help under this type of an approach.

Under our legislation, 80 percent would even exceed our benefit limit of $3,450, and we had a catastrophic coverage of $3,700.

But the point here is that it now is 70 percent. In all States across the country, seniors are left behind.

I heard this morning about how many seniors will be covered. But let us look at the other side of that equation and who won't be covered.

If you look at these statistics, it is staggering. It is 71 percent in Maryland. In Oregon, 51 percent of seniors will be left behind. In my State of Maine, they will not get a basic drug benefit under this proposal; neither will 50 percent in Virginia, 67 percent in Arizona, 51 percent in Arkansas, 66 percent in Missouri, 72 percent in Washington, 64 percent in Iowa, 70 percent in Colorado, and 52 percent in Montana. These seniors will not get a basic drug benefit under the Graham plan because they earn at least $1 over the strict income limit for the comprehensive coverage offered to low-income seniors.

Only those seniors with incomes below 200 percent of the Federal poverty level obtain real prescription drug coverage under the Graham plan.

Let us look at chart 3. It is not a comprehensive benefit because it guts the most important part of any drug benefit program; that is, basic coverage. There is a huge gap. We were criticized for our gap between $3,450 and $3,700. But this is a canyon in terms of gap in coverage. You have no coverage from basically zero to $3,300 in out-of-pocket drug expenses—zero.

Seniors above 200 percent will have to spend $3,300 before they receive any coverage at all. According to the Congressional Budget Office, two-thirds of seniors will not have prescription drug costs even has high as $3,000 or $2,500. That means that most of the 26 million Medicare beneficiaries with incomes above 200 percent of the Federal poverty level would never spend enough to receive any coverage—no coverage at all. It is not a comprehensive benefit.

What about the 125 percent of seniors who will spend $4,000 annually on prescription drugs? They will not have any coverage for their prescription drug costs until about Thanksgiving Day after 10½ months with no coverage at all—no coverage at all for 10½ months.

I am told that under this plan most seniors will only get a 35-percent discount off their drug costs through the Government-managed plan until they spend $3,300 a year.

Private drug coverage plans get significantly larger discounts, anywhere from 20 to 40 percent, compared to a benefit such as this. I know the author of this amendment, Senator GRAHAM, claims seniors will get up to a 30-percent discount, but I challenge him to show me where it says that in this legislative initiative we are considering in the Senate. It is not in this legislation. And study after study has shown that discount cards, such as the one offered for seniors in this coverage gap, do not offer discounts that high.

What the typical senior actually gets from this plan is about $6 a month in help with drug costs. So the total annual benefit will be $72. What about the senior, as we said earlier, who is spending $2,000 to $3,000? They will get no coverage other than maybe this average of 5 percent off on discounted drugs, which will average about $6 a month.

This does not offer a Medicare drug benefit, in all reality, in the Medicare Program. This program would, in reality, be administered by the State Medicaid Program. This means the States will experience a huge unfunded Federal mandate in the Graham plan because they are required to pick up a large share of the cost of this new program.

An analysis conducted by the Centers for Medicare and Medicaid Services of the costs passed on to the States by this Graham amendment shows that many States across this country will be required to shoulder a sizable new financial burden.

Let's just talk about a few of the States hardest hit. I have a list of them, but I will go through a few: Arizona, Arkansas, California, Colorado, Iowa, Louisiana, Montana, Oregon, South Dakota, Washington, West Virginia.

Do you know what the annual impact will be on States, just in 1 year alone, based on our up-to-date analysis of the impact of this legislation? It is $5 billion in 1 year—$5.189 billion in 1 year—as an unfunded mandate on the States, for a grand total of $70 billion over 10 years. That is $70 billion over 10 years in an unfunded mandate to the States as a result of this low-income benefit now being placed, for the first time, in the Medicaid Program, not Medicare.

States, that as we all know are struggling in a sea of red ink, will be forced to raise taxes to implement the drug benefit for low-income seniors. Ironically, this new unfunded mandate will create a new funding crisis for States that we just tried to correct with the Rockefeller-Collins amendment last week, which was designed to give emergency Medicaid funding to States so they are not forced to cut their existing health care programs. I might add, that was returning to the States $9 billion for a year and a half. We are talking about an unfunded mandate, in 1 year, of $5.1 billion, and $70 billion over 10 years, to the States.

I might also say, this plan penalizes low-income seniors who earn extra income because it could mean they could lose their drug coverage. Only those beneficiaries who earn up to $17,720 for an individual and $23,880 for a couple will get comprehensive coverage, as I mentioned earlier. Any individual beneficiary who earns $17,720, plus $1, or a couple who earns $23,880, plus $1, gets no coverage. They are left to spend 18 percent of their income for prescriptions.

Just 2 years ago—another irony here—we passed legislation, in March of 2000. The Senate voted 100 to 0 to repeal the Social Security earnings limit. Yet here we are today considering a plan that would effectively establish a new earnings limit almost identical to one we repealed. Here is another contradiction in legislative policy.

So now we are going to penalize low-income seniors if they want to earn more money. Now we are creating a penalty——

The PRESIDING OFFICER. The Senator has used 15 minutes.

Ms. SNOWE. We are now creating a penalty on prescription drug coverage.

May I ask unanimous consent for 2 more minutes.

Mr. FRIST. I yield an additional 2 minutes to the Senator from Maine.

The PRESIDING OFFICER. The Senator from Maine.

Ms. SNOWE. Thank you, Mr. President.

That is an important point, that we are now creating this type of penalty for low-income seniors, because if they earn $1 more, they lose their prescription drug coverage.

Finally, employer-sponsored plans, labor-union sponsored plans, will be penalized under this legislation. There will be a disincentive for employers and labor unions to continue their coverage. You might ask, why? I will answer that question. Because now, under this legislation before us, they have revamped the standard for how you calculate your out-of-pocket cost for the catastrophic level of $3,300.

These plans will not be counted toward the out-of-pocket costs. So employers will not have an incentive to continue these programs. And certainly employees would not want to because they would not want to lose their coverage. Labor unions will drop their plans. So that is another disincentive.

Now 23 percent of retirees have such coverage. We do not want to create a disincentive for the continuation of those programs. But that is exactly what this Graham proposal will do that is before this Senate today. That is

why I am urging my colleagues not to support this initiative. Allow us to go back to where we were on Friday, continuing the discussions we were holding across the aisle with our tripartisan group, with Senator BREAUX, Senator JEFFORDS, Senator GRASSLEY, Senator HATCH, Senator BAUCUS, Senator KENNEDY, Senator WYDEN, and others, so that we can have a comprehensive plan for all Medicare beneficiaries, with universal coverage that the AARP and all of us have embraced for the last 37 years with the existence of the Medicare Program.

This isn't the last vote. This can be the beginning. And I cannot imagine this Senate, in September, considering a Medicare give-back to providers and not considering a prescription drug program for our Nation's seniors. They deserve better. And we can do better.

Mr. President, I ask unanimous consent that the following material be printed in the RECORD.

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

[From the New York Times, July 29, 2002]

FINDING A FORMULA FOR MEDICARE DRUG BENEFITS

(By Marilyn Moon)

Washington.—The political debate over how to add a prescription drug benefit to Medicare has dragged on now for more than four years. Prescription drugs have become an integral part of health care delivery, but unlike insurance for most working families, the Medicare program for older and disabled people provides almost no drug coverage. Politicians from both parties know they have to do something, but the hurdles are big: money and control.

The debate in the Senate is still ongoing. But large differences along party lines remain, and the Republican House plan that was passed on a party line vote in June makes hopes for compromise remote given the desires of consumers for broad coverage and of drug companies for minimal government controls.

The sums needed are enormous; over the next 10 years, Medicare beneficiaries are expected to spend $1.8 trillion for drugs. Thus, while the Senate Republicans' top offer of $370 billion over eight years is a lot of money, it represents only a bit more than one-fifth of drug spending over that period. The Republican plans contain big gaps in coverage and allow restrictions on what drugs will be covered. Democrats offer more coverage, but at a cost of $500 billion or more.

Since all proposed plans would be voluntary, those who spend relatively little on prescriptions need to be wooed into participating with the promise of receiving some benefits. Otherwise, only high users will enroll and any program will become very expensive over time.

All the competing plans offer generous coverage above a certain level of spending for those with catastrophic expenses. The differences arise in how to treat people who spend below the catastrophic level but still spend several thousand dollars annually on drugs. The Senate Democratic proposal requires beneficiaries to pay a portion of the costs, up to $4,000 a year. Beyond that limit, all drug costs are covered. But under the House Republican plan individuals must pay 100 percent of their drug expenses between $2,000 and $5,300.

Increasingly, many people on Medicare are ending up in this middle spending range, particularly those who take one or more drugs every day for a chronic condition. Drugs for such common ailments as hypertension, high cholesterol and arthritis cost $1,200 to $1,500 a year, creating a substantial financial burden for the chronically ill.

A viable compromise is to offer comprehensive coverage for those with low incomes and catastrophic help for all other beneficiaries, an approach that seems to be gaining favor in the Senate. But this plan would still cost about $400 billion, while providing little help for most Medicare recipients with chronic illnesses.

Money accounts for only part of the differences between the two parties. A big disagreement is over how the benefit is structured—and the precedent it sets for Medicare's future. The Democratic approach basically would have Medicare pay for drugs the way it now pays for hospital and physician benefits. Republicans want instead to have the benefit offered by private insurers. Compromise on this ideological question is especially difficult.

The Democratic approach is simpler and relies on Medicare's well-tested structure. But drug manufacturers, fearing that Medicare would impose price controls on drugs, are strongly opposed to enlarging Medicare itself to cover drugs.

Supporters of a private insurance structure argue that only competition among plans can achieve substantial control over rising prescription drug costs. But this theory has not been proved in other contexts. The private managed-care option in Medicare, for example, has raised costs to the federal government. Meanwhile, many Medicare recipients have had to suffer with plans that cut benefits or, worse, are withdrawn altogether because the companies offering them have quit the Medicare program entirely for lack of profits.

A privately administered drug benefit would be particularly problematic. If private insurers carry the risk for drug costs, they will probably structure their plans in ways that put high users of drugs at a disadvantage. For example, they can establish a list of preferred drugs (a formulary) and either not cover certain drugs or charge more for drugs that are not on the list. There are, for example, many anti-cholesterol drugs, but a formulary may not include the drug that works best for a particular patient. Consumers who need many drugs are likely to find it hard to decipher which medications the plans will cover and at what cost.

Ultimately, lawmakers and the rest of us must decide whether we trust government to deliver a new drug benefit effectively. What we do know is that the need for drug coverage is too great to let this issue remain unresolved.

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SENIORS LEFT BEHIND BY THE LATEST GRAHAM PLAN

| | *Percent* |
|---|---|
| Alabama | 57 |
| Alaska | 68 |
| Arizona | 67 |
| Arkansas | 51 |
| California | 66 |
| Colorado | 70 |
| Connecticut | 70 |
| Delaware | 69 |
| District of Columbia | 61 |
| Florida | 64 |
| Georgia | 69 |
| Hawaii | 73 |
| Idaho | 61 |
| Illinois | 67 |
| Indiana | 65 |
| Iowa | 64 |
| Kansas | 68 |
| Kentucky | 50 |
| Louisiana | 51 |
| Maine | 61 |
| Maryland | 71 |
| Massachusetts | 64 |
| Michigan | 66 |
| Minnesota | 66 |
| Mississippi | 47 |
| Missouri | 66 |
| Montana | 62 |
| Nebraska | 55 |
| Nevada | 64 |
| New Hampshire | 65 |
| New Jersey | 65 |
| New Mexico | 60 |
| New York | 57 |
| North Carolina | 57 |
| North Dakota | 52 |
| Ohio | 64 |
| Oklahoma | 56 |
| Oregon | 66 |
| Pennsylvania | 62 |
| Rhode Island | 54 |
| South Carolina | 58 |
| South Dakota | 59 |
| Tennessee | 56 |
| Texas | 56 |
| Utah | 72 |
| Vermont | 59 |
| Virginia | 62 |
| Washington | 72 |
| West Virginia | 58 |
| Wisconsin | 65 |
| Wyoming | 60 |

| State | Current Medicaid drug coverage (% of Poverty) | State share of costs of expanding Medicaid drug coverage (Percent of benefit cost) | | Mandated state expenditures to pay for expanding Medicaid drug coverage in 2005 | | Total cost of new Medicaid mandate to states in 2005 |
|---|---|---|---|---|---|---|
| | | From current level of drug coverage to 120% of poverty | From 120% to 150% of poverty | New state mandate to cover up to 120% FPL (state portion of costs) | New state mandate to cover 120–150% FPL (state portion of costs) | |
| All States | | | | $3,464,769,443 | $1,725,226,680 | $5,189,996,123 |
| Alabama | 74 | 29.4 | 20.58 | 71.839,488 | 27,330,240 | 99,169,728 |
| Alaska | 74 | 41.73 | 29.21 | 3,992,726 | 1,518,920 | 5,511,646 |
| Arizona | 74 | 32,75 | 22.92 | 46,279,680 | 17,602,560 | 63,882,240 |
| Arkansas | 74 | 25.72 | 18 | 39,374,234 | 14,976,000 | 54,350,234 |
| California | 100 | 50 | 35 | 242,560,000 | 212,240,000 | 454,800,000 |
| Colorado | 74 | 50 | 35 | 47,472,000 | 18,060,000 | 65,532,000 |
| District | 100 | 30 | 21 | 3,168,000 | 2,772,000 | 5,940,000 |
| Georgia | 74 | 40.4 | 28.28 | 110,017,280 | 41,854,400 | 151,871,680 |

| State | Current Medicaid drug coverage (% of Poverty) | State share of costs of expanding Medicaid drug coverage (Percent of benefit cost) | | Mandated state expenditures to pay for expanding Medicaid drug coverage in 2005 | | Total cost of new Medicaid mandate to states in 2005 |
|---|---|---|---|---|---|---|
| | | From current level of drug coverage to 120% of poverty | From 120% to 150% of poverty | New state mandate to cover up to 120% FPL (state portion of costs) | New state mandate to cover 120–150% FPL (state portion of costs) | |
| Hawaii | 100 | 41.23 | 28.86 | 7,388,416 | 6,464,640 | 13,853,056 |
| Idaho | 74 | 29.04 | 20.33 | 11,114,189 | 4,228,640 | 15,342,829 |
| Iowa | 74 | 36.5 | 25.55 | 40,027,360 | 15,227,800 | 55,255,160 |
| Kentucky | 74 | 30.11 | 21.08 | 59,169,763 | 22,513,440 | 81,683,203 |
| Louisiana | 74 | 28.73 | 20.1 | 61,109,859 | 23,235,600 | 84,345,459 |
| Mississippi | 100 | 23.38 | 16.37 | 17,132,864 | 14,994,920 | 32,127,784 |
| Montana | 74 | 27.04 | 18.93 | 8,358,605 | 3,180,240 | 11,538,845 |
| Nebraska | 100 | 40.42 | 28.34 | 11,640,960 | 10,202,400 | 21,843,360 |
| New Hampshire | 74 | 50 | 35 | 19,872,000 | 7,560,000 | 27,432,000 |
| New Mexico | 74 | 25.44 | 17.81 | 26,026,138 | 9,902,360 | 35,928,498 |
| North Dakota | 74 | 31.64 | 22.15 | 11,876,390 | 4,518,600 | 16,394,990 |
| Ohio | 64 | 41.17 | 28.82 | 200,672,461 | 62,712,320 | 263,384,781 |
| Oklahoma | 74 | 29.44 | 20.61 | 45,069,107 | 17,147,520 | 62,216,627 |
| Oregon | 74 | 39.84 | 27.89 | 41,930,803 | 15,953,080 | 57,883,883 |
| South Dakota | 74 | 34.71 | 24.3 | 9,707,693 | 3,693,600 | 13,401,293 |
| Tennessee | 74 | 35.41 | 24.79 | 84,961,338 | 32,326,160 | 117,287,498 |
| Texas | 74 | 40.01 | 28.01 | 315,086,752 | 119,882,800 | 434,969,552 |
| Utah | 100 | 28.76 | 20.13 | 4,877,696 | 4,267,560 | 9,145,256 |
| Virginia | 80 | 49.47 | 34.63 | 108,596,544 | 47,512,360 | 156,108,904 |
| Washington | 74 | 50 | 35 | 93,472,000 | 35,560,000 | 129,032,000 |
| West Virginia | 74 | 24.96 | 17.47 | 27,188,429 | 10.342,240 | 37,530,669 |

NEW GRAHAM BILL IMPOSES BILLIONS IN UNFUNDED STATE MANDATES THROUGH MASSIVE MANDATORY MEDICAID EXPANSION

*Why does the bill increase Medicaid cost for many states?*

The bill mandates a major expansion of a form of Medicaid to provide prescription drug coverage. It creates a new category of Medicare-Medicaid ''dual eligibles,'' who qualify for drug coverage if they meet the means test requirement in the bill. States, through their Medicaid programs, are required to determine low-income eligibility and to pay the enrollment fee and most of the drug costs for beneficiaries with incomes below 200% of poverty. Low-income beneficiaries are responsible for paying a $2 copay for generic drugs and $5 for brand name drugs; the new drug benefit picks up all the rest of the costs. This is a comprehensive drug benefit, estimated to cost around $3200 per beneficiary on average in 2005. The Federal government pays for the Medicare portion of the benefit. But most of the cost of this comprehensive benefit must be paid through Medicaid. This is because the Medicare benefit is a limited one: Medicare covers only 5 percent of the cost of drugs up to the catastrophic limit of $3300, then provides catastrophic coverage with a $10 copay. Thus, state Medicaid programs must pay at least two-thirds of the cost of the drug benefit, around $2000 per beneficiary in 2005. This is a conservative estimate of Medicaid benefit cost, and it will increase rapidly over time.

The Federal government pays only part of the cost of the Medicaid benefit, based on the state's Medicaid FMAP rate and enhanced FMAP rate:

| Percent of Poverty Rate | Medicaid Category | Required State Contribution |
|---|---|---|
| 0–74 | Truly Dually | Normal Medicaid Match |
| 75–100 | QMB's | Normal Medicaid Match |
| 100–120 | SLMB's | Normal Medicaid Match |
| 120–150 | Drug QMB1 | Enhanced (SCHIP) Match |
| 150–200 | Drug QMB2 | 100% Federal Match |

While all states have comprehensive Medicaid drug coverage up to 74 percent of poverty, many states do not have coverage up to 150 percent of poverty. States that currently do not provide comprehensive drug coverage up to 150% of poverty through either Medicaid or a state drug assistance program up to 150% are thus required to pay for a significant portion of the cost of comprehensive drug coverage. The cost of the new mandate depends on how many beneficiaries in the state currently do not have comprehensive coverage. The costs also increase rapidly over time, because drug cost are rising rapidly.

*How much must your State pay?*

The overall cost of this mandate to states in 2005 will exceed $5 billion, and may be much more. Over the 10-year budget window, the cost of the Medicaid mandate to the affected states will exceed $70 billion—about 14 times the 2005 costs. The attached table shows states that definitely will pay hundreds of millions more because of this proposal. Additional states may also face higher costs, if they do not already provide comprehensive drug benefits up to 150 percent of poverty.

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NO HELP FOR RETIREES WITH EMPLOYER OR UNION COVERAGE FROM GRAHAM

Retirees with decent coverage from a union or employer do not incur actual drug costs out of their own pockets above $3,300, as they would have to in order to benefit from the Graham amendment. So this benefit provides nothing for them.

The Graham bill supporters note that ''no employers drop'' coverage as a result of their bill. This is because the benefit is so paltry.

In contrast, the Tripartisan bill provides a real subsidy worth almost $1,600 per retiree to help union and employer plans continue coverage.

And those that decide to ''wrap around'' the strong basic benefit for all Medicare beneficiaries still provide comprehensive assistance to their workers. This is real help for employer and union coverage.

The Graham benefit does little to stem the trend toward dropping employer coverage. And when employers drop, Graham leaves retirees with nothing until they incur over $3,300 in costs out of their own pockets.

Graham would spend $390 billion yet provide virtually no benefit for anyone with retiree coverage. When retirees find out that they won't benefit from this, how will they react?

Ms. SNOWE. I yield the floor.

The PRESIDING OFFICER. The Senator from Tennessee.

Mr. FRIST. Mr. President, I yield 10 minutes to the Senator from Iowa.

The PRESIDING OFFICER. The Senator from Iowa.

Mr. GRASSLEY. I thank the Senator from Tennessee.

Mr. President, obviously, as you might expect, I rise in opposition to the latest amendment by Senator GRAHAM—whether it is Graham 2, 3, or 4, I am not sure, but it is another Graham idea on drugs.

First of all, I would like to address an argument that some Senators have been making on behalf of this amendment. They have argued that this is the Senate's very last chance to deal with the drug issue this year. Even though this amendment is terribly flawed, they say that somehow Senators should be encouraged to vote for it anyway.

Mr. President, I am second to none in my frustration with the Senate's failure on this issue at this point. The Democratic leadership has abandoned any pretense of a fair process. And fair process is what the Senate is all about. Instead of leading, the Democratic leader has been content to cook up his own proposals or have members of his party cook up their own proposals and try to somehow just ram them through the Senate.

For those of us who believe things in this body must be done in a bipartisan way, and through the committee process, and, in the end, get things done, this process in which we have been involved has been extremely frustrating.

The good news is that this vote is not the last vote. Fortunately, the Senate still has time and the ability to act. Speaking for my colleagues in the tripartisan group, we are ready to move on and begin work in the Finance Committee on a truly bipartisan compromise. I wish Senator DASCHLE had the confidence in Senator BAUCUS I have to move a bipartisan bill on Medicare prescription drugs out of committee.

No one should vote for this amendment in the misguided belief that it is their last chance because it is not their last chance.

Now I would like to address the substance of the amendment before us. The sponsors chose to spring the text of this amendment on the Senate yesterday for the first time. Perhaps they thought they could slip in something

new that we would not catch. Well, we caught it, and you know we have caught it by the speeches of the Senator from Maine. We actually have had a chance, and we have studied the Graham amendment.

The Graham amendment imposes a massive new burden on States just when State treasuries are in terrible shape. What does it do? Well, it mandates—do you like mandates?—that State Medicaid Programs provide cost-sharing assistance to an entirely new universe of seniors who have incomes up to 150 percent of the Federal poverty level. If that is not bad enough, it also socks the States with administrative costs of enrolling seniors with incomes up to 200 percent of poverty. Even beyond those costs, this enrollment burden is going to be an administrative nightmare for the respective States because of all the different populations involved.

At a time—and we know this is true in at least 45 of the 50 States—when they are experiencing tremendous budget pressures, massive new burdens of this type are the last thing the States need to have imposed upon them by the Federal Government. In fact, last week we heard of the problems of the State budgets and the problems States are having with their Medicare Program, because we voted for additional fiscal relief just last week. How ironic it would be if now we were going to add yet another burden.

Let me point out another problem with the amendment before us, and that is the low-income benefit, focusing on the beneficiaries that it serves. If you earn $1 too much to qualify for coverage, you get nothing. That is a cliff, we call it. We try to avoid cliffs. If we do policy right, we do avoid cliffs. But this amendment isn't about policy that makes sense, this amendment is about a political statement.

So seniors can find themselves in a situation where, if they earn $17,720, they qualify. If they earn an extra $1, $17,721, they lose drug coverage. So the Graham amendment sets up disincentives for beneficiaries to work at the same time as Congress has been trying to remove the wrong incentives from the law, and here we are considering a new disincentive. Once again, the policy just doesn't make sense.

Everything I have said so far pertains to the benefit for the 30 percent or so of low-income beneficiaries who get solid coverage under the Graham amendment. Unfortunately, there are another 70 percent out there who get very little coverage at all. Those 70 percent, in fact, are the biggest losers of all under this alternative.

Just how bad is this benefit in the amendment before us? A senior above 200 percent of poverty with average drug spending will receive approximately $6 of assistance every month—only $6 towards their prescription drug expenses. For me, $6 a month is hardly a benefit at all. I would be embarrassed to go home to Iowans and tell them I voted for an amendment that provided only $6 a month to average beneficiaries.

Why is there so little benefit? Because for 70 percent of the seniors, there is no coverage from zero to $3,300 in out-of-pocket spending. A week ago, the author of this amendment complained about a proposal I put forward because we had a $250 deductible. Now we are seeing a $3,300 deductible. Benefits paid by private insurance don't even count towards that.

Another problem: Retirees with decent coverage from a union or an employer do not incur actual drug costs out of their own pocket above $3,300, so the Graham benefit provides almost nothing for them.

I have to sound a sobering note: You don't pull the wool over the eyes of Americans—and seniors in particular. They don't appreciate false promises. I fear Senators who vote for the Graham amendment will have a lot to answer for down the road. I won't be one of them. I urge my colleagues not to be one of them either.

We are facing another mostly partisan vote on a mostly partisan bill, another vote that will fail to get 60 votes and will fail to help our seniors. Had regular order been followed, had the Finance Committee been given the right to work its bipartisan will, we could be completing action on this issue. Instead, we are still at a beginning.

The sponsors of the tripartisan bill, the only bipartisan bill in all of Washington, DC, to provide comprehensive, universal coverage, have always been ready and willing to talk to anyone about compromises, and we are still in this mode. We are ready to meet people any place, any time, anywhere to discuss this, including members and leaders of the AARP, who somehow got sucked in today to supporting something that a week ago they said they abhorred.

This situation is going to continue to be the case for us in this group, even after this morning's vote. So this vote is an ongoing, evolving process to get us a successful product. I have promised my constituents I will not give up on this issue. Adding a drug benefit to Medicare is business that simply cannot wait another year to cost $100 billion. Just as the need for prescription drug coverage in Medicare is not going to go away, we in the tripartisan group are not going to go away.

Mrs MURRAY. Mr. President, I rise today to reluctantly support the Graham/Smith amendment. I am casting this vote to move the process forward so we can get closer to providing seniors and the disabled with the prescription drug coverage they need.

I have got to tell you that I am frustrated and disappointed that Congress hasn't made more progress on this critical issue. Our seniors deserve better than the procedural fights we have seen here in the Senate, and they deserve better than the Graham/Smith amendment. Today I am voting for this amendment because it offers best hope of moving the process forward after so many delays.

Part of my frustration goes back to the priorities that were set last year. Strengthening Medicare should have been a top priority in Congress. Instead, the Republican-controlled House and Senate moved forward with a $1.25 trillion tax cut. Now we are fighting to provide a minimal Medicare prescription drug benefit that will not cost more than $400 billion over ten years. While we have come a long away since the President's inadequate $190 billion proposal at the start of the year, we still are not where we need to be.

I do want to applaud the efforts of our leader Senator DASCHLE and Senator GRAHAM. I know that they share my goal of a universal, affordable benefit as part of Medicare. Senator GRAHAM has worked especially hard on behalf of our seniors and the disabled.

While this amendment provides some targeted relief, it falls far short of our original goal. I supported S. 2625, a universal, affordable benefit that treated all seniors the same. Like the Medicare program, it offered every senior access to affordable coverage. I was disappointed that we could not secure the necessary 60 votes on this package. I do want to point out that S. 2625 did receive 52 votes, meaning a majority of my colleagues supported this approach. Unfortunately, due to procedural battles and partisan bickering, 52 votes were not enough.

This amendment does provide immediate assistance to the most needy and vulnerable. Ensuring that seniors below 200 percent of poverty receive access to affordable coverage is critical and will offer coverage to a larger number of seniors and the disabled. In Washington State, this could mean that 290,000 Medicare beneficiaries would be eligible for full coverage with a nominal copayment and no monthly premiums. This is a big improvement. It would ease some of the pressures on our State Medicaid program, which has been trying to fill the Medicare gap for low income beneficiaries.

But, as we all know, income is sometimes not always the best measurement of need. What about those seniors who earn just $1 over the 200 percent of poverty threshold? They could have significantly higher drug costs yet receive no benefit, until they reach a catastrophic level of $3,300.

In Washington State, this could mean 428,000 beneficiaries would not be eligible for the low income assistance. Yet, these seniors paid the same taxes and contributed the same percentage of their income while they were working to support the Medicare program.

I am pleased this amendment will offer catastrophic protection to all seniors regardless of income. Targeted relief to those with expensive drug costs does provide some level of fairness to the program. Ensuring that seniors with more than $3,300 in out of pocket

costs receive relief is a positive improvement and will offer some piece of mind.

This amendment is a good starting point, but it cannot be the final product we offer our seniors. I fear that this proposal could get worse in conference. The House-passed bill is nothing but a false promise of benefits. It is based on a private insurance model that has all but failed in most parts of the country. It would require significant out of pocket costs for even the low income and could result in less coverage for many seniors. It has a huge hole in coverage and does not offer a seamless benefit as part of Medicare. It is a sham, and once it sees the light of day, seniors will not be fooled.

I am willing to support this amendment with the understanding that this is only the beginning. This is the foundation for building a real universal benefit as part of Medicare. This cannot be the high water mark. I do not want a final conference report to offer only targeted limited relief based on a private insurance model. We cannot just merge this amendment with the House-passed bill. Instead, we must build on both approaches and make significant improvements. We must insist that the final product result in a seamless benefit that is part of Medicare that offers universal, affordable coverage.

I want to make one other point about our attempts to improve Medicare. As my colleagues know, I am very concerned about Medicare reimbursement rates. These rates vary by region and don't reflect the true costs of providing care in many States. I am concerned that this amendment builds on that flawed, unfair formula.

In Washington State, the annual per beneficiary payment from Medicare is $3,921 while in Louisiana it is as high as $7,336. Seniors in Washington State are suffering from this inequity. They cannot find a doctor to accept new Medicare patients and are forced to seek care in overcrowded emergency rooms. This inequity also puts providers in Washington State at a distinct economic disadvantage. Doctors are leaving my State for other parts of the country that offer higher Medicare reimbursements. In some parts of the country, Medicare payments are so high they subsidize private insurance payments. I can tell you that this is not the case in Washington State.

Unfortunately, the Graham/Smith amendment would result in some States receiving much greater coverage than others. Because the benefits will be targeted to those below 200 percent of poverty, some States will again receive much more Medicare funding than other States. In Washington State, only 40.4 percent of seniors would be eligible. However, in Louisiana 66 percent would eligible for coverage. As we work to improve Medicare we should make the program more fair to all seniors.

I understand that we will not be adding a provider package to this bill. We all recognize the need to address the provider shortfalls. I understand that the Majority Leader is committed to taking up a provider package in September. This must be a priority. It does little good to offer a prescription drug benefit if seniors cannot find a doctor. I urge my colleagues to work to address the inequities in the Medicare reimbursement formula as part of a provider package. We cannot continue to increase payments without a fix, as those at the top continue to receive a large percentage of the increased dollars.

So I am willing to support the Graham/Smith amendment as a starting point for our work on crafting an affordable, universal drug benefit that's part of Medicare. It's clear that we still have a great deal of work to do. And regardless of the outcome of this vote, I'm committed to working on this issue until we have the coverage that seniors and the disabled need.

Mr. HATCH. Mr. President, my, what a difference a week makes! Who would ever think that the Senate would now be considering a piece-meal, minimalist Medicare prescription drug coverage amendment.

Is that what seniors want? I don't think so and that is why I want to express my vehement opposition to the Graham plan.

Over the past few weeks, we have heard just about everything under the sun regarding prescription drug coverage. Some fact, much fiction.

What we need to do now is to sort out the rumors and false statements and look just at the facts.

The one undeniable fact where we all agree is this: the need for Medicare drug coverage is too great to let it become buried in a political quagmire.

We have all been working hard on this issue and we must not fail our seniors now by passing a piece-meal Medicare prescription drug plan. Apparently, our Democratic Leadership does not agree. Let's look at the facts.

We know that the tripartisan bill will cost $370 billion over 10 years. We hear that the latest Graham bill will cost close to $400 billion over 10 years, but the plan keeps changing so we do not have a true CBO score. We just received the legislative language late yesterday afternoon and CBO has not had a change to carefully review the legislative language.

We know that the tripartisan bill will provide a comprehensive benefit package for all seniors. Every single senior receives comprehensive, guaranteed coverage for his or her prescriptions.

We know that the Graham bill does not provide comprehensive coverage for all seniors. Under the Graham bill seniors only receive coverage for drugs if their incomes are below 200 percent of the Federal Poverty Level or if they reach their catastrophic coverage limit. What happens to middle-income beneficiaries? My friends, these seniors are just out of luck.

We know that the tripartisan bill will work to push drug costs down through private sector competition.

We know that the graham bill is going to have a new, federally-funded, government-run drug program that has no cost-saving mechanisms. In my opinion, a government-run program will lead us down the dangerous path of prescription drug price-setting. Look what has happened to the reimbursement rates of other Medicare providers, like hospitals and physicians.

The tripartisan bill encourages competition based on quality and cost. The tripartisan proposal lowers prices for all drugs without compromising quality and innovation. The Graham plan does not.

The tripartisan plan offers choice—a choice of plans, a choice of medication and a choice of Medicare coverage through our enhanced fee-for-service option. The Graham plan has a one size fits some proposal.

Our tripartisan plan improves the Medicare program by taking a global approach to meet the changing needs of seniors. The tripartisan bill provides protection against high hospitalization costs and offers free preventions benefits. This is what modern health care demands.

On the other hand, the Graham plan only provides minimal drug coverage for a small number of Medicare beneficiaries.

Why should seniors settle for a piecemeal approach? It just doesn't make any sense.

For less than the cost of the Graham catastrophic plan—or, I think, the catastrophic Graham plan—which would benefit less than half of seniors, the tripartisan approach provides comprehensive coverage with quality drug coverage, choice and cost savings for all Medicare beneficiaries.

A piece-meal approach and last minute changes to keep the CBO score down to placate people is the approach my colleagues on the other side have taken in putting this bill together. And it is the wrong approach.

So it is no surprise that is what their plan has offered—a piecemeal, band-aid approach to providing drug coverage.

We need to provide Medicare beneficiaries with adequate prescription drug coverage, this year. We must put aside our differences and self interests.. Partisan arguments only stand in the way of Medicare drug legislation being passed by the Senate.

Let's start the process of improving health care for our seniors by passing quality prescription drug coverage.

Let's not fail them again by allowing the piece-meal Graham plan to pass the Senate. Our Medicare beneficiaries are depending on us to provide them the best Medicare prescription drug coverage possible.

My friends, a vote in favor of the Graham plan does not accomplish this important goal. Our Medicare beneficiaries deserve better.

I urge my colleagues to vote against the Graham amendment.

Mr. HOLLINGS. Mr. President, I rise today to reluctantly oppose the Graham-Smith amendment. First of all, let me commend the distinguished Senior Senator from Florida for the leadership he has shown throughout the years to bring a meaningful prescription drug benefit to Medicare. America's senior citizens have no stronger ally in this body than Senator BOB GRAHAM. He has worked tirelessly to provide real relief to Medicare beneficiaries from their prescription drug costs and I was proud to stand with him, Senator MILLER, and Senator KENNEDY last week to try to move ahead with a real drug benefit. However, I must oppose this amendment because it largely neglects the vast middle-class of senior citizens.

Just yesterday, Secretary Thompson granted South Carolina a Section 1115 waiver to bring our state's SilverxCard program under Medicaid, thereby allowing the program to expand coverage to seniors with incomes of up to 200 percent of the Federal poverty level. Thus, the very same seniors that would receive comprehensive coverage under the Graham-Smith Amendment can already receive coverage, albeit more limited, in South Carolina through Medicaid or SilverxCard. This amendment would not make one additional Medicare beneficiary in South Carolina eligible for prescription drug coverage. I also have found that affluent seniors in South Carolina can either afford supplemental prescription drug coverage on their own or have a plan from a former employer that contains prescription drug coverage.

Which seniors are left furthest behind in South Carolina? It is the middle-class, those individuals who spent their lives working in the textile mills, manning the assembly line, teaching in our schools, and tending to our farmland. They worked hard, paid taxes into Medicare, and deserve to receive the same benefits under Medicare as anyone else. I cannot in good conscience vote for an amendment that tells a senior citizen with an income of $17,720 that, yes, you receive a real prescription drug benefit and another senior citizens with an income of $17,721 that, no, you have to spend $3,300 out of your own pocket before you receive any assistance. We did this once already with Medicare. It failed and this Senator learned that we should not do it again.

I understand the desire of many of my colleagues to pass something, anything to help citizens afford their prescription drugs. I talk to the same people and receive the same heart-wrenching letters from constituents as they do. I know their commitment and desire to enact legislation this year is real and genuine, but I simply cannot support this approach. All of our seniors deserve comprehensive Medicare prescription drug coverage.

I still believe that we can reach agreement before the end of the year on a real, meaningful benefit for all our seniors and stand ready to work with my colleagues to make this possible.

Mr. BUNNING. Mr. President, I rise today to speak briefly about the Graham-Smith amendment.

The Senate has been debating a prescription drug benefit for Medicare for the past two and a half weeks. In fact, Congress has been working on the issue for years now. Now our colleagues in the House have passed a proposal. The Senate needs to do the same.

All along I have supported the efforts of the Tripartisan group and their efforts to write a common sense Medicare prescription drug proposal. I voted for their bill because I think it targets relief in a fiscally responsible manner to those seniors who need it the most.

Unfortunately, I cannot support the Graham-Smith amendment.

While we all agree that seniors need help with their prescription drug costs, this amendment falls short for several reasons.

First of all, this amendment creates an ''all or nothing'' program for many seniors. Seniors below 200 percent of poverty, which is $17,720 for singles and $23,880 for married couples, will basically have all of their prescription drug costs paid for, with only a $2 or $5 copay for drugs.

However, folks who make over 200 percent of poverty, even if it is only by a small fraction, basically don't get a real benefit until catastrophic coverage kicks in at $3,300. Writing this steep of an income cliff into the law isn't fair. We can do better.

The difference between having an income of $17,720 and $17,721 shouldn't costs seniors $3,300 in prescription drug costs. In Kentucky, there are almost 240,000 seniors who have incomes above this threshold. Under Graham-Smith, they basically get nothing.

Second, this amendment doesn't give us enough bang for our buck. The Congressional Budget Office estimates that this amendment will cost $390 billion, which is a heck of a lot of money. However, even if we pass it, we still aren't offering a real benefit to all seniors, like we did with the Tripartisan amendment.

The Tripartisan proposal would have cost $370 billion, and all seniors could have had catastrophic coverage starting at $3,700, along with substantial help with their prescription drug costs below that. Even the Hagel Amendment, with a price tag of $295 billion, limited out of pocket expenses for folks below 200 percent of poverty at $1,500.

I just don't understand why we would want to pay an additional $20 billion or $95 billion more for a Medicare prescription drug plan that offers fewer benefits. This means that the Graham-Smith proposal shortchanges not only seniors, but the American taxpayer as well.

America's seniors need our help, and the Senate needs to pass a prescription drug bill. But because the Senate Democrat leadership insisted on bypassing the usual committee process and proceeding straight to the Senate floor with the debate, we have been struggling with a legislative free-for-all that, in the end, could lead to nothing passing at all.

When I made my first floor statement on this issue, I warned against this sort of procedural gimmickry and its possible consequences. So far we have voted on three prescription drug proposals, and only two have earned more than 50 votes, let alone the 60 that are needed under the budget rules. If the committee process had been allowed to work its will, I think there is a much better chance that we could pass a serious proposal to provide meaningful relief to seniors.

I can't support Graham-Smith. It's a day late, more than a few dollars too short and fails to provide real help to seniors who need it most. I think there is still a chance, a small one, to pass a real bill. But the door is about to close on our seniors yet again. I hope we don't let them down.

Mr. CORZINE. Mr. President, I rise today in strong support of the Graham-Smith amendment. I believe that this compromise represents an important victory for all our Nation's seniors, and particularly for seniors in my State of New Jersey.

Let me be frank: this is not the proposal I would have preferred and is not the proposal I have talked about with my constituents for the last few years. I have gone around New Jersey and have heard from my constituents about how they struggle to deal with rising drug prices, how they fear being bankrupted in their last years, and how they worry about burdening their families. That is why I strongly support a comprehensive Medicare benefit, and that is why I supported the Graham-Miller-Kennedy-Corzine amendment last week.

But, I am also a pragmatist, and I know that the Graham-Smith amendment is a good and necessary start, upon which we can build. It will provide critical relief to the neediest of seniors, and provides comfort to all seniors that castatrophic drug costs will not ruin them. And I know that if we can get this enacted, next year I will be back here fighting to expand its reach.

The Graham-Smith amendment will ensure that no senior spends more than $3,300 to buy their prescription drugs. It also provides comprehensive coverage to our Nation's neediest seniors, those with incomes up to 200 percent of the federal poverty level. In addition, it provides a thirty to forty percent discount on prescription drugs for all seniors. At a cost of $390 billion over ten years, the Graham-Smith amendment will guarantee all seniors much-needed prescription drug coverage at a reasonable price.

My State of New Jersey and many other States around the Nation have responded to the glaring need for prescription drug coverage for our Nation's seniors by creating state pharmacy benefit programs. In New Jersey,

we have the PAAD and Senior Gold programs. The PAAD program currently provides comprehensive drug coverage to seniors up to 220 percent of the Federal poverty line, and the Senior Gold program provides more limited coverage to certain higher income seniors.

I am pleased that the Graham-Smith amendment preserves and reinforces State pharmacy benefit plans like New Jersey's. I worked with Senators GRAHAM and SMITH to ensure that the amendment enables States with prescription drug programs to wrap their programs around the Medicare prescription drug benefit, to create more generous and more extensive benefits for all seniors. This is a crucial provision that will enable New Jersey, Pennsylvania, New York, Minnesota and the other 20 States that have State-funded prescription drug programs to expand and supplement their existing programs.

I also worked with Senators GRAHAM and SMITH to ensure that state pharmacy program spending counts toward a beneficiary's out of pocket limit. This will ensure that New Jersey seniors reach catastrophic coverage as quickly as possible. I want to thank Senators GRAHAM and SMITH for their assistance with these provisions.

Let me outline how the Graham-Smith amendment would benefit New Jersey seniors: 1,189,000 New Jersey senior citizens and disabled Medicare beneficiaries would be eligible for coverage under the Graham-Smith plan; 568,000 Medicare beneficiaries, 48 percent, would be eligible for low-income assistance and will receive all needed drugs in return for nominal copayments; 621,000 senior citizens and disabled Medicare beneficiaries, 52 percent, who are not eligible for special low-income assistance would benefit from discounts of 25–30 percent on each prescription.

I know many of my colleagues have raised concerns that this amendment does not provide comprehensive coverage for all seniors. But the basic fact is that this amendment provides prescription drug insurance for all our nation's seniors and disabled. It provides a thirty to forty percent discount on prescription drugs for all Medicare beneficiaries and would provide full prescription drug coverage to every Medicare beneficiary who spends at least $3,300 per year for their prescription drugs.

The Congressional Budget Office has estimated that by 2005, the year that this amendment would take effect, at least half of all Medicare beneficiaries will have annual prescription drug expenditures that exceed $4,000.

And, don't forget that the eighteen million Medicare beneficiaries with incomes below 200 percent of poverty would receive all the prescription drugs they need, for a small copayment of $2 for generics and $5 for brand name drugs.

At a time in which this Congress has voted to give billions of dollars in tax breaks to the wealthiest people in our country, it is wrong and hypocritical to tell seniors that we simply don't have the funds or the will to pass an amendment that will provide them access to affordable, essential medicines.

Mrs. FEINSTEIN. Mr. President, I rise today in support of the amendment offered by Senators GRAHAM and SMITH to add a prescription drug benefit to the Medicare program for low-income beneficiaries and those with high drug costs.

The amendment offered today is built on consensus and compromise, and is the product of weeks of extensive discussion. I believe in its final form, this amendment strikes a balance between the Senate's proper exercise of fiscal responsibility and the need to expand and update the Medicare program to include some help with the high costs of prescription drugs for today's 40 million Medicare beneficiaries.

I want to thank my good friend, Senator LINCOLN CHAFEE, for his commitment to getting prescription drugs to those in our society who are the sickest and the poorest. I have been working with him since the end of June in developing a cost effective alternative that would get prescription drugs to the lowest income and the sickest in our society immediately.

I believe that the Graham-Smith amendment we are debating today addresses my major concern which is to provide low-income individuals in our society with access to a full, prescription drug benefit at low cost.

I am pleased that others in the Senate agree with me that at a minium we should provide a comprehensive benefit to those individuals in our communities who are making daily decisions about eating or paying rent and buying their necessary, life-saving prescription drugs.

The prescription drug benefit created by this amendment includes three important components.

First, this amendment creates a voluntary, low-income benefit so that seniors would no longer be forced to continue making decisions between food or medicine. Under this plan, beneficiaries would pay no premium, no annual fee, and no deductible. Their only cost would be a nominal copay of $2 for a generic drug and $5 for a brand name drug.

I believe the assurance that over 18 million Medicare beneficiaries, 47 percent of all Medicare beneficiaries, with incomes below $17,720, 200 percent of the Federal poverty level, would have access to needed prescription drugs at a nominal cost is the most important component of this proposal.

For California, this means that 1.8 million senior citizens and disabled Medicare beneficiaries, 49 percent, with incomes below $17,720 for an individual and $23,880 for a couple would have immediate access to all needed drugs.

Second, this amendment would provide all 40 million Medicare beneficiaries with access to catastrophic coverage. For a simple cost of $25 a year for those with incomes above $17,720, every beneficiary would have the assurance that once out-of-pocket spending for prescription drugs exceeds $3,300, a copayment of $10 would provide them with access to full coverage at no additional cost to them.

Beneficiaries with incomes below $17,720 would not be responsible for the $10 copay. Low-income individuals would receive this benefit at no cost.

Third, this amendment provides the 14 million Medicare beneficiaries, 35 percent, making over $17,720 with access to discounts of about 25 percent on each prescription. For an annual fee of $25, these beneficiaries would have access to the federal negotiated rate and would receive a 5 percent government subsidy in addition on each prescription they purchase.

In California, this means an additional 1.9 million senior citizens and disabled Medicare beneficiaries, 51 percent, who are not eligible for low-income assistance would benefit from discounts of 25–30 percent on each prescription.

By providing coverage to low-income individuals and those with high drug bills, this proposal meets the most fundamental needs of our nation's senior citizens and disabled.

Passing this amendment is timely. On a daily basis, my office hears from California's seniors about the financial constraints they face which often prohibits them from buying necessary medication.

I recently heard from Helen Cecil, a senior citizen from Paramount, CA on this issue. She lives on a fixed monthly income of $1,000. Her rent is $421 a month, and she spends $150 a month on her prescriptions to treat high cholesterol, hypertension and arthritis. In total, Helen spends $1,800 annually on medication. She admits to having only one option: She must cut down on food in order to buy her medications.

Under the Graham-Smith amendment, Helen would pay no monthly premium and no deductible. She would only pay $2 per prescription for generic drugs. Assuming she purchases generic drugs, her monthly bill of $150 for three medications to treat her chronic health conditions would drop to approximately $6. Helen saves about $142 monthly. This is money she can use to buy groceries.

For the millions of Medicare beneficiaries that face the same predicament as Helen Cecil, I believe the government has a responsibility to see that they are not forced to choose between buying food and buying medications. Quite frankly, it is hard to think that in the richest nation on earth, we have allowed a situation to evolve where so many of our elderly must make such a choice.

I am hopeful that the Senate won't fail our Nation's sickest, poorest and most frail.

In the hopes of breaking the gridlock of this debate, and with the need to

pass legislation that meets both the budgetary restrictions of these uncertain times and the needs of our nation's low-income seniors, I urge my colleagues to support the Graham-Smith amendment.

Mr. LEVIN. Mr. President, I will support the Graham-Smith amendment. However, I would have preferred a prescription drug benefit added to Medicare, like the Medicare Outpatient Prescription Drug Act of 2002, commonly referred to as the Graham-Miller proposal. The Graham-Miller amendment would have provided a comprehensive, voluntary, affordable and reliable prescription drug benefit to Medicare beneficiaries. I voted for the Graham-Miller amendment, which was supported by a majority of the U.S. Senate in a vote last week. Unfortunately, the proposal required 60 votes and subsequently failed.

On balance, I will support the Graham-Smith compromise, even though I have some reservations. The bill has three major points. First, the Graham-Smith amendment provides all Medicare beneficiaries access to a prescription drug card which allows Medicare beneficiaries to pool their purchasing power and receive drug discounts of up to 35 percent. The Federal Government would add an additional 5 percent subsidy to any negotiated price. Second, low-income beneficiaries would receive full drug coverage—paying only a nominal copayment for their drugs. Third, ''catastrophic coverage'' would be available to Medicare beneficiaries so that someone doesn't have to spend more than $3,300 in out-of-pocket expenses on prescription drugs. After that, a beneficiary would only pay a $10 copayment for each prescription drug.

However, I do have a number of reservations about the Graham-Smith proposal. First, a prescription drug card is no substitute for adding a prescription drug benefit to the Medicare Program. I am a strong advocate of making prescriptions drugs an entitlement for every Medicare beneficiary who wants it. A prescription drug card can be uncertain, relying on a possible negotiated benefit that might not materialize and is no substitute for a guaranteed prescription drug benefit. I am also opposed to a means test for Medicare. Medicare's beneficiaries receive services because they have paid into the system their entire working lives. It is unfair for Medicare beneficiaries to receive different benefits based on their respective incomes. This sends the wrong message to our Nation's 40 million Medicare beneficiaries who rely on its stability and its application to all eligible seniors.

So, with reservation, I will be supporting the Graham-Smith proposal as the Senate's best chance to pass a Medicare prescription drug benefit this year, and I urge my colleagues to do the same.

Mr. REED. Mr. President, I would like to take a few minutes to share with my colleagues my thoughts about the Graham-Smith amendment that the Senate will be voting on shortly. I have to say that the proposal currently before us is a far cry from what I have previously supported and certainly no where near what I had hoped for in terms of a Medicare prescription drug benefit.

Indeed, this is not the benefit we ultimately should enact and, more importantly, this is not the benefit our seniors deserve. At best, the Graham-Smith proposal provides a universal catastrophic benefit to those seniors with the highest prescription drug costs and it will aid those States that do not already have a State-based prescription drug benefit. These concessions, offered in a spirit of compromise and bipartisanship, limit the effect and reach of this bill. Chief among these concessions has been cost. That constraint on resources is driven predominately by the passage of the President's tax plan, which leaves us with resources that are only sufficient to meet the needs of low-income seniors and those who spend over $3,300 out of their own pocket.

Nevertheless, the proposal does start us on the road to a universal, voluntary benefit for our Nation's elderly and disabled population by offering a comprehensive benefit for those living below 200 percent of the Federal poverty level. According to estimates, nearly half of the Medicare beneficiaries in Rhode Island would be eligible for the fully subsidized Federal prescription drug benefit. In addition, the amendment provides catastrophic coverage for drug costs above $3,300. And, contrary to other proposals, these benefits would be provided in the same manner that seniors receive all other health care benefits: through Medicare.

There are however several areas where I feel this amendment falls short.

First, seniors above 200 percent of poverty would receive, for a nominal annual enrollement fee, a discount card that would provide an automatic 5 percent Federal subsidy for all drug costs and additional savings that are expected to be captured through the negotiation of lower drug prices from the manufacturers. However, questions have been raised recently as to the effectiveness of prescription benefit managers, or PBMs, to achieve the best price for their subscribers. I believe that the potential benefits and drawbacks of PBMs on such a large scale have not been thoroughly explored, nor has the question of whether PBMs are a reliable mechanism to achieve lower drug prices been answered. I am also concerned about having a discount card as the sole source of coverage for beneficiaries above a certain income level because I believe it deviates from the basic tenents of the Medicare program and may not provide the kind of assistance seniors and disabled persons with substantial drug costs might need.

Second, there is no requirement that States with existing pharmaceutical assistance programs for low-income seniors, like my home State of Rhode Island, maintain their commitment to this particularly vulnerable population. I believe that the Graham-Smith amendment would have a much greater impact if it acknowledged and rewarded the ongoing efforts in many States and encouraged them to work as partners with the Federal Government to build a far-reaching prescription drug benefit that would offer more robust assistance to many more of our elderly and disabled than the Federal Government can currently achieve on its own.

While I understand that many of our States are facing dire budgetary situations, I believe our commitment to providing struggling States the temporary support they need has been demonstrated through the Rockefeller-Collins-Nelson amendment which passed the Senate by an overwhelming margin last week. I am disappointed that the Graham-Smith amendment does not take the role of the States into more serious consideration. If the proposal is enacted, I hope to work with my colleagues to strengthen the State's role in this program.

The plan that I cosponsored and supported, the Graham-Miller-Kennedy amendment, was the only true Medicare prescription drug proposal to be presented to the Senate. It is the only one that would have created a guaranteed, univeral benefit for all Medicare beneficiaries, regardless of income. In terms of the benefit structure, it required a modest monthly premium and reasonable co-payment for prescriptions. However, this benefit was deemed to be too costly by many of our Republican colleagues given the current Federal budget deficits. I would argue that we might be in a different position if we had not enacted a major tax cut bill last year.

Nevertheless, my colleague, Senator GRAHAM, has tirelessly worked to craft a scaled-back benefit proposal that is modeled after the Ensign-Hagel amendment and would seem to meet the chief concern of my Republican colleagues and should garner their support. I commend Senator GRAHAM and others for their efforts on this critical issue and I intend to support his amendment in the spirit of compromise and moving this debate forward. The Graham-Smith amendment is certainly not the end of the road in terms of the prescription drug issue, it is only the beginning. If Congress is going to have a serious chance of getting a Medicare prescription drug bill to the President's desk this year, we must take action now. I hope my colleagues will follow the lead of our colleagues, Senators GRAHAM and SMITH, and work towards the enactment of a Medicare prescription drug benefit.

Mr. LEVIN. Mr. President, I will support the Graham-Smith amendment. However, I would have preferred a prescription drug benefit added to Medicare, like the Medicare Outpatient Prescription Drug Act of 2002, commonly

referred to as the ''Graham-Miller proposal.'' The Graham-Miller amendment would have provided a comprehensive, voluntary, affordable and reliable prescription drug benefit to Medicare beneficiaries. I voted for the Graham-Miller amendment, which was supported by a majority of the United States Senate in a vote last week. Unfortunately, the proposal required sixty votes and subsequently failed.

On balance, I will support the Graham-Smith compromise, even though I have some reservations. The bill has three major points. First, the Graham-Smith amendment provides all Medicare beneficiaries access to a prescription drug card which allows Medicare beneficiaries to pool their purchasing power and receive drug discounts of up to 35 percent. The Federal Government would add an additional 5 percent subsidy to any negotiated price. Second, low-income beneficiaries would receive full drug coverage—paying only a nominal copayment for their drugs. Third, ''catastrophic coverage'' would be available to Medicare beneficiaries so that someone doesn't have to spend more than $3,300 in out-of-pocket expenses on prescription drugs. After that, a beneficiary would only pay a $10 copayment for each prescription drug.

However, I do have a number of reservations about the Graham-Smith proposal. First, a prescription drug card is no substitute for adding a prescription drug benefit to the Medicare Program. I am a strong advocate of making prescriptions drugs an entitlement for every Medicare beneficiary who wants it. A prescription drug card can be uncertain, relying on a possible negotiated benefit that might not materialize and is no substitute for a guaranteed prescription drug benefit. I am also opposed to a means test for Medicare. Medicare's beneficiaries receive services because they have paid into the system their entire working lives. It is unfair for Medicare beneficiaries to receive different benefits based on their respective incomes. This sends the wrong message to our Nation's 40 million Medicare beneficiaries who rely on its stability and its application to all eligible seniors.

So, with reservation, I will be supporting the Graham-Smith proposal as the Senate's best chance to pass a Medicare prescription drug benefit this year and I urge my colleagues to do the same.

The PRESIDING OFFICER. Who yields time?

Mr. KENNEDY. How much time remains, Mr. President?

The PRESIDING OFFICER. The Senator from Massachusetts has 22½ minutes. The Senator from Tennessee has 5 minutes.

Mr. KENNEDY. Mr. President, I yield 18 minutes to the Senator from Florida.

The PRESIDING OFFICER. The Senator from Florida is recognized.

Mr. GRAHAM. Mr. President, we have a very simple message this morning. America's seniors now, for 37 years and 1 day—since 37 years ago yesterday was the day Lyndon Johnson signed the Medicare legislation into law—have been waiting for prescription drug coverage. It was a minor amount of their expenditures in 1965. On average, it was $65 a year. It is a staggering amount for seniors today—over $2,100 a year, on average.

Today is the day that there are no more excuses for delay. There is no credible reason to vote against the motion to waive the Budget Act so that the Senate can then consider an affordable, bipartisan prescription drug proposal, and all of the modifications, amendments, and other alternatives that others might wish to propose.

There have been a number of objections raised to our proposal—some of them last week—being contradictory to the same provisions or modifications that are in our current bill, and some new issues were raised this morning. Let me briefly comment.

Last week, we heard that the prescription drug bill we had offered was too expensive, at an estimated cost of $594 billion for 10 years. We were told: we cannot support anything that is above $400 billion. So we went to work. We rolled up our sleeves, and we made a number of changes, and we have gotten the cost under $400 billion. In fact, the Congressional Budget Office states that in conjunction with the generic drug bill—on which our Presiding Officer has provided such leadership—the cost of our bill now will be $382 billion. So we have met the desire to have a less costly proposal.

Now we are getting the other argument, that because it is less costly, it is not sufficiently comprehensive. Let me explain what this bill will provide, first, for all senior Americans. In my opinion, the most important thing it will provide is peace of mind. If you are a relatively well American in the early seventies, you have prescription drug costs you can manage. The problem is that you never know whether a day from now you might not suffer from some catastrophic event, such as a heart attack, or be found to have a chronic disease such as diabetes, which will suddenly escalate your prescription drug cost, potentially threatening the economic security of your retirement.

This legislation will provide the peace of mind that will give you the assurance that, once having spent $3,300, you will get full coverage, but for a $10 per prescription copayment. That is a benefit of real value, which is available to all American seniors. The cost is $25 a year as an enrollment fee. There could be no greater bargain in the insurance market than to be able to buy the peace of mind of this catastrophic coverage for $25 a year.

That is not all of the benefits that will be available to all senior Americans. Because we are going to have 40 million Americans with a champion, called a pharmacy benefit manager, negotiating with the pharmaceutical companies to get the best discounted prices, Families U.S.A., the Chain Drugstore Association, and the U.S. Department of Health and Human Services have all stated that, under our legislation, they estimate that these organizations would be able to negotiate discounted prices in the range of 15 to 25 percent. That will be available to all seniors.

In addition to that, we are going to provide that there will be a 5-percent Federal supplement on top of whatever the discounted amount is. So there will be real benefits for all Americans.

But we did have to make some difficult choices when we reduced the size of this program by over $200 billion. One of those decisions was that we would focus our effort on those who had the largest prescription drug bills through a catastrophic program that would be available to all, and we would focus on those who were the neediest Americans and, therefore, had the greatest difficulty paying their prescription drug costs.

This business of life is a business of making choices, and we decided that those were the two groups that should get the most attention under the beginnings of a Medicare effort to provide prescription drug benefits.

I might say that this is very consistent with what President George Bush said as ''candidate'' George Bush when he emphasized that he thought a prescription drug benefit was a priority for the Nation and that the priority within the priority was providing prescription drug coverage for those who were most in need. That is what we have done.

For those persons who are under 200 percent of poverty—which today is 38 percent of America's 40 million Medicare eligibles—this will provide a very significant benefit; and with no premiums, with no deductibles, they will have access to prescription drugs for a copayment of $2 for generic drugs and $5 for brand name drugs. This will provide for the millions of senior Americans who are the most likely not to have any other source of assistance—they didn't work for an employer who provided retiree prescription drug benefits or they cannot afford a Medigap policy. This is the group of Americans who are at greatest need, and they will get the greatest assistance.

There have been some other arguments raised today about the plan we are proposing. It has been suggested that there will be massive costs to the States as a result of this plan. Let me read you a statement we have just received from the Congressional Budget Office. It states:

This plan will have almost no effect—

I would like my colleagues on the other side of the aisle to listen to this Congressional Budget Office release.

This plan will have almost no effect on State spending and will have savings to States when combined with the underlying generic bill. There will also be savings for

States that have their own State-funded drug programs. State savings come from the Federal Government paying all of the catastrophic benefits which are now paid by the State, as well as 5 percent of each beneficiary's drug cost, which is not subject to a match.

This is not a new idea. We have a program that has been in place for several years called the QMBs and SLMBs program. Don't ask me what the acronyms fully stand for, other than that they provide Medicare assistance to pay premiums, deductibles, and coinsurance for low-income Americans who are still above the Medicaid level. That has not proven to be an unmanageable program for State-Federal cooperation, and neither will this.

It has also been stated that previous employers will drop the insurance coverage of their retirees if we adopt this legislation. Quite to the contrary. The Congressional Budget Office, again, has stated that with our plan there would be no employer dropping of coverage, whereas with the plan that has been proposed by our colleagues on the Republican side, the same CBO estimates that up to one-third of the employers would drop prescription drug coverage.

The issue today, frankly, is not any of the questions that have been raised in opposition to the thoughtful proposal that is the result of real compromise between Democrats and Republicans, a true bipartisan outreach. On many provisions of this bill, we have adopted language verbatim from legislation that was introduced last week by, for instance, Senators HAGEL and ENSIGN. Senator GORDON SMITH has worked in the highest standards of cooperation and collaboration to give this Senate an opportunity to vote on a solid, significant prescription drug benefit.

What we are going to vote on in a few minutes is a motion to waive the Budget Act. How ironic. We have a Budget Act, which is 18 months old, that says the maximum amount we can spend on prescription drugs is $300 billion over 10 years.

Both the Republican plan and the Democratic plan are above $300 billion, a clear recognition that people who have looked at what will be required to provide a prescription drug benefit have come to the same conclusion: we cannot provide a meaningful, responsible benefit to senior Americans for $300 billion.

We are going to have an opportunity to vote to waive the Budget Act so we can then consider what would be a responsible prescription drug benefit, but unless we get 60 votes to waive the Budget Act, we will never get to the substance of this issue.

I urge my colleagues to focus on the question that is before us: Should we maintain a slavish commitment to an 18-month-old number that both Republicans and Democrats have clearly indicated is inappropriate or should we waive the Budget Act and have an opportunity to have a full, substantive debate on prescription drugs?

There have been some who said this is not the last time; that we can come back maybe in September or October, or some time in 2002, and act upon this. I admire their optimism, but as a pragmatist, I question the practical reality. In addition to the difficulty of passing legislation through the Senate, we know that we have to go to conference with the House, and the House is likely to have significantly different provisions, including different priorities in terms of where to place emphasis in a senior prescription drug plan for Medicare than the Senate will have.

If we waste the month of August, which would be an opportunity for serious consultation between the House and the Senate, in hopes that in September we can arrive at a compromise that can be voted by the Congress and then signed into law by the President, we will have missed our greatest opportunity to achieve this long-sought goal of senior Americans.

The real issue today is, we have a choice of saying, yes, we want to continue, we want to have the opportunity to develop a prescription drug benefit or we want to say no, that we are prepared to accept the status quo—another year in which senior Americans will be denied Medicare assistance in purchasing their prescription drugs, the fastest rising cost element in the typical health care budget of senior Americans.

Mr. President, I urge my colleagues today to vote yes to waive the Budget Act and then vote yes to continue a serious, substantive debate on the issues involved in providing our senior citizens access to a meaningful prescription drug benefit.

I would not like this debate to end in the ashes of a vote that says we are going to put a greater value on the homage to an archaic budget number, which nobody today is advocating as being adequate to meet the needs of senior Americans.

That is the issue: Do we say yes to the opportunity or do we say no to further gridlock and denial of this critical element of a modern health care program?

I thank the Chair.

The PRESIDING OFFICER. Who yields time?

Mr. KENNEDY. Mr. President, how much time remains on our side?

The PRESIDING OFFICER. The Senator from Massachusetts has 6 minutes 45 seconds.

Mr. KENNEDY. I yield 2 minutes to the Senator from Michigan.

The PRESIDING OFFICER. The Senator from Michigan.

Ms. STABENOW. I thank the Chair. Mr. President, this is it today. We have a very real choice to make. I believe it boils down to this: The drug companies of America like the system the way it is today. They want nothing to happen. The seniors of America are counting on us to stand up and do the right thing: Not privatizing Medicare with a private plan that sets up insurance HMOs which, by the way, was written in the House in part by the drug companies knowing that this is the approach that is least likely to lower prices but, rather, protecting, preserving, and modernizing Medicare.

This is a bipartisan effort. I commend colleagues on both sides of the aisle who have stepped up to say we are going to make a downpayment on modernizing Medicare to cover prescription drugs. That is what this is. Everyone gets help. Everyone's prices go down. And for those who need it the most, those who are the sickest, they will, in fact, receive comprehensive coverage. No premium. No deductible. They will get the help they need.

I am proud to stand today with my colleagues, Senator GRAHAM, Senator SMITH, and others on both sides of the aisle who have put this together with AARP and with the senior groups in America to say the time has come. The time has come for us to place this downpayment on modernizing Medicare and move forward until we completely provide comprehensive Medicare coverage for all seniors and the disabled in this country.

I cannot imagine why we would not want to keep this process going to get the bill in front of us. It can always be fine tuned. We can continue to work together. But today is yes or no on whether we proceed to help the seniors of America and stand with them. Stop talking about it; let's act together and let the seniors know that we are willing to provide the leadership necessary—all of us together—to get this done. I thank the Chair.

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

Who yields time?

Mr. FRIST. Mr. President, I yield 2½ minutes to the Senator from Oklahoma.

The PRESIDING OFFICER. The Senator from Oklahoma.

Mr. NICKLES. Mr. President, I urge my colleagues not to waive the Budget Act with respect to the point of order for a lot of different reasons. One, I wish we had a budget. Somebody said we could have passed a budget. Maybe the Budget Committee was going to pass a higher number.

Unfortunately, this is the first time since 1974 that we have not had a budget pass the Senate. Maybe one of the most fiscally irresponsible things we have not done is not pass a budget. We are still under the constraints of last year's budget.

Last year, we overwhelmingly passed a budget and set up $200 billion, $300 billion, and it was passed by the Finance Committee. Really what we should do is direct the Finance Committee to pass a bipartisan bill.

I looked at the last 22 years, and the Finance Committee has dealt with major Medicare and Medicaid reforms, every one of which passed with bipartisan support except one. Only once did we bypass the committee.

Unfortunately, the Democrat leadership said: We are not going to go

through the Finance Committee because we think it will report out something we do not like. So they came up with a partisan bill, and we are playing ping-pong.

I looked at the amendment we are considering right now. It is 102 pages. It was still warm off the press, and nobody on this side, with one exception maybe, had seen this amendment before it was offered yesterday.

This is the most important expensive expansion of Medicare in its history, and we find out that most of the expansion is not in Medicare but Medicaid, and the cost to States is in the billions of unfunded mandates to the States because we did not just expand Medicare, we expanded Medicaid, and we are telling the States they are going to have to come up with matches to provide this brand new free benefit. Thirty-one States are going to have to pay for half of this new benefit. There is an increase in S–CHIP match, a 100-percent match for some, but 31 States have a 74-percent match. They have to go up to 120 percent.

All of that is on the States, or at least their matching portion. The estimated cost of unfunded mandates is $70 billion.

We have not had a hearing. We have not had a markup. This may be a classic example of the best way not to mark up legislation that is this important.

Let us step back a little bit. Let us work with the Finance Committee. Let us work in a bipartisan way. We can certainly get that done. We have the month of August and part of September. We can report a positive bipartisan bill that can become law. What is before us, unfortunately, is well short of that goal.

The PRESIDING OFFICER. The Senator has used 2½ minutes.

The Senator from Massachusetts.

Mr. KENNEDY. I understand there are 4½ minutes remaining.

Mr. SCHUMER. There are 4 minutes 11 seconds.

Mr. KENNEDY. I yield 2 minutes to the Senator from North Carolina.

Mr. EDWARDS. Mr. President, I hope the Senate, given this opportunity, will do something about providing a drug benefit for all those Americans who desperately need it. This is obviously a compromise, but great work has gone into this effort and it is important we do something for all those people who need help.

I want to say a word about the underlying bill because while we are providing the prescription drug benefit, we need to make that benefit affordable, No. 1, and, No. 2, we need to do something about the cost of prescription drugs in this country.

The Presiding Officer, Senator SCHUMER, led the way, along with Senator MCCAIN, in doing something about the cost of prescription drugs in this country in getting generic drugs on to the marketplace, providing competition, and bringing down the costs for all Americans. In the HELP Committee, Senator COLLINS and I, working with Senator SCHUMER and Senator MCCAIN, built on that work that had already been done and provided a way to deal with the problem of brand name drug companies abusing the patent process to keep generics out of the marketplace.

What was happening was this: Brand name companies were filing frivolous patents. The result of filing those frivolous patents is the generics were not able to get into the marketplace. The brand names used the litigation process to keep generics out of the marketplace. What this underlying legislation does is to close those loopholes. It provides specifically for a mechanism to eliminate the use of frivolous patents to, in fact, give brand name companies protection when they have a real, new, creative, and innovative product, but at the same time it eliminates the patent and litigation abuses that have been occurring. It eliminates things such as brand name companies getting a patent on putting their pills in a brown bottle. Those are the kinds of abuses that have been occurring. In the past, they have kept generics out of the marketplace.

What the underlying legislation will do is it will save $60 billion for American consumers over the next 10 years. It is critically important that we do this drug benefit, but it is also critically important that we do something about the cost of prescription drugs for all Americans.

The PRESIDING OFFICER. The Senator has used his 2 minutes.

The Senator from Massachusetts.

Mr. KENNEDY. Five years ago, the first prescription drug legislation was introduced in the Senate. We have waited and the seniors have waited 5 years to see whether the Senate of the United States was going to take action. Under the leadership of Senator DASCHLE, we have the opportunity to do that. That is because the Democratic leader said so.

A week ago, the Republicans said no to the comprehensive program that was introduced by Senator GRAHAM and Senator MILLER that would have provided the comprehensive approach about which so many have talked.

I have listened to my friends on the other side of the aisle. They are using a favorite technique. That is to misrepresent and distort what is before the Senate, and then differ with it.

Senator GRAHAM has given the facts on this program. The basic issue before the Senate now, in the next few minutes, is whether we consider prescription drugs a priority for our senior citizens. If we vote with Senator GRAHAM and Senator SMITH, we are saying they are a priority.

This bill is not going to solve all the problems, but it is a downpayment. It is a downpayment on those prescription drugs. Every one of us who is going to support that position is committed to coming back next year and the year after to make sure we have the comprehensive issue. That is what is before the Senate: Do we take the problems of our senior citizens seriously or are we going to get behind some kind of facade and say let us put it off for another day?

Seniors have listened to that every single year since the time we passed Medicare in 1965. Now is the time to do something about it. This is a downpayment on prescription drugs, and I think it is time the Senate take that action, and take it today.

I understand our time is up.

The PRESIDING OFFICER (Mr. NELSON of Nebraska). The Senator from Tennessee controls 2½ minutes.

Mr. FRIST. Mr. President, we are about to vote on an amendment that very clearly costs more and covers fewer people than the tripartisan bill we debated last week.

I yield the remainder of our time to one of the sponsors of that tripartisan, more comprehensive plan that seniors deserve better than the underlying bill on which we are about to vote.

I yield the remainder of our time to the Senator from Louisiana.

The PRESIDING OFFICER. The Senator from Louisiana.

Mr. BREAUX. I thank the Senator from Tennessee for yielding.

Mr. President, now is the time to do something about prescription drugs, but this is not the thing to do with prescription drugs. How do I go back to Louisiana, as in every State, and tell the Medicaid Program in Louisiana that this bill is going to cost my State $85 million, which we do not have, through our State Medicaid Program to have the State pick up part of the costs of this prescription drug program? How am I going to go back to my State of Louisiana and tell the 240,000 people in Louisiana that, yes, Congress passed a prescription drug program but, guess what, you are not part of it. You are going to pay 95 percent of all of your costs of prescription drugs, and the Federal Government is going to pick up 5 percent.

Now is the time to do something about prescription drugs, but this Congress can do much better than this. What we ought to do is combine the best of what Government can do with the best of what the private sector can do, and come up with a program that fits Medicare that is universal, that is comprehensive, that covers all seniors, not just some of the seniors, and gives them all a program of which they can be proud. That is the concept of what Medicare was 37 years ago. We should not now divert from that concept and say one group of seniors is going to have one plan, the other seniors are going to get left by the wayside.

Certainly, I think this Congress can do better than that, and we will have the opportunity to do that, working with our colleagues over the August recess to put together that type of plan.

I yield the floor.

The PRESIDING OFFICER. The majority leader.

Mr. DASCHLE. I will use a minute of my leader time. I know we are scheduled to have a vote.

I simply remind my colleagues that almost every senior organization has endorsed the Graham amendment. Not one senior organization has endorsed the Republican plan. What does that tell us? The drug companies endorse the Republican plan. The insurance companies endorse the Republican plan. We do not find one senior organization endorsing the Republican plan. So what is wrong with this picture? Why is it that we cannot get bipartisan, overwhelming support for something every senior organization endorses?

This is our opportunity to make a downpayment, a first step, and we ought to support it. I applaud the Graham amendment. I hope our colleagues will look at it carefully and support it. This is a critical moment. Senior organizations agree. They endorse it. They want this to pass.

I yield the floor.

Mr. FRIST. Mr. President, has all time expired?

The PRESIDING OFFICER. The time is 29 seconds for the minority.

Mr. FRIST. Mr. President, a point of order will be filed very shortly.

In closing, it is important that people recognize the bill is inadequate. Seniors deserve more. A proposal has been discussed, the tripartisan bill, which is a more comprehensive approach for less money. This bill promises less, gives less, fewer benefits, for more money. I urge the defeat of the underlying bill.

I yield back the remainder of our time.

The PRESIDING OFFICER. All time has expired.

Mr. FRIST. I make a point of order that the Graham amendment No. 4345 violates section 302(f) of the Budget Act.

The PRESIDING OFFICER. The Senator from Florida.

Mr. GRAHAM. Pursuant to section 904 of the Congressional Budget Act of 1974, I move to waive the applicable sections of that act for purposes of the pending amendment, and I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The question is on agreeing to the motion. The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. NICKLES. I announce that the Senator from North Carolina (Mr. HELMS) is necessarily absent.

I further announce that if present and voting the Senator from North Carolina (Mr. HELMS) would vote ''no.''

The result was announced—yeas 49, nays 50, as follows:

[Rollcall Vote No. 199 Leg.]

YEAS—49

| | | |
|---|---|---|
| Akaka | Dodd | Mikulski |
| Baucus | Dorgan | Miller |
| Bayh | Durbin | Murray |
| Biden | Edwards | Nelson (FL) |
| Bingaman | Feinstein | Reed |
| Boxer | Graham | Reid |
| Byrd | Hutchinson | Rockefeller |
| Cantwell | Inouye | Sarbanes |
| Carnahan | Johnson | Schumer |
| Carper | Kennedy | Smith (OR) |
| Cleland | Kerry | Specter |
| Clinton | Kohl | Stabenow |
| Collins | Landrieu | Torricelli |
| Conrad | Leahy | Wellstone |
| Corzine | Levin | Wyden |
| Daschle | Lieberman | |
| Dayton | Lincoln | |

NAYS—50

| | | |
|---|---|---|
| Allard | Feingold | McConnell |
| Allen | Fitzgerald | Murkowski |
| Bennett | Frist | Nelson (NE) |
| Bond | Gramm | Nickles |
| Breaux | Grassley | Roberts |
| Brownback | Gregg | Santorum |
| Bunning | Hagel | Sessions |
| Burns | Harkin | Shelby |
| Campbell | Hatch | Smith (NH) |
| Chafee | Hollings | Snowe |
| Cochran | Hutchison | Stevens |
| Craig | Inhofe | Thomas |
| Crapo | Jeffords | Thompson |
| DeWine | Kyl | Thurmond |
| Domenici | Lott | Voinovich |
| Ensign | Lugar | Warner |
| Enzi | McCain | |

NOT VOTING—1

Helms

The PRESIDING OFFICER. On this vote, the yeas are 49, the nays are 50. Three-fifths of the Senators duly chosen and sworn not having voted in affirmative, the motion is rejected. The point of order is sustained and the amendment falls.

AMENDMENT NO. 4299, AS AMENDED

The PRESIDING OFFICER. Under the previous order, there are 2 minutes of debate equally divided before the vote on the Dorgan amendment.

Who yields time?

Mr. REID. Mr. President, I yield the time.

The PRESIDING OFFICER. All time is yielded. The question is on agreeing to the Dorgan amendment, as amended, Without objection, the amendment, as amended, is agreed to.

The amendment (No. 4299), as amended, was agreed to.

Mr. LEVIN. Mr. President, I move to reconsider the vote.

Mr. DASCHLE. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

CLOTURE MOTION

The PRESIDING OFFICER. Under the previous order, the Chair lays before the Senate the pending cloture motion, which the clerk will report.

The legislative clerk read as follows:

CLOTURE MOTION

We, the undersigned Senators, in accordance with the provisions of Rule XXII of the Standing Rules of the Senate, do hereby move to bring to a close the debate on Calendar No. 491, S. 812, the Greater Access to Affordable Pharmaceuticals Act of 2001.

Harry Reid, Jon S. Corzine, Byron L. Dorgan, Ron Wyden, Maria Cantwell, Paul S. Sarbanes, Debbie Stabenow, Richard J. Durbin, Tom Daschle, Daniel K. Akaka, Jack Reed, Kent Conrad, Zell Miller, Charles E. Schumer, Ernest F. Hollings, Hillary Rodham Clinton.

The PRESIDING OFFICER. There are 2 minutes of debate equally divided.

Mr. KENNEDY. Mr. President, this is an important issue, and the Senate is not in order. We have 2 minutes of discussion on this, and important comments will be made by our colleagues who deserve to be heard.

The PRESIDING OFFICER. The Senate will be in order.

Who yields time?

Mr. KENNEDY. Mr. President, I yield 1 minute to the Senator from New York.

The PRESIDING OFFICER. The Senator from New York.

Mr. SCHUMER. Mr. President, I think many of us regret that we could not succeed on the last amendment. But there are still things we can do, and must do, to make the cost of drugs lower for all citizens. The Schumer-McCain generic drug bill, the underlying bill, does just that.

For people who are paying $100 per prescription, they will pay $30 or $35 or $40. It will reduce the cost of overall drug spending by $60 billion. It will take some of the burden off our hard-pressed States as their Medicaid rates come down.

It will also apply to everybody: the young and the old, the senior citizen who needs these drugs, as well as the family with a child who cannot afford a desperately needed drug to make that child better.

It is supported by a large group, not only senior citizen groups and consumer groups and labor groups but GM and Caterpillar and Kodak and Ford.

Please let us move forward on this amendment. We have a lot to do in the area of making prescription drugs cheaper, and this is a very vital first step.

I urge my colleagues to vote for cloture.

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

Who yields time?

The Senator from New Hampshire.

Mr. GREGG. Mr. President, the underlying bill, which is the generic drug bill, has not really been addressed as we have moved through these debates on the overlying issue of whether we should have a prescription drug program for seniors.

This underlying bill still has many significant issues in it. Probably the most significant issue is the fact that it creates a new cause of action, a whole new set of lawsuits which have never been used before. This cause of action has never been tried before, never been used before, involving patent law and the FDA. It really will be a lawyer's relief act rather than an act which is going to relieve our citizens of the high costs of drugs.

We should have the opportunity to amend this bill. It can be improved. The basic concepts of this bill are good,

but the bill can be improved. That is why we should not have cloture at this time. We simply have not had a chance to properly address this underlying bill because it has been sort of sidetracked as we have addressed the prescription issue for seniors. So I would hope we would vote against cloture.

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

By unanimous consent, the mandatory quorum call has been waived.

The question is, Is it the sense of the Senate that debate on S. 812, a bill to amend the Federal Food, Drug, and Cosmetic Act to provide greater access to affordable pharmaceuticals, shall be brought to a close?

The yeas and nays are required under the rule.

The clerk will call the roll.

The legislative clerk called the roll.

Mr. NICKLES. I announce that the Senator from North Carolina (Mr. HELMS) is necessarily absent.

I further announce that if present and voting the Senator from North Carolina (Mr. HELMS) would vote ''No.''

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

The yeas and nays resulted—yeas 66, nays 33, as follows:

[Rollcall Vote No. 200 Leg.]

YEAS—66

| | | |
|---|---|---|
| Akaka | Durbin | Mikulski |
| Baucus | Edwards | Miller |
| Bayh | Feingold | Murray |
| Biden | Feinstein | Nelson (FL) |
| Bingaman | Fitzgerald | Nelson (NE) |
| Boxer | Graham | Reed |
| Breaux | Grassley | Reid |
| Byrd | Harkin | Rockefeller |
| Cantwell | Hollings | Sarbanes |
| Carnahan | Hutchinson | Schumer |
| Carper | Inouye | Sessions |
| Chafee | Jeffords | Shelby |
| Cleland | Johnson | Smith (NH) |
| Clinton | Kennedy | Smith (OR) |
| Collins | Kerry | Snowe |
| Conrad | Kohl | Specter |
| Corzine | Landrieu | Stabenow |
| Daschle | Leahy | Torricelli |
| Dayton | Levin | Voinovich |
| DeWine | Lieberman | Warner |
| Dodd | Lincoln | Wellstone |
| Dorgan | McCain | Wyden |

NAYS—33

| | | |
|---|---|---|
| Allard | Domenici | Lott |
| Allen | Ensign | Lugar |
| Bennett | Enzi | McConnell |
| Bond | Frist | Murkowski |
| Brownback | Gramm | Nickles |
| Bunning | Gregg | Roberts |
| Burns | Hagel | Santorum |
| Campbell | Hatch | Stevens |
| Cochran | Hutchison | Thomas |
| Craig | Inhofe | Thompson |
| Crapo | Kyl | Thurmond |

NOT VOTING—1

Helms

The PRESIDING OFFICER. On this vote, the yeas are 66, the nays are 33. Three-fifths of the Senators duly chosen and sworn having voted in the affirmative, the motion is agreed to.

The PRESIDING OFFICER. The question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed for a third reading, and was read the third time.

Mr. SCHUMER. Mr. President, before I get to discussion of the underlying bill, I would first like to thank Senator KENNEDY for his long-time leadership in ensuring access to affordable prescription drugs and especially for the strong fight he and Senators GRAHAM and MILLER have led here on the Senate floor for the past two weeks to add a meaningful prescription drug benefit to Medicare.

I would also like to thank Senator KENNEDY for his leadership in the HELP Committee in bringing Hatch-Waxman abuses to light, and for working with our Leader to move Schumer-McCain to the floor.

I also want to thank my colleague Senator MCCAIN, with whom I introduced the GAAP Act—as well our colleagues who introduced the bill in the house, Congressman SHERROD BROWN and Congresswoman JO ANN EMERSON—for all their hard work in drawing attention to this issue and pushing to get this bill passed this year.

When this Hatch-Waxman debate began, the Senate had two choices:

First, we could choose not to act, and let loopholes in the law continue to let drug prices skyrocket; or, second, we could pass this bill, close the loopholes, and bring down drug prices for all consumers.

Today, as the Senate approaches a vote on the Schumer-McCain bill, the Greater Access to Affordable Pharmaceuticals Act, the choice is clear.

Consumers win. PhRMA loses.

Not only was the bill passed out of committee on a strong bipartisan vote; not only have we heard strong messages of support from our colleagues on the floor; but the public, too, has spoken.

Major corporations have spoken. Labor has spoken. Senior groups have spoken. Consumer groups have spoken. Governors have spoken. Insurers have spoken. Pharmacists have spoken. Disease groups have spoken.

And they want to see action. They want to see the loopholes closed, and they want to see competition in the pharmaceutical marketplace.

Last week we also heard from CBO. Its message: This Bill will bring the relief the public wants. A conservative estimate shows the bill will save consumers $60 billion on drug costs over the next 10 years. And it will mean nearly $8 billion to the Federal Government. When we pass a Medicare drug benefit, it will mean even more savings.

Yesterday, we heard from the FTC. The report the Commission issued illustrates the abuses and tells Congress clear as day to plug up the loopholes in Hatch-Waxman. Their recommendations lead to one inexorable conclusion: pass Schumer-McCain.

The study makes clear that lawyers for the pharmaceutical industry have picked the Hatch-Waxman law clean and that the law needs significant and immediate reform.

The one group that doesn't want to see action is the group representing the name brand drug industry, PhRMA.

Why is the support so widespread? It is quite simple, really. As most things do, it comes down to cold, hard, cash. Drug expenditures have been rising at double digit rates—at nearly 18 percent per year—throughout the 90s.

These increases are simply unsustainable. And closing the loopholes in the patent laws is a common sense way to do something about them. They will mean real savings for consumers, businesses, States, and seniors.

We looked at 15 name-brand prescription drugs whose expiring patents will pave the way for billions of dollars in savings if blockbuster drug companies don't block the less expensive generic versions of these drugs from coming to market when they should.

These drugs are used to treat a variety of illnesses, including allergies, high cholesterol, asthma, and depression. You have probably seen commercials for some of them on TV—Claritin, Zocor, Zoloft. You might even remember Cipro from last fall's anthrax scare.

All of the drugs are scheduled to come off patent by 2005, which in English means that their less expensive versions can then go on sale.

The savings consumers will see on these drugs alone will be at least $4.15 billion annually by 2008 when these less expensive generics are fully phased in.

The biggest savings would come on the popular antidepressant Zoloft, which would see consumer savings of over $735 million if users opt to use the low cost generic version.

Other savings would come on the popular allergy medicine Claritin which would see savings of $501 million and on the cholesterol medicine Zocor, which would see savings of $577 million.

For the individual consumer, these projections are a dream come true.

If you look at what three popular pharmacy chains charge for five commonly prescribed drugs—Claritin, Cipro, Zocor, Zoloft, and Singulair—the individual consumer would see individual savings ranging from $42 to $75 a month on these drugs if generic alternatives were available.

Those filling a Singulair prescription at Walgreens, for example, to treat asthma would save about $54 on the generic version, paying only $34 as opposed to the current price of $87.99. Those filling a Cipro prescription at CVS to treat a urinary tract infection would save about $58, paying only $37 for a 20 pill supply as opposed to the current price of $95.59.

Zocor users would save $45, paying an estimated $70 for a 30 pill supply to control high cholesterol instead of the $115.53 they currently pay at Rite Aid.

The good news is that these numbers show that these drugs can one day be within reach of working Americans.

The bad news is that if we in Congress don't act, the chances of the blockbuster drug companies ever letting that happen are about as likely as the Yankees asking me to pitch Game 7.

We have heard time and time again from the big drug companies that patent protection is the key to innovating

new drugs. And as I have said time and time again, I could not agree more.

When drug companies innovate new drugs which benefit the patient, they are indeed preventing disease and saving lives. And they should be rewarded for doing so with a period of time to exclusively market the drug.

That is how the system is supposed to work and that's how it did work for a very long time.

But over the almost 20 years since Hatch-Waxman was passed, the drug companies have taken advantage of this system, devising new ways to extend the period of exclusivity they get when they patent a life-saving drug.

Today, I want to debunk some of the myths that the drug companies are perpetuating about the way they are using the patent laws and how the bill Senator MCCAIN and I have introduced will impact innovation in the pharmaceutical industry.

PhRMA has been circulating a list of claims that it has been calling a ''reality check.'' If a bank tried to cash that check, it would bounce.

Today, I want to shine a light on some of the PhRMA claims and ensure that the public knows the truth about what is going on in the drug industry.

The reality is that the drug companies are not spending all their time innovating new drugs, they are innovating new patents.

Instead of devising new ways to further medical science, they are focusing on furthering company profits. And that often means keeping the competition at bay.

But before I go on, I want to make clear that the Greater Access to Affordable Pharmaceuticals Act is not about robbing pharmaceutical companies of legitimate patent protection. It's not about theft of innovation, it's not about taking steps to enact laws that are not in the best interest of consumers.

In fact, it is about just the opposite. It is about examining competition in today's marketplace and revisiting a compromise which was struck nearly 18 years ago.

That compromise—the Hatch-Waxman Act—was intended to strike a balance and help save consumers billions of dollars on pharmaceuticals while rewarding brand name companies for their innovations.

But, in recent years, as the profits and stakes have become higher, as I said, the drug industry lawyers have picked the Hatch-Waxman law clean.

Companies are aggressively pursuing extended monopolies through filing weak or invalid patents and engaging in deals which the FTC is increasingly scrutinizing for anticompetitive motives.

We must put an end to these abuses.

The GAAP act does not intend to cut innovators off at the knees and it isn't a freebie for the generic drug industry. It is a pro-consumer bill that restores the balance intended by Hatch-Waxman.

The bill would limit the delay to one 30-month stay, for brand companies who file suit against a generic challenger. And the only patents eligible for this automatic stay would be the brand company's original patents.

For any patents listed after the brand drug is approved, the brand company would instead have to allow a court to decide whether their case merits a stay against generic competition.

It would prevent abuses like those we are discussing here today by reducing incentives to list patents that are not truly innovative, but instead are intended solely to extend monopolies.

The GAAP act reforms the so-called ''180-day rule'' by closing the loophole that enables a brand name company to pay a generic manufacturer to stay off the market, effectively putting the kibosh on competition.

Closing this loophole would prevent problems like the Hytrin case where Abbott Laboratories allegedly paid Geneva Pharmaceuticals $4.5 million per month to keep their hypertension drug off the market.

Now PhRMA will tell you that the law is not broken.

They will tell you that generics' share of the prescription market has increased from 18 percent in 1984 to 47 percent today.

But what they won't tell you is that generics have been stuck right around 45 percent for at least the past 6 years.

They will also tell you the games are not causing delays. But this chart shows that in 2000, 20 of the 30 drugs that were supposed to come off patent were delayed. In 2001, 23 out of 26 were delayed—88 percent of the drugs supposed to come off patent have been delayed, and most of these delays continue today.

PhRMA will tell you that ''patents on new products never delay generic versions of old ones.'' And if we were talking about patents on new drugs, that would be a true statement. But that is not what we are talking about. We are talking about new patents on old drugs.

The drug companies are coming up with different formulations or dosage forms, or other unapproved uses for old drugs whose patents have either expired or are about to expire in order to keep low-cost generic competitors off the market.

Since a generic has to show that it doesn't infringe on these new patents before it can enter a market, the drug companies buy some extra time and can extend their market exclusivity.

The changes Senator MCCAIN and I have proposed protect the brand companies from having their patents infringed on. But they also prevent the brand companies from abusing their patents and keeping generics off the market.

Let's take a look at some of the ''innovations'' that brand companies are listing in the FDA's Orange Book. It is these kinds of patents which can automatically delay competition.

For Ultram, a pain medication, the brand company has come up with a new dosing schedule—because it's a strong medication, they suggest that you could take one-fourth of a pill at a time and slowly build up to taking a whole pill. This is a dosing method which doctors and pharmacists have used on many drugs, in many instances. Yet, somehow, J&J got a patent on it. And now that patent is preventing generic competition.

On Fosamax, a drug for osteoporosis, the brand company has come up with a ''kit'' inside which the pills are arranged. This may be a great little kit, but its patent shouldn't be listed in the Orange Book where it can delay generic competition.

On Pulmicort, an asthma medication, the company has a patent on the container the drug is in—and that patent is listed in the Orange Book, where it cause an automatic 30-month stay against a generic.

On Thalomid, a cancer drug, the company has come up with not one—but two—computer programs that pharmacists can use when doling out prescriptions. Computer programs—not new drugs—computer programs.

Cyclessa, similar to Fosamax, has a patent on a kit which reminds you how to take the medicine. Well the generics can make their own kit.

A new piece of plastic shouldn't keep an old pill off the market.

These patents are real. Sure they may be on things that are novel, but they have nothing to do with the drug substance that is helping the patient. They are put in the Orange Book for the sole purpose of extending a company's monopoly.

PhRMA says the automatic 30 month stays never extend a patent. Well, they may not extend the amount of time a company can exclusively sell its particular container, but stacking them one after the other certainly extends the amount of time that the brand can keep its competition away from its customers.

And brand companies are getting better and better at timing the filing of their patent applications so that their new patents are issued just as their original patents are expiring. This practice causes a delay in generic competition, which is nothing less than a de facto extension of the original patent.

The delays caused by these additional patents are real, and they mean real money to consumers.

Take Neurontin, a drug used to prevent partial seizures. The basic patents expired in July of 2000. By listing patents which do not even relate to the originally approved form of the drug, the brand company has already succeeded in preventing generic competition for 21 months—a delay which may have already cost consumers over $800 million.

Further, by listing an additional patent with the FDA, and overlapping the automatic 30-month stays, the brand

company has effectively converted the original 30-month stay into a 54-month stay against generic approval, and they didn't even have to prove to a court that the new patent had any merit at all.

Or take, for example, Paxil, a drug with $2.1 billion in sales used to treat depression.

The basic active ingredient in Paxil was discovered back in the late 1970s by a Danish company, Ferrosan. But it wasn't marketed as a drug until Glaxo SmithKline licensed the original patents, did the clinical trials and got it approved by the FDA.

The company deserves a reward for bringing this old chemical to market, and under Hatch-Waxman, that reward was intended to be 5 years of market exclusivity—5 years during which a generic can't even put in an application on the drug.

But that wasn't enough for Glaxo. Before marketing the drug, they made a slight—and some would argue unnecessary—change to the basic compound in order to get a new patent, a patent which would add an additional 8 years to their monopoly their monopoly on a drug they didn't even discover.

Enter Apotex, the first generic challenger, which has gone to court claiming both that they do not infringe this new patent and that the new patent is invalid.

The case has been in court for 3½ years. Even if the companies come to resolution on this first patent, Glaxo has, in the meantime, applied for and been issued nine additional patents on Paxil—patents on yet other slightly different chemical substances, as well as patents on different formulations of the drug. The last of these patents expires in 2019.

These new patents have already invoked multiple 30-month stays against generic competition for Paxil. The automatic stays already granted add up to a delay of over 60 months. To be fair, if Glaxo prevails in court, these stays won't extend the time on their patent. But if Apotex wins the suit, these multiple 30-month stays will still be hanging out there preventing the generic from coming to market. And there's nothing to stop Glaxo from getting even more patents before these delays expire. Each year Glaxo can delay generic competition costs Paxil users up to $500 million.

What has happened with these drugs is that the drug companies saw their original patents about to expire and then created new ones to maintain their control over the market.

These kinds of practices have become the norm in the drug industry. These companies figure out a new way to keep the dollars rolling in, stooping to new lows every day to maintain their exclusivity rights.

I have heard from the big drug companies that they are in the failure business. Well, if it's the failure business that tops the Fortune 500 lists, sign me up.

The big pharmaceutical companies may make their claims, but we in Congress know the reality. Insurers and State Medicaid directors know the reality. Corporations know the reality. Our seniors know the reality.

The reality is that prescription drug prices are skyrocketing at a rate of 17 percent per year, generic penetration into the market has been stagnant for the past eight years, and loopholes in our patent laws are making the reality even worse.

They are crippling consumers and seniors who can't afford to purchase or take the drugs they need.

I agree that patent protection is important to saving lives, but I am sure those who dedicate their lives to finding new cures would also agree that a drug can do no good if it is financially out of the reach of patients who depend on it.

As Congress continues to wrestle with the complexity of crafting and paying for a meaningful Medicare prescription drug benefit, we must not overlook a straightforward solution to the escalating drug prices facing seniors, businesses, insurers and consumers today.

If we can ensure fair competition in the pharmaceutical marketplace—a level playing field for both brand and generic companies—then everyone will win.

I ask my colleagues in the Senate to vote yes today to S. 812: to vote yes for fair marketplace practices, vote yes for robust competition in the pharmaceutical marketplace, vote yes for access to affordable drugs—and vote yes for consumers.

I ask unanimous consent that further material be printed in the RECORD.

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

COMMONWEALTH OF PENNSYLVANIA,
OFFICE OF ATTORNEY GENERAL,
*Harrisburg, PA, July 24, 2002.*

Hon. JOHN MCCAIN,
*U.S. Senate,*
*Washington, DC.*
*Hon.* CHARLES E. SCHUMER,
*U.S. Senate*
*Washington, DC.*

DEAR SENATORS MCCAIN AND SCHUMER: As Attorney General of the Commonwealth of Pennsylvania, my constituents make me aware every day about how the high cost of prescription drugs adversely affects their lives. For that reason, I endorse the Greater Access to Affordable Pharmaceuticals Act of 2001 (S. 812) which you are sponsoring.

Pennsylvania has the second largest number of senior citizens of any state in the country. As you are well aware, Medicare does not provide a prescription benefit for most drugs. Therefore, senior citizens without private insurance, Medicaid or a special government program like Pennsylvania's PACE program, pay for prescription drugs themselves. Even though Pennsylvania's PACE program is a model for other state and federal senior citizen prescription benefit plans, the program does not cover every senior citizen. Thus, there are many Pennsylvania citizens living on fixed incomes who find that their income and standard of living is being eaten away by prescription drugs that can cost more than $100 a month. Senior citizens who are on two or three medications can face monthly prescription costs of $500 to $1000.

One factor in the high cost of prescription drugs is attempts by brand name drug makers to forestall entry by generic competitions. The Hatch-Waxman Act of 1984 was intended to spur generic competition with brand name pharmaceuticals. Unfortunately, brand name drug makers have been using that act in unintended ways to block or delay rather than foster generic entry. In particular, two provisions have been misused. One allows for an automatic 30-month stay of a generic's drug application upon the filing of a patent infringement suit by a brand name manufacturer. The other grants the first generic drug applicant for a drug a 180-day period of exclusivity before other generics can enter the market. These two provisions can be misused to delay generic entry by years. I believe that the Greater Access to Affordable Pharmaceuticals Act of 2001 provides a reasonable remedy for these abuses which balances the interests of consumers and the pharmaceutical industry.

While I believe that pharmaceutical companies should be compensated for their discoveries and innovation with appropriate patent protection, I object to those patents being lengthened by misuse of the current law. Passage of your bill will address those misuses. Thank you for your work and consideration on this matter.

Very truly yours,

D. MICHAEL FISHER,
*Attorney General.*

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STATE OF NEW YORK
OFFICE OF THE ATTORNEY GENERAL,
*New York, NY, July 24, 2002.*

Senator EDWARD KENNEDY,
*Washington, DC.*
Senator JUDD GREGG,
*Washington, DC.*

DEAR SENATORS KENNEDY AND GREGG: I write to express my support of the Greater Access to Affordable Pharmaceuticals Act of 2001 (''GAAP''), which amends the Hatch-Waxman Act of 1984 (the ''HWA''). I attach a Policy Statement which details the arguments made in this letter.

In the past several years, State Attorneys General have filed five antitrust suits to remedy the harm caused by brand-name and generic manufacturers' manipulation of loopholes in the Hatch-Waxman Act (''HWA''), thereby delaying generic entry. These are:

State of Ohio, et al. v. Bristol-Meyers Squibb, Co., concerning the anti-cancer drug Taxol127 (the ''Taxol litigation);

State of Alabama, et al. v. Bristol-Myers Squibb Co., et al., concerning the anti-anxiety drug Buspar127 (the ''Buspar litigation'');

State of New York, et al. v. Aventis, S.A., et al., concerning the anti-hypertension drug CD127 (the ''Cardizem litigation'');

State of Florida, et al. v. Abbott Laboratories, Inc., concerning the anti-hypertension drug Hytrin127 (the ''Hytrin litigation''); and

Commonwealth of Pennyslvania v. Schering-Plough Corp. et. al, concerning the potassium supplement K-Dur 20 (''the K-Dur 20 litigation'').

Through these cases, and other multi-state investigations, this Office has gained substantial experience with the shortcomings of the HWA. GAAP will be an important step in correcting these problems, and in ensuring consumers access to affordable medication.

GAAP specifically alleviates two critical problems caused by the HWA, which the cases brought by the Attorneys General illustrate:

The Thirty Month Stay—Under the HWA, brand-name manufacturers list unexpired patents with the FDA in a compendium known as the ''Orange Book.'' The FDA does not evaluate the merits of the listing, and relies on the manufacturer's representations as to the listing's validity. An Orange Book listing carries a rich reward—an automatic 30-month stay against certain potential generic entrants whome the manufacturer has sued for patent infringement, despite the absence of any court finding that the infringement claim has any validity whatsoever.

Problems caused by this provision are illustrated by the facts of the Buspar litigation. In that case, Bristol-Myers Squibb (''BMS'') sought to extend its patent monopoly for its profitable buspirone anti-anxiety medication. As BMS's buspirone patent was about to expire, BMS received a patent for a metabolite that the body naturally produces—which BMS claimed was the result of introducing buspirone into the body. BMS then had the FDA list the patent in the Orange Book eleven hours before the first generic alternative to buspirone was to otain FDA approval. Although BMS explicitly stated to the United States Patent Office that its new patent did not cover buspirone, it Orange Book entry made precisely the opposite claim. As a result, generic makers of buspirone were barred from the market, and consumers paid millions more than they would have paid, had a generic alternative been available.

GAAP helps alleviate this problem in two essential ways. First, a brand-name manufacturer will no longer be able to obtain the 30-month stay for follow-on patents. Had GAAP been in place, BMS's scheme would not have been possible. Second, in certain instances, GAAP allows generic manufacturers to challenge fraudulent Orange Book listings in court.

The 180-day exclusivity period—HWA gives certain generic entrants who are the first to seek FDA approval for their drugs a 180-day exclusivity period during which no other generic alternative to the same brand-name drug may come to market. While this provision was intended to provide an incentive for generic entry, in several instances, brand-name manufacturers have paid their generic counterparts to staff off the market, without generic forfeiting its right to exclusivity. This creates a perpetual bar to entry by other generics. Thus, in both the Hytrin and Cardizem cases, no generic version of the brand-name drug could be sold until litigation and investigations by the Federal Trade Commission led the parties to cancel their agreements.

GAAP would render impossible such permanent barriers to generic entry. Under the pending bill, if generic entry does not take place within sixty days of the generic drug's approval, the next generic manufacturers in line may enter the market. Conduct now being challenged in costly and time-consuming litigation would simply not have taken place had GAAP been in effect.

Case-by-case and after-the-fact investigations and litigation are no substitute for fixing the problems inherent in the HWA. For that reason, I applaud the efforts of Senators Schumer and McCain, and those of other GAAP sponsors, and urge the speedy passage of this important and beneficial bill.

Sincerely,

ELIOT SPITZER.

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*July 24, 2002.*

STATEMENT ON S. 812, THE GREATER ACCESS TO AFFORDABLE PHARMACEUTICALS ACT OF 2001

In a letter issued today, Attorney General Eliot Spitzer has written in support of the Greater Access to Affordable Pharmaceuticals Act of 2001 (''GAAP''), introduced by Senators McCain and Schumer to amend the Hatch-Waxman Act of 1984 (the ''HWA''). This statement explains in greater detail the arguments set forth in that letter, and the problems with the HWA that led to its submission.

Protecting consumers' access to quality health care at affordable prices is one way in which the State Attorneys General serve the American public. To that end, State Attorneys General have, in recent years, brought five antitrust actions arising, in whole or in part, out of efforts by brand-name drug manufacturers to manipulate the HWA's procedures to keep cheaper generic drugs off the market, and to maintain monopoly pricing long after the brand-name drug's patent expiration date. These are:

State of Ohio, et al. v. Bristol-Myers Squibb, Co., concerning the anti-cancer drug Taxol® (the ''Taxol litigation'');

State of Alabama, et al. v. Bristol-Myers Squibb Co., et al., concerning the anti-anxiety drug Buspar® (the ''Buspar litigation'');

State of New York, et al. v. Aventis, S.A., et al., concerning the anti-hypertension drug Cardizem CD® (the ''Cardizem litigation'');

State of Florida, et al. v. Abbott Laboratories, Inc., concerning the anti-hypertension drug Hytrin® (thee ''Hytrin litigation''); and

Commonwealth of Pennsylvania v. Schering-Plough Corp. et al, concerning the potassium supplement K-Dur 20 (''the K-Dur 20 litigation'').

As described in more detail below, these cases starkly illustrate the weaknesses of the HWA.

The New York Attorney General has reviewed the terms of GAAP against the backdrop of this experience, and believes that this bill represents a substantial step towards correcting the HWA's flaws, and restoring the appropriate balance that Congress initially intended between protecting innovation and ensuring affordable drug prices. Indeed, much of the misconduct challenged in these cases would not have been possible had GSSP been in force.

By this statement and in his letter, the Attorney General highlights the need for reform. After a brief summary of the present law, the statement describes state enforcement actions in greater detail, and show how GAAP effectively closes loopholes that allowed for the misconduct addressed by these actions.

By passing GAAP, Congress can protect consumers, lower drug prices, and avoid the need for time-consuming and expensive litigation. For those reasons, the New York Attorney General has strongly urged that Congress enact GAAP into law.

*I. Generic Drugs and the Hatch-Waxman Act*

Generic drugs are bioequivalents of brand-name drugs in dosage, form, safety strength, route of administration, quality, performance characteristics and intended use. They tend, however, to be priced significantly below their brand-name equivalents. An increase in the use of generic drugs would be an important step in controlling the rising costs of pharmaceuticals, and of health care in general.

In 1984, Congress passed the HWA, which streamlined the regulatory approval process for generic drugs. In particular, the Act permits the manufacturer of a new generic drug to submit an Abbreviated New Drug Application (''ANDA''), which may rely on the safety assessments of the New Drug Application (''NDA'') filed by the ''pioneerr''—i.e., brand-name—drug's manufacturer. An ANDA entails far less expense than an NDA, and can be approved by the FDA far more expeditiously.

Although it is not necessary for purposes of this statement to deve into all the intricacies of the HWA, two elements—the 30 month stay and the 180-day exclusivity period—play an important role in allowing pharmaceutical companies to delay generic entry and deny consumers the benefits of competition, despite the good intentions of the HWA's drafters. These elements are addressed below.

*II. The HWA's Loopholes*

*A. The 30 Month Stay*

The Food and Drug Administration (''FDA'') maintains a list of pharmaceutical patents commonly known as the ''Orange Book.'' Upon receiving FDA approval for a brand-name drug, the manufacturer must inform the FDA, in substance, of all patents that would be infringed by the non-licensed sale of a generic equivalent for that drug. The FDA then includes those patents on its Orange Book list. Before marketing a generic drug, an ANDA filer must certify that the listed patents will not prevent sale of the generic version, for any of several reasons, and notify the brand-name manufacturer of its certification. One such certification—the so-called ''paragraph IV certification''—attests that the pioneer drug patent ''is invalid or will not be infringed by the manufacture, use, or sale of the new drug for which the application is submitted.'' Once an ANDA applicant—the generic manufacturer—submits a paragraph IV certification, the brand-name manufacturer has 45 days within which to bring a patent infringement action against the applicant. If the brand-name manufacturer initiates such a suit, the FDA's approval of the NADA is automatically delayed for 30 months.

The 30 month period is referred to as a ''stay.'' More accurately, it is an injunction that takes effect immediately on the brand-name manufacturer's filing of its case, regardless of the strength or weakness of its patent infringement claims, and without any judicial oversight whatsoever. The statutorily-created injunction relieves the brand-name manufacturer of the responsibility of satisfying a court that it is entitled to a preliminary injunction against generic entry—a threshold that the brand-name manufacturer would have to meet in the absence of the HWA. The FDA itself lacks the expertise or the resources to evaluate the validity of patents identified for listing in the Orange Book and, in consequence, lists patents solely in reliance on the brand-name manufacturer's listing request.

Given the minimal standard for placement in the Orange Book, and the financial rewards of such a listing—a 30-month roadblock to generic entry—it is no surprise that drug manufacturers go to extraordinary lengths to insure that the FDA list any unexpired patent covering a profitable brand-name drug. Often, as the initial patent for a drug's active ingredient nears expiration, the brand-name manufacturer will seek ''secondary patents'' on specific aspects of the drug, such as mode of delivery—the validity of which may be dubious, at best—and which the manufacturer claims apply to previously approved uses of the drug. Armed with such new patents, manufacturers have been able to suppress generic alternatives, which would otherwise be available to consumers.

The cases brought by the States illustrate the potential for misuse inherent in the 30 month stay provision:

The Buspar litigation concerns, in part, an effort by Bristol-Myers Squibb (''BMS'') to extend its patent monopoly for the profitable buspirone anti-anxiety medication. As BMS's patent for buspirone was about to expire, it received a patent for a metabolite that the body naturally produces—BMS claimed—as

the result of introducing buspirone into the body. BMS then had the FDA list the patent in the Orange Book eleven hours before the first generic ANDA was to be approved. Although BMS explicitly stated to the United States Patent Office that its new patent did not cover buspirone, its Orange Book entry made precisely the opposite claim. As a result, generic makers of buspirone were barred from the market, and consumers paid hundreds of millions of dollars more than they would have paid, had a generic alternative been available.

A federal district judge found that BMS's conduct before the FDA was improper and ordered the patent delisted, thereby permitting the sale of generic alternatives. On appeal, the Federal Circuit held that, as a matter of procedure, generic entrants could not sue to obtain delisting from the Orange Book, and vacated the order without evaluating BMS's behavior before the FDA. This past February, yet another federal district judge found BMS's Orange Book filing to be ''objectively baseless,'' and an effort to ''justify taking property that belongs to the public.''

The Taxol litigation addresses efforts by BMS to preserve its monopoly on Taxol, an important treatment for breast cancer and other tumors that the federal government itself initially developed and then licensed to BMS for five years. In their complaint, the States allege that BMS fraudulently obtained patents for Taxol, listed them in the Orange Book, and then filed litigation for the sole purpose of delaying generic entry into the market via the HWA's stay provision. It took nearly three years before a court rejected BMS's claims, during which cancer patients were deprived of access to less expensive generic alternatives.

In a particularly egregious manipulation of the HWA, BMS entered into an arrangement with generic manufacturer American Bioscience, Inc., by which BMS consented to be subject to a court-ordered temporary restraining order, issued upon ABI filing a lawsuit demanding that BMS list one of ABI's Taxol patents in the Orange Book. Based on the order, BMS had the FDA list ABI's patent in the Orange Book—in an apparent effort to clothe the fraudulent listing with the seeming legitimacy of a court decree. After generic manufacturers and the Federal Trade Commission filed papers challenging the collusively obtained order, the Court ruled that ABI was not entitled to sue BMS to obtain an Orange Book listing, and dismissed the case.

GAAP takes important steps towards resolving the problems addressed by these cases, in two ways. First, GAAP limits drug manufacturers to a single 30 month stay per drug. As initially drafted, GAAP eliminated the 30 month stay altogether. While the original might better encourage pharmaceutical competition, the compromise version passed by the Senate Health, Education, Labor and Pensions Committee represents a substantial improvement over the present legal regime.

In the Buspar case, BMS was able to obtain a 30 month stay for the third patent it claimed barred generic versions of buspirone, after the initial patent had expired and without the need to obtain a court ruling on infringement. GAAP instead requires drug manufacturers that obtain such follow-on patents to protect their intellectual property in the same manner as other patent holders—by going to court, proving that their case has a likelihood of success, and securing an injunction against the alleged infringer. That option provides recourse for genuinely aggrieved patent holders, while prohibiting brand-name manufacturers from gaining an advantage, to the detriment of consumers, solely on the basis of their own assertion of a valid patent and their willingness to file suit.

Second, GAAP would allow generic competitors to seek declaratory relief on the validity of an Orange Book listing at the time an NDA is approved—when, under GAAP, the brand-name manufacturer would still be entitled to a thirty month stay. As the Federal Circuit's Buspar ruling demonstrates, the FDA's decision to list a patent in the Orange Book may not be subject to any judicial review under existing law, and frivolous or fraudulent listings can become impassable roadblocks to generic entry. Although a previous version of the bill would have afforded even greater opportunity for challenging Orange Book listings, this aspect of GAAP would still provide potential entrants with the means to challenge such roadblocks in court, in those cases where the thirty-month stay would still apply.

*B. The 180-Day Exclusivity Period*

HWA gives the first ANDA filer with a paragraph IV certification a 180-day exclusivity period following a court ruling permitting entry, during which no other manufacturer of a generic version of the same drug could enter. This provision provides an incentive for generic manufacturers to challenge brand-name patents. But as currently structured, the HWA provides a means for brand-name and generic manufacturers acting in collusion to bar new generic competitors for significantly longer periods. In effect, the brand-name manufacturer simply ''buys'' the first ANDA filer's agreement neither to enter the market nor to transfer its exclusivity rights, thereby creating a perpetual bar against other generic competitors. This can have a profound impact on drug prices, because generic drugs are typically not priced at their full discount until the exclusivity period has expired and additional generic competitors are able to enter the market.

Cases brought by the Attorneys General illustrate this abuse of the HWA:

The Cardizem litigation arises from an agreement between brand-name manufacturer Hoechst Marion Roussel, Inc. (''HMRI'') and generic drug manufacturer Andrx Corporation (''Andrx''), under which HMRI paid Andrx nearly $90 million in exchange for Andrx's agreement to keep its cheaper alternative to HMRI's Cardizem CD heart medication off the market. As part of the agreement, Andrx agreed to stay off the market while still prosecuting its ANDA—so as to maintain its right to the 180-day exclusivity period granted the first-filer under the HWA—and pledged not to transfer or sell its exclusivity rights. Thus, the agreement effectively barred any further generic entry. Only after private suits challenged this arrangement and the FTC opened an investigation, did Andrx enter the market, thereby removing the block against additional generic competitors. A federal district court has since held the HMRI/Andrx agreement to constitute a per se violation of the antitrust laws. (That ruling is now on appeal.) In yet another case, the Court of Appeals for the District of Columbia Circuit reinstated a generic manufacturer's claim challenging the HMRI/Andrx agreement.

The Hytrin litigation challenges an arrangement under which Abbot Laboratories (''Abbott'') paid generic manufacturer Geneva Pharmaceuticals, Inc. (''Geneva'') over $60 million, in exchange for Geneva's agreement not to market a generic version of Abbot's hypertension medication, Hytrin. In that agreement—as in Cardizem—Geneva promised not to give up the 180-day exclusivity period as the first ANDA filer. No other generic manufacturers were able to enter the market, and Geneva and Abbott shared the profits from the resulting exclusion of competition. The district court held this arrangement per se unlawful. (That ruling, too, is on appeal.)

Under GAAP, the first ANDA filer loses its right to exclusivity if it does not come to market within 60 days of the date on which it is declared eligible to do so by the FDA. Further, the 180-day exclusivity period runs from either the date of a final court decision on the patent infringement action, or the date on which a settlement order or consent decree is signed by the court, whichever is earlier. These provisions should severely limit the ability of the brand-name manufacturer and first generic entrant to act collusively to bar other generic alternatives from reaching consumers.

*III. Conclusion*

In the examples above, antitrust suits seeking full recompense for injured consumers helped cause the wrongdoers to cease their misconduct, and may aid in deterring further abuses. But antitrust enforcement on a case-by-case basis will not solve the problems underlying the lawsuits, which are inherent in the HWA itself. As enacted, the HWA affords unscrupulous manufacturers with both means and incentive to extend brand-name monopolies beyond the patent exclusivity period set by Congress.

Not all such misconduct comes to the attention of law enforcers or private plaintiffs; antitrust litigation is time-consuming, expensive and risky; and pharmaceutical companies are learning from previous legal setbacks, and are adopting ways to exploit the present law that may be less vulnerable to antitrust challenges—yet still deleterious to the goal of harnessing competition to provide affordable health care. Amending the HWA so as to remove available avenues for anticompetitive and anticonsumer actions, rather than relying on individual lawsuits for costly after-the-fact remedies, is a far more effective means to protect consumers.

WHOSE SIDE ARE YOU ON?

IN FAVOR OF THE CURRENT SYSTEM

Pharmaceutical Research and Manufacturers Association (PhRMA)

IN FAVOR OF CLOSING THE LOOPHOLES

General Motors Corporation
Ford Motor Company
Daimler Chrysler
International Union, UAW
AFL–CIO
AFSCME
Verizon
Wal-Mart
Kodak
Motorola
Caterpillar, Inc.
K-Mart
Georgia-Pacific
Albertsons
UPS
Kellogg's
Sysco
Constellation Energy Group
Ahold USA
Woodgrain Millwork
Weyerhaeuser
National Committee to Preserve Social Security & Medicare
AARP
Consumer Federation of America
Families USA
Gray Panthers
National Consumer League
Consumers Union
Public Citizen
U.S. PIRG
Governor Howard Dean (VT)
Governor William Janklow (SD)
Governor Bob Wise (WV)

Governor M.J. ''Mike'' Foster, Jr. (LA)
Governor Don Siegelman (AL)
Governor Gary Locke (WA)
Governor Bob Holden (MO)
Governor Jeanne Shaheen (NH)
Governor Tony Knowles (AK)
Governor Benjamin Cayetano (HI)
Governor Ronnie Musgrove (MI)
Generic Pharmaceutical Association (GPhA)
American Association of Health Plans
Aetna
Blue Cross Blue Shield Association
Anthem Blue Cross and Blue Shield
Health Insurance Association of America
Kaiser Permanente Health Plan
HIP
Association of Community Health Plans
National Association of Health Underwriters
National Association of Chain Drug Stores
Advance-PCS
Caremark Rx
American Academy of Family Physicians
National Committee to Preserve Social Security and Medicare
Academy of Managed Care Pharmacy
Alliance of Community Health Plans
National Organization for Rare Disorders
National Hemophilia Foundation
Alpha One Foundation
Gay Men's Health Crisis
Center for Medical Consumers
Treatment Action Group
Interstitial Cystitis Association
The Narcolepsy Network
Pacific Business Group on Health
Midwest Business Group on Health
Washington Business Group on Health
Food Marketing Institute

Mr. KENNEDY. Mr. President, I am pleased today that the Senate has passed the Schumer-McCain bill. This bill is the Senate's answer to the public's demand for action on lower drug prices. The bill would end—once and for all—the drug industry's abuses and close legal loopholes the industry exploits to block competition and keep drug prices artificially high.

The record is clear that the pharmaceutical industry uses loopholes in the landmark Hatch-Waxman Act to drive up the cost of prescription drugs. Each and every day, pharmaceutical companies exploit those loopholes to maintain their monopoly over their drugs, and to keep more affordable generic drugs off the market. America's consumers pay the price, and today the Senate has said loud and clear—it's time to stop the abuses.

Just yesterday, the Federal Trade Commission recommended legislative changes that are incorporated in Schumer-McCain. And here today, the Senate has approved the Schumer-McCain reforms on a strong bipartisan vote. The Senate has spoken and it has said: Stop these abuses. Stop depriving our seniors and our uninsured of safe and effective drugs that they can afford. Stop driving up the cost of health care for employers and health plans and consumers by delaying lower cost generic drugs.

What is it we have done today? Schumer-McCain amends the Hatch-Waxman Act, which provides for the approval of generic drugs. The Hatch-Waxman Act has been a tremendous success in promoting competition and innovation in the pharmaceutical industry. Indeed, both the brand drug and generic drug industries have flourished under it.

Yet there are clearly weaknesses in the Hatch-Waxman Act. Today, of the top 15 best-selling drugs potentially subject to generic competition, the basic patents on at least five have long expired. Their exclusive rights to market their drugs have passed. Yet there is no generic competition. The system needs repairs.

Prescription drug costs are spiraling out of reach of the elderly and uninsured. They are draining the health care budgets of State governments, employers and labor unions. All because brand-name drug companies have exploited loopholes in the law to pocket windfall profits.

Drug prices have skyrocketed at double digit rates annually since 1996, and experts expect this trend to continue. This drug price inflation has been far in excess of the rate of consumer price inflation. And experts agree that spiraling drug prices have accounted for almost two-thirds of growth in drug spending especially the higher prices of new, aggressively promoted drugs.

Generic drugs are clearly part of the answer. Simply put, a 1 percent increase in generic use can decrease the Nation's yearly bill for drugs by a billion dollars. And ensuring the timely approval of generic drugs could save consumers $60 billion over the next 10 years.

These savings are easy to understand. For patients and health plans alike, the costs of brand-name drugs are four times higher than for their generic equivalents. That difference is even higher for the elderly and uninsured, who must often pay full price for their medicines. On average, a month's supply of a generic drug costs a patient $4 and the health plan $16; the costs for a brand drug are 4 times higher: $16 for the patient, $64 for the plan. For the uninsured, and seniors who lack prescription drug coverage, the full costs are either $20 for the generic or $80 for the brand drug.

The antidepressant Prozac is a clear example. Generic companies challenged and defeated a Prozac patent. Today, you can buy 30 generic Prozac tablets for less than $30—less than a third of what brand-name Prozac will cost you.

But some pharmaceutical companies game the system by listing spurious patents with the FDA—patents on unapproved uses, unapproved compounds, or formulations that they don't even market. Then they get automatic 30 month stays delaying approval of generic drugs.

For example, Neurontin is a drug approved by FDA to treat epilepsy. In 2001, Neurontin sales exceeded $1.1 billion. The basic patent on the drug compound expired in 1994, and the patent on the approved method of use expired in 2000. But the company had listed two additional patents on the drug that the generic companies had to certify were invalid or not infringed. These two patents were on an unapproved compound—just the addition of a water molecule to the basic compound—and on an unapproved use, the treatment of neurogenerative disease, patents that never should have been listed at FDA.

The first 30-month stay needlessly delayed generic competition for half a year. But before that stay was up, Neurontin's manufacturer listed a third formulation patent with FDA. The generic applicant had to certify to that patent as well and another 30 month stay will delay generic approval until December 2002. In total, a generic version of this drug will be delayed 30 months, at a cost to consumers of $1.4 billion.

In effect, Neurontin's manufacturer blocked generic competition by obtaining a patent for simply adding a water molecule to its basic drug. That patent meant months of delay in which that company enjoys huge profits while preventing affordable generic versions from reaching the market. This single water molecule will cost consumers at least $1.4 billion in savings for their prescription drugs. We still do not know when a generic will get to market, but we do know that Schumer-McCain will make it far more likely that a generic Neurontin will be available in 2003.

To address the abusive mis-listing of patents at FDA, the ever-greening of patents, and the stacking of successive 30 months stays, Schumer-McCain includes a series of provisions designed to work together to close the loopholes and foreclose future gaming of the system. Schumer-McCain does several things.

First, Schumer-McCain permits only one 30-month stay per generic drug application, and only on those patents listed with the FDA within 30 days of brand drug approval.

Second, for the patents for which no 30-month stay is available, Schumer-McCain provides an expedited process whereby a patent owner can, within 45 days, seek a preliminary injunction to defend its patent against a particular generic drug applicant. If a patent owner elects not to defend its patent against that generic applicant as part of this process, it cannot later enforce that patent against that applicant or others for the manufacture, distribution, sale, or use of that applicant's generic drug. This provision does not preclude the patent owner from enforcing its patent against anyone else, including a subsequent generic applicant that challenges the patent in its generic application. Schumer-McCain includes related provisions that enhance protections for patents. One requires a generic applicant who challenges a patent to provide better information to the patent owner for it to assess the merits of the generic applicant's patent challenge, while the second clarifies that a preliminary injunction in a drug patent infringement case may be granted notwithstanding the availability of monetary damages.

Third, Schumer-McCain clarifies the information that must be filed with FDA on patents that claim a drug or an approved method of using a drug, so that it will be more difficult for drug manufacturers to list inappropriate patents or incorrect or incomplete information with FDA.

Fourth, Schumer-McCain enforces this requirement to list patent information at FDA by saying that failure to list a patent bars the patent owner from enforcing the patent against a generic applicant or others for the manufacture, distribution, sale, or use of a generic drug. This provision does not bar enforcement of the patent against anyone else, in particular against any brand drug company or others for the manufacture, distribution, sale, or use of a brand drug that infringes the patent. In addition, the provision provides that corrections to patent information may be made after it is published by FDA in the unusual circumstance of an inadvertent mistake or clerical error.

Finally, Schumer-McCain allows generic applicants to sue brand drug companies to delist patents or correct patent information on patents that can trigger 30 month stays. This provision allows for the correction of misinformation in and the removal of incorrectly listed patents from FDA's Orange Book.

A second tactic used by brand drug companies is to collude with a generic drug manufacturer to block other generic versions of the drug from getting to consumers. Under the Hatch-Waxman Act, the first generic drug company to challenge a patent on a brand drug has the exclusive right to market its drug for 6 months before any other generic can compete. In some cases, brand drug companies have paid such a generic drug company not to exercise its 6-month right, thereby blocking other generic versions of the drug.

For example, terazosin hydrochloride is used to treat high blood pressure and enlarged prostate. Consumers used about $540 million of the drug in 1998. A generic was scheduled for market in April 1999, but Abbott Laboratories reached sweetheart deals with two generic companies, Zenith Goldline Pharmaceuticals and Geneva Pharmaceuticals, to keep their generic products off the market. That in turn blocked other generics from getting to market for 16 months. Abbott paid Zenith a lump sum of $3 million plus $6 million per quarter under their agreement, while Geneva received $4.5 million per month. The Federal District Court in Florida held that the agreements were illegal under antitrust laws. The result was that consumers paid hundreds of millions more than they should have because generic competition was delayed.

Schumer-McCain closes this loophole and ensures generic challenges to invalid patents. How does it do this? It provides for six situations in which a generic drug company with the 180 days of exclusivity must forfeit the exclusivity—for example, if the generic is found by the Federal Trade Commission to have colluded with a brand drug company, if it withdraws its application, or otherwise delays in getting to market. When the first generic forfeits the 180 days, the generic applicant that is next ready to be approved and go to market can go to market, and consumers immediately enjoy generic competition and lower costs.

If that generic applicant is the second generic to have challenged a patent, it gets the 180 days of exclusivity and subsequent generic applicants are delayed from getting final FDA approval for 180 days. If the generic applicant ready to go to market is not the second generic to have challenged a patent, but rather is the third or the fourth or the fifth, the 180 days of exclusivity disappears and FDA may approve subsequent generic applicants as soon as they are ready.

Either way, consumers benefit because the first generic that is ready gets to market as soon as it can. In addition, the 180 exclusivity remains as an incentive for the second generic applicant to challenge a patent, an incentive that is vital to maintain especially for those situations when a patent must be shown to be invalid. In this way, Schumer-McCain speeds generic drugs to market while preserving the 180 day incentive—an incentive that has encouraged generic companies to break patents on several high-priced blockbuster drugs and saved consumers billions of dollars.

Schumer McCain also makes some other adjustments to the 180-day exclusivity provision. First, it clarifies that the court decision that can start the 180-day period running is the earlier of the date of a final decision from which no appeal, other than a petition for review by the Supreme Court, has been or can be taken or the date of a settlement order or consent decree that includes a finding that the patent at issue is invalid or not infringed. This provision also clarifies that it is any such decision on the patent that will trigger the 180-day period, not necessarily one in the case to which the generic applicant with the exclusivity was a party. Second, the bill clarifies that the 180-day period is available only to the first applicant to challenge a patent on a brand drug, and that subsequent applicants that challenge different patents on that brand drug do not also receive a 180-day period of exclusivity, unless the first forfeits its exclusivity, as provided for by the bill. Third, the bill clarifies that the 180-day period is only applicable to a generic applicant that challenges a patent if that applicant is sued for patent infringement.

Finally, Schumer-McCain includes a provision that is intended to forestall frivolous challenges by brand companies to the legal legitimacy of FDA's bioequivalence regulations, challenges that have substantially delayed the approval of some generic drugs. The court challenges by brand companies have taken several forms, including challenges to the specifics of the FDA's regulations and the FDA's authority to issue the regulations, and have involved drug products such as asthma inhalers and topicals. The challenges themselves frequently start as administrative challenges in the form of citizen petitions and progress to legal challenges. Each challenge delays approval or marketing of the generic, and each one consumes valuable FDA resources in defending against these fundamentally frivolous lawsuits. These lawsuits are also filed notwithstanding the holdings of different circuit courts of appeal upholding the regulations.

The provision says that FDA's current regulations on bioequivalence shall continue in effect as legitimate exercises of FDA's statutory authority. The provision allows FDA to amend its regulations through rulemaking, but it does not preclude judicial review of those amended regulations, nor judicial review of an application of either the current or amended bioequivalence regulations. Finally, the provision makes it clear we are not changing FDA's authority under the Federal Food, Drug, and Cosmetic Act over biological products.

The Hatch-Waxman Act has been a tremendous success in stimulating both competition and innovation. But there are weaknesses in this law that Schumer-McCain rightly closes. Drug companies are entitled to fair profits on their research and innovation. But when patents expire, those companies must innovate to succeed and help patients, not block competition to their old drugs.

I also want to applaud the inclusion of a number of important amendments which will help lower drug costs and ensure drug coverage for all Americans, including Senator STABENOW's amendment to help States negotiate lower prices and Senator ROCKEFELLER's amendment to provide emergency Medicaid relief to States in fiscal crisis.

Schumer-McCain restores the balance of the original Hatch-Waxman Act, ends the abuses that block competition, and closes the gaps in the Hatch-Waxman Act. The Senate has said: Stop the abuses. Now the House of Representatives must act with us.

I thank my health staff for all their hard work on this legislation—David Dorsey, David Nexon, Paul Kim and Michael Myers on S. 812. David Dorsey made a particularly important contribution to this effort, and deserves high praise for his work. I also want to particularly recognize the hard work and unwavering dedication of Missy Rohrbach with Senator SCHUMER. And the record would be incomplete without noting the very important contributions of Carlos Fierro and Jeanne Bumpus with Senator MCCAIN, Kyle Kinner with Senator EDWARDS, Michael Bopp with Senator COLLINS, Debra Barrett with Senator DODD, Sean Donohue

with Senator JEFFORDS, Anne Grady with Senator MURRAY, Steve Irizarry with Senator GREGG, and Dean Rosen with Senator FRIST. And I am so grateful, too, for the excellent contributions of Jane Oates, Stacey Sachs, Brian Hickey, Scott Berkowitz, Amelia Dungan, Kent Mitchell, Jeffrey Teitz, Melody Barnes, Marty Walsh, Jim Manley, Stephanie Cutter and so many others who made this legislation possible.

I ask unanimous consent that letters of support for S. 812 be printed in the RECORD.

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

COALITION FOR A COMPETITIVE PHARMACEUTICAL MARKET,
*Washington, DC, July 10, 2002.*

Hon. EDWARD M. KENNEDY,
*Chairman, Senate Health, Education, Labor and Pensions Committee,*
*U.S. Senate, Washington, DC.*

DEAR MR. CHAIRMAN: As a broad-based coalition of large employers, consumer groups, generic drug manufacturers, insurers, labor unions, and others, we are writing to advise you of our strong support for the Edwards/Collins amendment to S. 812, the Greater Access to Affordable Pharmaceuticals Act. We believe it is critical that Congress act this year to pass legislation that would eliminate barriers to generic drug entry into the marketplace. The legislation you will be marking up today clearly would accomplish this long-overdue need.

Prescription drug costs are increasing at double-digit rates, and clearly are unsustainable. Current pharmaceutical cost trends are increasing premiums, raising copayments, pressuring reductions in benefits, and undermining the ability of businesses to compete in the world marketplace. We believe that a major contributor to the pharmaceutical cost crisis is the use of the Drug Price Competition and Patent Term Restoration Act of 1984 clearly in ways unanticipated by Congress, which effectively block generic entry into the marketplace. The repeated use of the 30-month generic drug marketing prohibition provision and other legal barriers have resulted in increasingly unpredictable and unaffordable pharmaceutical cost increases.

Although the compromise amendment being offered today does not totally eliminate the 30-month marketing prohibition provision, as would be our preference, it does make important process changes that will lead to a more predictable, rational pharmaceutical marketplace. We recognize that compromises have been necessary to garner the support of a majority of the Members of the Committee and appreciate your leadership and the hard work of your staff. However, we would strongly oppose any additional amendments that would undermine the intent of this legislation by further delaying generic access or reducing competition and increasing costs to purchasers. We also remain opposed to legislation that would increase costs to purchasers either through extended monopolies or unnecessary and costly litigation.

We are convinced that the legislation you are advocating will make a major difference in increasing competition in the marketplace and enhancing access to more affordable, high quality prescription drugs. We look forward to working with you and other Members of the HELP Committee to ensure that this important legislation is enacted this year.

The Coalition for a Competition Pharmaceutical Market is an organization of large national employers, consumer groups, generic drug manufacturers, insurers, labor unions, and others. CCPM is committed to improving consumer access to high quality generic drugs and restoring a vigorous, competitive prescription drug market. CCPM supports legislation eliminate legal barriers to timely access to less costly, equally effective generic drugs.

CCPM PARTICIPATING MEMBERS

American Association of Health Plans, Aetna, Anthem Blue Cross and Blue Shield, Blue Cross and Blue Shield Association, Caterpillar, Inc., Consumer Federation of America, Families USA, Food Marketing Institute, Generic Pharmaceutical Association, General Motors Corporation, Gray Panthers, Health Insurance Association of America, IVAX Pharmaceuticals, National Association of Chain Drug Stores, National Association of Health Underwriters, National Organization for Rare Disorders, Ranbaxy Pharmaceuticals, TEVA USA, The National Committee to Preserve Social Security and Medicare, United Auto Workers, Watson Pharmaceuticals, and WellPoint Health Networks.

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GENERAL MOTORS,
*Detroit, MI, July 15, 2002.*

Hon. EDWARD M. KENNEDY,
*U.S. Senate, Russell Senate Office Building, Washington, DC.*

DEAR SENATOR KENNEDY: As the largest private provider of health care coverage in the nation, I am writing to commend you for your leadership in supporting legislation that removes barriers to generic competition and reduces costs to all consumers. At General Motors, we insure over 1.2 million workers, retirees, and their families, and on their behalf, I want to thank you for supporting and passing out of the Senate Health, Education, Labor and Pensions Committee S. 812, the Greater Access to Affordable Pharmaceuticals Act.

We now spend over $1.3 billion a year on prescription drugs, and without relief, these costs are projected to continue to grow at 15 to 20 percent a year. Such increases are clearly unsustainable, and over time will make it impossible for us to compete in the world market.

We are convinced that your support of S. 812 will rationalize the currently distorted marketplace that has led to increasing and unpredictable pharmaceutical costs. This has resulted in increasing premiums, copayments, and pressures to reduce benefits. We believe that this landmark legislation will close the loopholes in the Hatch-Waxman law that currently block generic entry into the marketplace. Moreover, we believe your leadership in supporting bipartisan amendments in Committee strengthen S. 812 and assure much-needed predictability in the health care delivery system.

As a large employer and payer of health care, we are pleased that the Committee process clarified the so-called ''de-listing'' provision. This modification makes clear that the necessary ability for generics to challenge brand-name companies who have inappropriately listed patents in the FDA Orange Book does not in any way provide for civil and monetary penalties, and solely focuses the remedy for the abusive listing on the de-listing of the product from the Orange Book.

Once again, I want to thank you for the work that you and your staff have put in to this effort. We believe that your efforts will make a major difference in increasing prescription drug competition and choice, as well as expanding access to more affordable medications for our current and former employees and their families.

Sincerely,

DICK WAGONER, Jr.
*President and Chief Executive Officer.*

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GENERIC PHARMACEUTICAL ASSOCIATION,
*Washington, DC, July 10, 2002.*

Hon. EDWARD M. KENNEDY,
*Chairman, Senate Health, Education, Labor and Pensions Committee, U.S. Senate, Russell Senate Office Building, Washington, DC.*

DEAR MR. CHAIRMAN: We are writing to express our strong support of the Edwards amendment to S. 812, the Greater Access to Affordable Pharmaceuticals Act. As the manufacturers, suppliers, and distributers of more than 90 percent of the nations' generic medicines, the Generic Pharmaceutical Association (GPhA) is all too familiar with the abusive tactics name brand pharmaceutical companies employ to delay consumers access to affordable, quality generic pharmaceuticals and the dire need for Congress to pass legislation to close the loopholes in the law that the name brand industry has grown so proficient in exploiting. We believe the Edwards amendment effectively accomplishes this goal and has earned the tripartisan support it is now receiving.

The high cost of prescription drugs is one of the nation's most pressing public policy challenges today. Senior citizens, the uninsured, major employers, governors, consumer groups and public and private insurers are all looking to Congress for relief from the unsustainable annual increases in prescription drug costs. Increasing consumer access to generic medicines by increasing competition in the pharmaceutical market place can and must play a central role in any legislative plan to control drug costs. The full benefits increased competition can bring to the health care delivery system, however, cannot be realized until Congress closes the loopholes in the Hatch-Waxman Act that are thwarting competition and inflating the cost of prescription medicines.

Abuse of the 30-month stay provision of the Hatch-Waxman act is one of the most effective and most frequently used methods to delay generic competition. The Generic Pharmaceutical Association believes the most efficient way to ensure this provision is no longer used to delay generic competition is to abolish it completely. However, GPhA recognizes that compromises were necessary to bring support for the legislation to its current point and commends you, the other Members of the Senate HELP Committee, and your staff for your unwavering commitment to knocking down the barriers that are blocking access to generic medicines.

GPhA looks forward to working with you to secure the Committee's approval of the Edwards amendment and would oppose any effort to dilute or weaken it with amendments that would maintain or exacerbate the problems in the existing Hatch-Waxman system. As always, we appreciate your leadership on this issue and stalwart commitment to ensuring all Americans have access to quality, affordable health care.

Sincerely,

KATHLEEN D. JAEGER,
*President and CEO.*

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NATIONAL ORGANIZATION FOR RARE DISORDERS, INC.,
*Danbury, CT, July 17, 2002.*

Hon. EDWARD M. KENNEDY,
*U.S. Senate,*
*Washington, DC.*

DEAR SENATOR KENNEDY: For the sake of 25 million Americans with rare ''orphan'' diseases, we want you to know that S. 812, the

Greater Access to Affordable Pharmaceuticals Act (GAAP), and the Edwards-Collins Amendment that was passed by the Senate HELP Committee on July 11, 2002, will help millions of uninsured and underinsured Americans to gain access to affordable medications.

GAAP will close the loopholes of the Hatch-Waxman generic drug law that was enacted in 1984. This will ultimately lead to availability of lower cost generic drugs in a timely manner. When pharmaceutical patents expire, competition would be allowed without undue delay, and competition will drive prices down. We believe that S. 812 will make affordable treatments accessible to uninsured and underinsured people, particularly the elderly and younger Medicare beneficiaries who receive Social Security Disability benefits. In the absence of a Medicare prescription drug benefit, S. 812 is an essential first step in the giant leap forward that Americans desperately need for health care.

We hope that Congress will close the loopholes to the Hatch-Waxman Act and deter the frivolous lawsuits that have repeatedly delayed availability of affordable generic drugs. We hope that this will be the first step in your efforts to add a much needed prescription drug benefit to Medicare.

Very truly yours,

ABBEY S. MEYERS,
*President.*

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CONSUMERS UNION,
*Washington, DC, July 16, 2002.*

DEAR SENATOR: Consumers Union urges your support of the ''Greater Access to Affordable Pharmaceuticals Act (GAAP Act) of 2001 (S. 812).'' This legislation would streamline and improve the generic drug approval process, saving consumers billions of dollars. We believe that companies trying to bring generic drugs to market face too many unnecessary obstacles and that the removal of these barriers will increase competition and deliver lower-priced drugs to consumers.

We support wider access to affordable medicines for all Americans, especially the uninsured, the underinsured, the elderly, and the disabled. Today, health care costs are spiraling out of control for consumers and employers. Between 1999 and 2000 alone, prescription drug spending increased by 17.3%—the sixth year of double-digit increases. According to a 2002 Brandeis University study, older Americans could save $250 billion over the next ten years through the increased use of generic drugs. The Schumer-McCain bill is a cost-saving measure that will help rein in spiraling prescription drug expenditures—a critical first step toward the implementation of an affordable Medicare prescription drug benefit.

This legislation will improve consumer access to generic drugs by restoring the balance between innovation and competition. We believe that the anticipated cost savings from this measure is a necessary foundation for the Senate to build a comprehensive prescription drug benefit into Medicare.

Sincerely,

JANELL MAYO DUNCAN,
*Legislative Counsel.*

Ms. CANTWELL. Mr. President, I rise today to express my disappointment regarding our current situation on Medicare prescription drug legislation. I am extremely disappointed that we have not been able to pass a prescription drug benefit, and I believe it is absolutely imperative that the Senate continue to work toward this end.

The fact is, when Medicare was designed in 1965, the system relied on inpatient hospitalization and seldom on outpatient services, preventive care, or patient drug therapies. At that time, prescription drugs only accounted for four percent of all personal health care expenditures.

But as we enter the 21st century, the cutting edge of health care has shifted. Every day, as new preventive and therapeutic drugs replace outdated inpatient procedures, Medicare falls further and further behind in providing basic care.

Medicare was written to cover the most basic health care for seniors. When the original bill passed, the legislation's conference report explicitly says that the intent of the program is to provide adequate ''medical aid for needy people,'' and should ''make the best of modern medicine more readily available to the aged.''

Well, we are not making the best use of modern medicine when millions of seniors cannot afford access to the prescription drugs they need. Prescription drugs that had not even been developed when Medicare was enacted are now an essential aspect of basic health care. We owe it to our seniors to live up to Medicare's original mandate and provide them the best medical care.

Unfortunately, today, beneficiaries' current drug coverage options are often expensive and unreliable. And as a result, nearly seven out of ten Medicare beneficiaries lack decent, dependable coverage for their prescription drug needs, and more than one-third have no coverage at all. Prescription drug expenditures for the average senior in my home State of Washington are over $2,100 every year, over 122,000 of my seniors spend more than $4,000 a year.

On average, one out of every five dollars of every Social Security check to Washington State's seniors is spent on prescription drugs. And seniors with the most serious illnesses spend nearly 40 percent of their Social Security check on prescription drugs. How in the world are seniors on fixed incomes supposed to do this? What happens to them in an emergency?

Last week I visited three senior citizen centers to discuss the current prescription drug debate. This is what my constituents told me: they want prescription drug coverage to be comprehensive, simple to administer, guaranteed, stable, and based on the very best medical technology. And most importantly, they want the benefit run through Medicare, a program they understand and upon which they depend.

I think this is the first point I want to make about HMOs versus Medicare as we continue to debate delivery mechanisms for a new benefit. Seniors do not want their prescription drug benefit run through an HMO or other private insurance company.

According to a June 2002 survey by the Kaiser Family Foundation and the Kennedy School of Government, 67 percent of American people believe we should expand Medicare to pay for part of prescription drugs, but only 26 percent say we should help seniors buy private insurance to pay for prescription drugs costs.

A private delivery model gives insurers complete control over whether to offer a benefit, how much to charge, and whether to cover drugs regardless of whether these drugs are medically necessary. That's too much control over a program that is supposed to guarantee help for seniors.

The very basic issue here is that the private market will not cover such a high-risk population—especially a population at such risk for adverse selection. I don't want to see this benefit be a repeat of the Medicare+Choice program. And if the private insurance model hasn't worked for the full Medicare benefit, it certainly won't work for a single benefit where utilization is expected to be high.

Putting HMOs in charge of prescription drug coverage would be like putting Enron in charge of Social Security.

The second point I want to make is that seniors need a benefit that is comprehensive, one that covers their total prescription drug needs. Thirty percent of Washington seniors—212,000 people—will fall into the benefit hole proposed under the Tripartisan bill. But these same seniors will need to continue to pay their monthly premium, whatever it is as determined by the private HMOs or insurance companies, during that benefit gap. My constituents will not stand for this.

We need to pay very close attention to the catastrophic coverage in all of these proposals and what it means for seniors. What we're talking about is covering medicines for the very sickest seniors, and we know that the very sickest seniors have the very highest drug costs. In fact, just 14 percent of the elderly population account for nearly half of all prescription drug expenditures.

Seniors account for 12.6 percent of the general population, but a third of all prescription drug expenditures. And while prescriptions are expensive, in some cases, prohibitively so, these are the very same prescription drugs that keep people out of the hospital, out of the nursing home, and living vibrant and happy lives. And while it is difficult to quantify in economic terms, prescription drugs preserve health and eliminate unnecessary hospitalization, which is by far most expensive segment of the health care.

Americans are becoming increasingly reliant on more effective, and more complicated, drug therapies. Total health care spending in the United States will total more than $1.5 trillion this year, an increase of 8.6 percent over last year, according to a March report released by the Centers for Medicare and Medicaid Services.

The other part of this debate concerns the need to get generic medications to the market, and to our Nation's seniors and disabled, more quickly. Generic medicines account for 42 percent of all prescriptions dispensed

in America and on average are put on the market at 75 percent of the cost of their name-brand rivals.

But we know that the current prescription drug patent system is broken, and I am extremely concerned that pharmaceutical companies may be acting illegally to extend their patents and prevent less expensive generic drugs from entering the market. To fix it, we need to eliminate patent loopholes that drug companies use to prevent price competition from generic alternative drugs.

We need to strengthen existing statutes, including antitrust laws. We need to stop drug company abuses that prevent generic competition and lower prices, stop illegitimate patent ''evergreening,'' and stop anticompetitive sweetheart deals between brand name and generic companies.

I am pleased that the underlying bill we are considering would get lower-priced generics on the market faster, especially since we know that prescription drug expenditures are the fastest growing segment of the health care market, with spending on outpatient prescription drugs in the U.S. increasing by 17 percent over last year. It is absolutely incredible that outpatient drug expenditures have more than doubled in the last five years.

Drug expenditures in the United States rose from about $5.5 billion in 1970 to a projected $161 billion this year, and CMS predicts that prescription drug expenditures will continue to increase faster than any other category of health care spending throughout the next ten years. Medicare beneficiaries alone will spend $1.5 trillion on prescription drugs over the next ten years.

Those two factors, great dependency on drug therapies and skyrocketing drug prices, put us on a collision course in our efforts to provide affordable health care.

I know that many of my colleagues are concerned that the money isn't there for this benefit, and I, too, have no doubt that a new benefit will be extremely expensive. The Congressional Budget Office estimates that the original Graham amendment will cost $576 billion over 10 years, and it spends about $85 billion a year by the end of the decade.

This new spending is in addition to the fact that the Medicare budget will reach at least $498 billion by 2012, and will begin spending out more than it brings in by 2016. Sustainable financing of the Medicare program is a looming problem that must be addressed.

But while we discuss the potential cost of a new benefit, we also need to discuss national priorities. I believe we can do a prescription drug benefit while living within our budget, and we can do so by having a clear vision for our country's priorities. One of my top priorities is getting a new prescription drug benefit to the Medicare beneficiaries in Washington state. But this may mean making other tough choices.

There is no doubt that if we interject all of these issues into the political debate surrounding the need to provide Medicare coverage of prescription drugs for our elderly and disabled, we have a debate to be rivaled by few others.

But the reality is that the Senate needs to move past the argument of whether or not to include prescription drugs in the Medicare program. We know there is a problem, and it is up to us to find a solution.

Congress is trying to take a reasoned and rational approach to integrating a new prescription drug benefit into the Medicare program.

I strongly believe that we need to include a prescription drug benefit in the Medicare program and I will continue to fight to ensure that all Washingtonians have access to the prescription medications they need.

Finally, I want to briefly address the geographic disparities in Medicare provider payments. I am especially concerned that providers serving a disproportionate number of Medicare and Medicaid patients are facing unsustainable fee reductions.

Every day I hear from my constituents that they are facing increasing difficulty in getting primary care services, and from physicians who can no longer afford to take on new Medicare patients. In fact, 57 percent of Washington state physicians are limiting the number or dropping all Medicare patients from their practices.

We absolutely must ensure that Medicare providers, hospitals, physicians, home health agencies, physical therapists, nursing homes, are paid enough to cover the cost of providing care to Medicare beneficiaries. I certainly hope that the Finance Committee, working with the Leadership on both sides, will pass a reimbursement package before we adjourn the 107th Congress. It will do us little good to provide a new Medicare benefit if there are no physicians willing or available to write prescriptions for Medicare beneficiaries.

Mr. MCCAIN. Mr. President, the Greater Access to Affordable Pharmaceuticals Act, GAAP, provides a real opportunity to benefit all consumers of prescription drugs. In the recently concluded study of the abuses of the Hatch-Waxman act, the Federal Trade Commission concluded that there is a need for Congress to act and to act quickly to end the exploitation of loopholes in current law that has delayed the entry of generic drugs into the market. S. 812 would allow consumers earlier access to generic versions of drugs while protecting the intellectual property rights of the brand name drug innovators—a protection that is necessary for their continued investment in research and development of new and improved pharmaceuticals.

S. 812 would accomplish five important objectives. First, the bill would limit the ability of brand name drug companies to delay the marketing of generic competitors. It does this by limiting brand name drug companies to only one automatic 30-month stay. Under current law, brand name drug companies can prevent generic substitutes from coming to market by suing the generics for patent infringement, thus triggering an automatic stay of up to 30 months on the FDA's approval of the generic drug. By bringing successive patent infringement suits, brand name drug companies have obtained sequential stays, and kept generics off the market much longer than 30 months.

Allowing for only one automatic delay is consistent with the FTC's recent recommendations. In its report, the FTC recommended that only one stay be allowed, and noted that: prior to 1998, only 1 out of 9 blockbuster drugs products involved at least three patent lawsuits, whereas after 1998, 5 of the 8 blockbuster products involved at least three lawsuits. . . .

[C]ases involving multiple patents take longer than those involving fewer patents [to resolve] the FTC wrote, and the Commission found that the multiple stacking of automatic stays delayed the approval of generic drug applications from between 4 and 40 months beyond the initial 30-month period.

There is no doubt that these stays have cost consumers enormous sums of money by preventing their access to cheaper generic versions of drugs. Allowing for one 30-month stay, as S. 812 does, strikes a balance between the rights of brand name drug companies seeking to protect their legitimate patents, and the rights of consumers to access generic drugs without unreasonable delay due to ''gaming'' of the system.

Second, the GAAP Act would modify the provision in current law that allows the first-to-file generic drug manufacturer an exclusive 180-day period to market its drug without competition from other generic manufacturers. The 180-exclusivity period was intended to provide a needed incentive for challenging dubious patents. Like the automatic 30-month stay, however, this 180-day exclusivity has been abused. Brand name and generic drug companies have colluded in deals in which the brand name manufacturer effectively extends its own period of exclusivity by paying the generic drug manufacturer to stay out of the market for the six months during which the generic would otherwise be able to compete. When this occurs, the brand name manufacturer wins, and the generic manufacturer wins, but consumers lose. To prevent this type of abuse, S. 812 modifies current law so that first-to-file generic manufacturers that engage in anticompetitive conduct and do not go to market, lose the privilege of the 6-month exclusivity in the generic market, and, in certain circumstances, that exclusivity ''rolls'' over to the next generic competitor.

Third, the legislation would require generic drug applicants to the FDA to provide a more detailed ''paragraph

IV'' filing. This means that the patent holder will not only receive a general notice that its patent is being challenged, but the generic drug applicant will be required to provide a more detailed legal basis of its assertions regarding the original patent's validity. This is an important protection for the brand name manufacturers because they will receive more information about the nature of the patent challenge as opposed to a simple notice that a generic application has been filed.

Fourth, S. 812 would clarify that the FDA's existing regulations as they pertain to bioequivalence have the effect of law. Currently, bio-equivalence is demonstrated through blood level studies, and only in some circumstances has the FDA allowed for limited human data to be submitted for products where blood studies are inapplicable. S. 812 would allow the FDA to amend its regulations as necessary and clarify its authority over biological products under the Federal Food, Drug and Cosmetic Act.

The fifth significant change to current law relates to how to clean up abuses of the ''Orange Book'', the manual in which the FDA lists all patents on pharmaceutical drugs. S. 812 allows generic manufacturers in certain instances to bring a cause of action to ''de-list'' or ''rename'' a drug patent. Current law provides no means for ''delisting'' a patent, although doing so can speed the marketing of generic drugs, particularly in cases involving patents that are patently frivolous and for which the brand name manufacturers clearly would not win a patent infringement suit. While purging the Orange Book of frivolous patents is important, I understand that some Senators are concerned that the new cause of action to ''delist'' will not speed the availability of generic drugs, but will lead to a snarl of litigation. I hope these concerns can be reviewed in conference.

Over twenty years ago, Hatch-Waxman established the procedures for bringing generic drugs to consumers and set out to strike a balance that would allow drug innovators to protect their innovations, while allowing generic drugs easier access into the market. In large part, Hatch-Waxman succeeded in bringing new lower-cost alternatives to consumers, and encouraging more investment in U.S. pharmaceutical research and development. This has been evident in the years since the enactment of Hatch-Waxman, where research and development has increased from $3 billion to $21 billion. Loopholes in the law, however, have delayed benefits to consumers. It is time to close them.

The Congressional Budget Office, CBO, recently released results of its estimate of S. 812, finding that total drug expenditures in this country over the next ten years, 203 to 2012, will be roughly $4.7 trillion. If the delays resulting from numerous lawsuits and agreements that arise under current law were eliminated, the CBO estimates that S. 812 would result in a savings of up to 7 percent, or $320 billion. For consumers, particularly seniors, the uninsured, and those on Medicare, this is a tremendous savings.

Congress will improve the lives of many Americans by passing the underlying language of S. 812. I urge my colleagues to do this now.

Mr. GRASSLEY. Mr. President, I'd like to say a few words about the Hatch-Waxman provisions that were contained in S. 812 that passed this morning. Ensuring access to affordable prescription drugs is a top priority for me. The challenge is to strike the right balance so consumers have timely access to medicine that's affordable and so that new, groundbreaking pharmaceuticals continue to be developed. I voted for S. 812 because I want Iowans and all Americans to benefit as much as possible from the competition and lower prices that generic drugs bring about in the marketplace. This bill starts to close loopholes in the current Hatch-Waxman law and stop abuses that may have contributed to the delay in market entry to generic drugs and kept drug prices high. I believe that this is a good first step toward recognizing and addressing concerns about abuses in the current system. However, I still have concerns about the drafting of a few of the provisions in this legislation.

For example, I'm concerned abut the new private right of action created by S. 812. The current Hatch-Waxman law does not allow for such a remedy, and this could cause unnecessary and increased litigation. I also share the concerns that Senator Frist expressed regarding the bioequivalency provision. I think that we need to clarify that this provision should in no way adversely impact or lessen public safety. Further, I think that we should clarify that the provision dealing with the 45 day paragraph IV notice does not eliminate all legal avenues with respect to a company being able to protect it's rights with respect to a patent. There might be a few other changes that would be beneficial to the bill. Nevertheless, I'm hopeful that we can improve on this legislation. We need to be able to close the loopholes, but also ensure that we keep the proper balance between promoting timely access to affordable generic drugs and giving brand-name companies reasonable intellectual property protections so they will continue to innovate and find new cures and drugs.

I was disappointed that the Senate was not able to consider an amendment I wanted to offer with Senator Leahy which would have required brand-name and generic companies to file with the Federal Trade Commission and Justice Department any agreements that deal with the 180 day exclusivity provision of the Hatch-Waxman law. The language of our amendment is exactly the language contained in S. 754, as reported out of the Judiciary Committee last November. So everyone knows, this legislation is fully supported by the Federal Trade Commission report that came out just yesterday. In fact, the Federal Trade Commission report said ''we believe that notification of such agreements to the Federal Trade Commission and the U.S. Department of Justice is warranted. We support the Drug Competition Act of 2001, S. 754, introduced by Senator Leahy, as reported by the Committee on the Judiciary.'' I'm putting my colleagues on notice that I will work to get this legislation passed to ensure that lower price drugs get to market as soon as possible.

I want Iowans to benefit from new scientific research and innovative drug products. Patent protections help provide incentives for these developments. With the practice of medicine today being so dependent on prescription drugs and with a new, taxpayer-financed prescription drug benefit on the horizon, I'll continue to work to make sure Congress maintains the right balance between patent protection and access to generic drugs.

Mr. MCCAIN. I would like to take the opportunity to talk about the underlying bill, S. 812, which, until now, has been largely treated in this two week debate as little more than a vehicle for a grander, more politically salient, but also more elusive, prescription drug benefit.

If the Senate fails to pass the underlying bill, the Greater Access to Affordable Pharmaceuticals Act, GAAP, will lose a real opportunity to benefit all consumers of prescription drugs. In a recently concluded study of the abuses of the Hatch-Waxman act, the Federal Trade Commission concluded that there is a need for Congress to act and to act quickly to put an end to the anti-competitive abuses that have delayed the entry of generic drugs into the market. S. 812 would allow consumers earlier access to generic versions of drugs while protecting the intellectual property rights of the brand name drug innovators, a protection that's necessary for their continued investment in research and development of new and improved pharmaceuticals.

While the brand name drug manufacturers have decried this bill, which has been portrayed by some as a boon to generic drug makers, I assure you that these portrayals are not accurate. The consumer is the intended beneficiary of this legislation, plain and simple.

S. 812 would accomplish five important objectives. First, the bill would limits the ability of brand name drug companies to delay the marketing of generic competitors. It does this by limiting brand name drug companies to only one automatic 30-month stay on the marketing of generic drugs. Under current law, brand name drug companies can prevent generic substitutes from coming to market by suing the generic for patent infringement and in

so doing, stop the FDA, for up to 30 months, from approving the cheaper substitute. By bringing successive patent infringement suits, brand name drug companies have obtained sequential 30-month stays, and kept generics off the market much longer than 30 months.

Allowing for only one automatic delay is consistent with the recommendation the Federal Trade Commission made recently in its comprehensive study of anticompetitive abuses of current law by brand name and generic drug companies. In its report, the FTC recommended that only one stay be allowed, and noted that ''prior to 1998, only 1 out of 9 blockbuster drug products involved at least three patent lawsuits, whereas after 1998, 5 of the 8 blockbuster products involved at least three lawsuits.'' ''[C]ases involving multiple patents take longer than those involving fewer patents [to resolve]'' the FTC wrote, and the Commission found that the multiple stacking of 30-month stays prevented the FDA from approving generic ANDAs from 4 to 40 months beyond the initial 30-month stay.

There is no doubt that these stays have prevented or delayed generic drugs from entering the marketplace and increased the price of prescription drugs. Allowing for one 30-month stay, as S. 812 does, strikes a balance between the rights of brand name drug companies seeking to protect their legitimate patents, and the rights of consumers to access generic drugs without unreasonable delay due to ''gaming'' of the system. I understand that there is disagreement regarding which patents should be afforded protection under the automatic stay, however, I believe we can all acknowledge that allowing for one, and only one stay, is the most effective way to prevent frivolous lawsuits that delay consumers' access to less expensive pharmaceuticals.

Second, the GAAP Act would modify the provision in current law that allows the first-to-file generic drug manufacturer an exclusive 180-day period to market its generic drug without competition from other generic manufacturers. The 180-exclusivity period was intended to provide a needed impetus for generic companies to challenge dubious patents. Like the automatic 30-month stay, however, this 180-day exclusivity has been abused. Brand name and generic drug companies have colluded in deals in which the brand name manufacturer effectively extends its own period of exclusivity by paying the generic drug manufacturer to stay out of the market for the six months during which the generic would otherwise be able to compete. When this occurs, the brand name manufacturer wins, and the generic manufacturer wins, but consumers lose. To prevent this type of abuse, S. 812 modifies current law so that first-to-file generic manufacturers that engage in anticompetitive conduct and do not go to market, lose the privilege of 6-month exclusivity in the generic market, and, in certain circumstances, that exclusivity ''rolls'' over to the next generic competitor.

Third, the legislation would require generic drug applicants to the FDA to provide a more detailed ''paragraph IV'' filing. This means that the patent holder will not only receive a general notice that its patent is being challenged, but the generic drug applicant will be required to provide a more detailed legal basis for its assertions regarding the original patent's validity. This is an important protection for the brand name manufacturers because they will receive more information about the nature of the patent challenge as opposed to a simple notice that a generic application has been filed.

Fourth, S. 812 would clarify that the FDA's existing regulations as they pertain to bio-equivalence have the affect of law. Currently, bio-equivalence is demonstrated through blood level studies, and only in some circumstances has the FDA allowed for limited human data to be submitted for products where blood studies are inapplicable. S. 812 would allow the FDA to amend their regulations as necessary and clarify their authority over biological products under the Federal Food, Drug and Cosmetic Act.

The fifth significant change to current law relates to how to clean up abuses of the ''Orange Book'', the manual in which the FDA lists all patents on pharmaceutical drugs. The provision in the current bill, allows generic manufacturers in certain instances to bring a cause of action to ''de-list'' or ''re-name'' a drug patent. Current law provides no means for ''delisting'' a patent, although doing so can speed the marketing of generic drugs, particularly in cases involving patents that are patently frivolous and for which the brand name manufacturers clearly would not win a patent infringement suit.

The cause of action for generic manufacturers to ''delist'' patents was a provision that was added to S. 812 late in the process, and it is controversial. Opponents argue that doing so will significantly increase and complicate litigation without clearly making generic drugs available to consumers more quickly. How the cause of action in S. 812 will work is yet unclear. I hope that during conference on this legislation, we can consider not only the provision in the Senate bill, but also the proposal mentioned in the FTC's recent report to permit a claim for ''delisting'' to be brought, not as an original and separate action, but as a counterclaim in the context of a patent infringement lawsuit. Such an approach may be more appropriate in that it could reduce the number of lawsuits, but still allow generic manufacturers a way to ''delist'' frivolous patents through summary judgments or other motions that can be raised in the context of patent infringement litigation.

Over twenty years ago, Hatch-Waxman establishes the procedures for bringing generic drugs to consumers and set out to strike a balance in the pharmaceutical industry that would allow brand name manufacturers to protect their innovations, while allowing generic brands easier access into the market. In large part, Hatch-Waxman succeeded in bringing new lower-cost alternatives to consumers, and encouraging more investment in U.S. pharmaceutical research and development. This has been evident in the 15 years since the enactment of Hatch-Waxman, where research and development has increased from $3 billion to $21 billion. Loopholes in the law, however, have delayed benefits to consumers. It is time to correct this.

The Congressional Budget Office, CBO, recently released results of its estimate of S. 812 finding that total drug expenditures in this country over the next ten years (2003 to 2012) will be roughly $4.7 trillion. If the delays resulting from numerous lawsuits and agreements were eliminated, the CBO estimates that S. 812 would result in a savings of up to 7 percent or $320 billion. For consumers, particularly seniors, the uninsured, and those on Medicare, this is a tremendous savings.

Congress will improve the lives of many Americans by passing the underlying language of S. 812. I urge my colleagues to do this now.

Mr. LEAHY. Mr. President, I am disappointed that at the very last moment, the acceptance of the Drug Competition Act of 2001 as an amendment to ''The Greater Access to Affordable Pharmaceuticals Act,'' S. 812 was withdrawn. This bill, which enjoys the justified support of the administration's antitrust enforcement agencies, would have brought lower-priced generic drugs to the marketplace. Along with Senator GRASSLEY, I have every confidence that this bill would have garnered the overwhelming support of our colleagues on both sides of the aisle and would have benefitted every American purchasing prescription drugs, and am mystified by the reversal of the agreement to accept it. I thank Senator GRASSLEY and Senator KENNEDY for their support.

Prescription drug prices are rapidly increasing, and are a source of considerable concern to many Americans, especially senior citizens and families. Generic drug prices can be as much as 80 percent lower than the comparable brand name version. S. 812 is a tremendous effort to improve timely introduction of generic pharmaceuticals into the marketplace, and into our medicine cabinets, and our amendment will provide an important tool in making that effort successful.

While the Drug Competition Act is a small bill in terms of length, it is a large one in terms of impact. It will ensure that law enforcement agencies can take quick and decisive action against companies that are driven more by greed than by good sense. It gives the

Federal Trade Commission and the Justice Department access to information about secret deals between drug companies that keep generic drugs off the market. This is a practice that hurts American families, particularly senior citizens, by denying them access to low-cost generic drugs, and further inflating medical costs.

This had been a genuine bipartisan effort, and I must thank all my colleagues, including Senator HATCH who has a long-standing interest in these issues and who has praised S. 754 on the floor in recent days. Also, sub-committee Chairman KOHL has worked with me from the start on this effort, and I particularly want to thank our co-sponsor Senator GRASSLEY, who has worked hard to reach consensus on this bill that will help protect consumers. This bill passed unanimously out of the Judiciary Committee last October, but it has been the subject of an anonymous hold on the floor, presumably unrelated to the merits. Partisan politics should not further delay enactment of this sensible, and universally applauded, bill into law.

In fact, just yesterday the FTC released its long-awaited report on the entry of generic drugs into the pharmaceutical marketplace. The FTC had two recommendations to improve the current situation, to close the loopholes in the law that allow drug manufacturers to manipulate the timing of generics' introduction to the market. One of those recommendations was simply to enact S. 754, as the most effective solution to the problem of ''sweetheart'' deals between brand name and generic drug manufacturers that keep generic drugs off the market, thus depriving consumers of the benefits of quality drugs at lower prices. In short, this bill enjoys the unqualified endorsement of the Republican FTC, which follows on the support by the Clinton Administration's FTC during the initial stages of our formulation of this bill. We can all have every confidence in the common sense approach that S. 754 takes to ensuring that our law enforcement agencies have the information they need to take quick action, if necessary, to protect consumers from drug companies that abuse the law.

The issue of drug companies paying generic companies not to compete was exposed last year by the FTC, and by articles in major newspapers, including an editorial in the July 26, 2000, The New York Times, titled ''Driving Up Drug Prices.'' This editorial concluded that the problem ''needs help from Congress to close loopholes in federal law.'' And while the FTC has sued pharmaceutical companies that have made such secret and anticompetitive deals, as the then Director of the Bureau of Competition Molly Boast testified before the Judiciary Committee in May 2001, the antitrust enforcement agencies are only finding out about such deals by luck, or by accident.

Under current law, the first generic manufacturer that gets permission to sell a generic drug before the patent on the brand-name drug expires, enjoys protection from competition for 180 days, a head start on other generic companies. That was a good idea, but the unfortunate loophole exploited by a few is that secret deals can be made that allow the manufacturer of the generic drug to claim the 180-day grace period, to block other generic drugs from entering the market, while, at the same time, getting paid by the brand-name manufacturer to not sell the generic drug.

The bill would have closed this loophole for those who want to cheat the public, but keeps the system the same for companies engaged in true competition. The deals would be reviewed only by those agencies—the agreements would not be available to the public. I think it is important for Congress not to overreact in this case and throw out the good with the bad. Most generic companies want to take advantage of this 180-day provision and deliver quality generic drugs at much lower costs for consumers. We should not eliminate the incentive for them. Instead, we should let the FTC and Justice look at every deal that could lead to abuse, so that only the deals that are consistent with the intent of that law will be allowed to stand.

This bill would have accomplished precisely that goal. Moreover, it fits neatly into S. 812's provisions requiring a generic drug company that has been granted the exclusive, 180-day period on the market to forfeit that privilege if it makes a deal with a brand name company, or otherwise delays bringing its generic drug into the marketplace. Such a generic company must relinquish that 180-day privilege to the next generic manufacturer that can come to market. Both S. 812 and S. 754 share the goal of ensuring effective and timely access to generic pharmaceuticals that can lower the cost of prescription drugs for seniors, for families, and for all of us.

Mr. KERRY. Mr. President, I am disappointed that the Senate was unable to pass the Graham-Miller-Kennedy amendment last week, as it would have established a comprehensive prescription drug benefit for our Nation's seniors. I strongly supported the Graham-Miller-Kennedy plan, as I believe it offered the best solution to the problem our senior citizens face in finding a way to afford the prescription drugs they need to stay healthy. Given the failure of the Senate to pass the Graham-Miller-Kennedy amendment, which I voted for, I now lend my support to the low-income, catastrophic benefit proposal that has been offered by my colleagues, Senators BOB GRAHAM and GORDON SMITH. While I would rather the Senate take a stand in support of a more comprehensive benefit, the Graham-Smith amendment marks an important first step in making sure that our country delivers on the promise that Medicare made to our Nation's seniors almost 30 years ago.

Medicare was enacted in 1965, under the leadership of President Lyndon Johnson, as a promise to the American people that, in exchange for their years of hard work and service to our country, their health care would be protected in their golden years. But that promise has not been fulfilled. Across our country, millions of seniors have cried out for help in paying for their prescription medication. Too many of our parents and grandparents confess that they are unable to afford the drugs their doctors prescribe for them. Too many of our parents and grandparents have to choose between paying for their rent, getting their groceries or buying the medicine they need to stay healthy.

Prescription drug expenditures are skyrocketing—with the drug prices facing seniors growing at four times the rate of inflation. These costs are forcing our Nation's elders to pile into buses, and travel into Canada and Mexico where they can purchase the medicine they need for 30 percent less of the cost in the United States. These costs are driving Americans across our borders to obtain the prescription medications our very own pharmaceutical companies have developed here at home.

I appreciate the biotechnology revolution being driven publicly, by the National Institutes of Health, and privately, by the pharmaceutical industry. The advancements in modern medicine are truly spectacular, and many of the most inspiring discoveries are being made by biotechnology companies in my own State of Massachusetts. I am proud of the work being done in my state and across the country. With continued investment in research, scientists predict that we may be 5 to 10 years away from major breakthroughs in medical treatment for diseases like Alzheimer's and Parkinson's. But I ask, of what consequence are medical discoveries if they never leave the laboratory or move beyond the shelf of a local pharmacy?

The Graham-Smith amendment will help move those medications from pharmacy shelves into the hands of the seniors whose lives depend on them. Graham-Smith offers all seniors protection against high drug bills, establishing Medicare coverage of all drug costs incurred over $3,300. In addition to catastrophic coverage, the Graham-Smith proposal will provide every senior, regardless of income, up to a 30 percent discount on drugs purchased before they reach the $3,300 stop-loss. For low-income seniors, the Graham-Smith plan provides special assistance, covering all drug costs for those beneficiaries below 200 percent of the Federal poverty level.

The Graham-Smith amendment will provide protection to all seniors against the high cost of prescription drugs. It is not the ideal solution, but it targets the seniors who need help the most. The sickest seniors will be protected from out-of-control costs, which

every senior needs as insurance against a serious illness. Seniors with low incomes are guaranteed the drugs they need so they don't have to choose between prescription drugs and other necessities. This amendment provides a solid first step toward the goal of providing a comprehensive, reliable Medicare prescription drug benefit for our seniors.

I urge my colleagues to join me in support of the Graham-Smith amendment. But let us not abandon our goal of establishing a more complete prescription drug benefit. Graham-Smith is a good first step, but we must continue the journey. Unless we establish a comprehensive Medicare drug benefit, the health of an entire generation will continue to be in jeopardy. We must act to deliver on that promise that President Johnson made 25 years ago. Our Nation's seniors deserve no less.

Mrs. BOXER. Mr. President, I am disappointed that after nearly three weeks of debate, the Senate has been unable to pass a prescription drug benefit for seniors. Millions of senior citizens across the country desperately need this help.

In California alone there are nearly 3.8 million Medicare beneficiaries. According to the most recent estimates, 684,000 of those Californians have no prescription drug coverage. Unsurprisingly, low-income California seniors make up the majority of those currently suffering. However, this is an issue that cuts across socioeconomic lines to affect all seniors, throughout my State and throughout the Nation.

It is easy to listen to numbers and forget that there are faces behind those numbers—real people with real health care problems. But that is precisely why this debate is so important. There are seniors in this country who are being gouged by the prices of prescription drugs, who are choosing to skip doses to make their drugs last, and who are holding off as long as possible before they fill their prescriptions because they simply can't afford it. This is a travesty, and one that we must address.

We had a tremendous opportunity to address this situation and to provide seniors with a comprehensive prescription drug benefit under Medicare. I supported a proposal to provide a voluntary, affordable prescription drug benefit for all seniors under Medicare, with special assistance to those with low incomes. This proposal would provide a reliable benefit for the people who spend the most on drugs and who, in many cases, can least afford it: senior citizens. Unfortunately, because of opposition from the other side of the aisle, that effort failed.

Fortunately, all is not lost. While we were unable to make prescription drugs more accessible to seniors, I am pleased that we were able to take steps to make prescription drugs more affordable for everyone.

I supported—and we passed—a provision that will allow drug reimportation from Canada. In Canada, the exact same drugs often cost one-third the price. However, pharmacies in this country are not currently allowed to buy drugs in Canada to sell in the United States, which would pass these savings on to consumers. That should change as long as those drugs meet strict safety standards before entering our country. This provision will allow that to happen.

I supported—and we passed—a provision that will allow states to negotiate lower drug prices for all of their citizens who currently lack prescription drug benefits. States currently negotiate drug prices for their Medicaid recipients, the poorest of our Nation's citizens. This provision will give States an even larger market power to ensure even deeper discounts for all residents who lack prescription drug coverage.

Finally, I supported—and we passed—a proposal to close the loopholes that currently allow brand-name drug companies to keep generic drugs off the market, even after the original patent on the drug has expired. Bringing generics to market ensures greater competition and ultimately reduces prices. This should not be unfairly stalled by brand-name companies that want to maintain their monopoly on the market.

These are all important ways in which we will be able to bring the costs of drugs down for all Americans, young and old, rich and poor. We must provide seniors with a true Medicare prescription drug benefit, so that they are no longer forced to choose between drugs and food or rent. We may not have succeeded today, but I will keep fighting to see it happen in the very near future.

Ms. COLLINS. Mr. President, I rise in strong support of the Greater Access to Affordable Pharmaceuticals Act, which will make prescription drugs more affordable by promoting more competition in the pharmaceutical industry and increasing access to lower priced generic drugs.

I was very pleased to have the opportunity to work with my colleague, the Senator from North Carolina, in offering this compromise in the Health, Education, Labor, and Pensions Committee, where it was approved by a strong bipartisan vote. I also recognize the leadership and hard work of the Senators from New York and Arizona on this critical issue.

Prescription drug spending in the United States has increased by 92 percent over the past 5 years to almost $120 billion. These soaring costs are a particular burden for the millions of uninsured Americans, as well as for those seniors on Medicare who lack prescription drug coverage. Many of these individuals are simply priced out of the market or forced to choose between paying the bills or buying the pills they need to remain healthy.

Skyrocketing prescription drug costs are also putting the squeeze on our Nation's employers who are struggling in the face of double-digit increases in their insurance premiums. They are finding it increasingly difficult to continue to provide health care coverage for their employees.

Soaring costs are also exacerbating the Medicaid funding crisis that all of us are hearing about from our Governors back home who are struggling to bridge shortfalls in the States' budgets.

In 1984, the Hatch-Waxman Act made significant changes in our patent laws that were intended to encourage pharmaceutical companies to make the investments necessary to develop new drug products while simultaneously enabling their competitors to bring lower cost, generic equivalents to the market. We should acknowledge that, to a large extent, the original Hatch-Waxman Act succeeded. The law has speeded access to generic drugs in the market. As a consequence, consumers are saving anywhere between $8 and $10 billion a year by purchasing lower priced generic drugs.

Moreover, there are even greater potential savings on the horizon. Within the next 4 years, the patents on brand name drugs with combined sales of $20 billion are set to expire. If Hatch-Waxman were to work as it was intended, consumers could expect to save between 50 and 60 percent on these drugs as lower-cost generic alternatives becomes available after these patents expire.

But despite the past successes of this law, it has become increasingly evident that the Hatch-Waxman Act has been subject to abuse. While many pharmaceutical companies have acted in good faith, there is mounting evidence that others have attempted to game the system by exploiting legal loopholes in the current law. The result is, too many pharmaceutical companies have maximized their profits at the expense of consumers by filing frivolous lawsuits that have delayed access to lower priced generic drugs.

Just yesterday, the Federal Trade Commission released its long-awaited study that found that brand name drug manufacturers have, indeed, misused the law to delay the entry of lower cost generics into the market. The FTC found that these tactics have led to delays of between 4 and 40 months—over and above the first 30-month stay provided under Hatch-Waxman—for generic competitors of at least eight drugs—eight very popular drugs—since 1992. Moreover, six of these eight delays have occurred since 1998.

The FTC report identifies two specific provisions of the current law—the automatic 30-month stay and the 180-day market exclusivity provision—as being susceptible to challenges and strategies that delay the entry of lower cost generic alternatives into the market. According to the FTC report, these loopholes ''continue to have the potential for abuse'' and, if left unchanged, ''may have [even] more significance [for consumers] in the future.'' I am pleased to say that these

are the very loopholes that our bill would close.

The Congressional Budget Office estimates that our legislation would cut our Nation's drug costs by an astounding $60 billion over the next 10 years. It is no wonder that our proposal is supported by coalitions representing the Governors, employers, insurers, organized labor, seniors groups, and individual consumers who are footing the bill for these expensive drugs and whose costs for many popular drugs could be cut in half if generic alternatives were more readily available.

I would like to pause for a moment to discuss some of the details of the underlying Edwards-Collins bill. Some of my colleagues have argued that certain provisions of the bill are unconstitutional or that the bill will lead to more litigation. But no amendments have been offered to change any of the provisions of the Edwards-Collins bill. Moreover, the bill itself is the product of months of work and represents a broad, bipartisan compromise that incorporates the views and concerns of a wide spectrum of interests.

I worked particularly hard on carefully wording the cause of action created by the bill, and believe that criticisms of it spurring increased litigation are not well-founded. Our bill creates a new civil action that offers a remedy if companies incorrectly or frivolously listed patents in the Orange Book, so that these patents do not delay the ability of a generic drug to come to market. The bottom line is, the cause of action will help to reduce both the cost of prescription drugs and the cost of prescription drug litigation. It does so by allowing generic drug makers, for the first time, to directly challenge a patent that has been frivolously or incorrectly listed.

I understand the concerns of some of my colleagues who are leery of creating new causes of action. But I would reply that, in many cases, litigating through narrowly-targeted suits can be quicker and less expensive than aggregating a number of claims in one, massive proceeding. Moreover, I have worked to target the new provision as carefully as possible. In Committee, I offered a common sense amendment to tailor the new cause of action in a way that will help minimize unintended consequences while, at the same time, ensuring that it still serves its intended purpose of policing frivolous or incorrectly listed patents. My amendment made it clear that the delisting cause of action is for injunctive relief only and cannot result in monetary damages. It also limited the new cause of actions to patents listed in the Orange Book up to 30 days after a New Drug Application's approval. In doing so, my amendment harmonized the 30-month stay provision and the cause of action, as it should be.

The original Hatch-Waxman Act was a carefully constructed compromise that balanced an expedited FDA approval process to speed the entry of lower cost generic drugs into the market with additional patent protections to ensure continuing innovation that brings us these wonderful lifesaving and life-enhancing drugs.

The bipartisan compromise bill before us restores that balance by closing the loopholes that have reduced the original law's intent and its effectiveness in bringing lower cost generic drugs to market more quickly. I am very pleased we are going to pass this legislation. It really will make a difference for millions of Americans who are struggling to afford the high cost of prescription drugs.

Mr. President, I ask unanimous consent that letters from various groups that are supporting this legislation and worked very closely with us in drafting it be printed in the RECORD.

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

BUSINESS FOR
AFFORDABLE MEDICINE,
*Washington, DC July 23, 2002.*

Hon. SUSAN COLLINS,
*US Senate,*
*Russell Senate Office Building,*
*Washington, DC*

DEAR SENATOR COLLINS: The Business for Affordable Medicine coalition encourages you to vote for the Hatch-Waxman reform measures in S. 812. By closing loopholes in the Hatch-Waxman Act, Congress will ensure that more affordable prescription drugs reach the market without delays, which will provide prescription drug purchasers with significant cost savings.

The Congressional Budget Office estimates that closing Hatch-Waxman loopholes would reduce the nation's drug costs by $60 billion over the next 10 years. Preventing delays in the availability of generics would also reduce federal spending for prescription drugs by $6 billion while increasing federal revenues by $2.2 billion.

Consumers and institutional purchasers (including employers, and federal and state governments) can no longer afford the anticompetitive practices that are made possible by loopholes in the Hatch-Waxman Act. Please be assured that BAM supports strong intellectual property protections, and we do not believe they are undermined by provisions of S. 812.

BAM corporate members include Ahold USA, Albertsons, Constellation Energy Group, General Motors, Georgia-Pacific, Kellogg Company, Kmart, Kodak, Motorola, Sysco Corporation, United Parcel Service, Wal-Mart, Weyerhaeuser, and Woodgrain Millwork. BAM also includes governors and a number of state labor leaders.

Together, we urge you to support these limited and targeted Hatch-Waxman reform provisions in S. 812 to make timely access to lower-cost generics a reality.

Sincerly,

JODY HUNTER,
*Director, Health and Welfare,*
*Georgia-Pacific Corporation.*

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COALITION FOR A COMPETITIVE
PHARMACEUTICAL MARKET,
*July 17, 2002.*

DEAR SENATOR: As a broad-based coalition of large employers, consumer groups, generic drug manufacturers, insurers, labor unions, and others, we are writing to advise you of our strong support for the S. 812, the Greater Access to Affordable Pharmaceuticals Act, as reported out of the Senate HELP Committee on July 11, 2002. We believe it is critical that Congress act this year to pass legislation that would eliminate barriers to generic drug entry into the marketplace. This legislation would accomplish this long-overdue need.

Prescription drug costs are increasing at double-digit rates and clearly are unsustainable. Current pharmaceutical cost trends are increasing premiums, raising copayments, pressuring reductions in benefits, and undermining the ability of businesses to compete. We believe that a major contributor to the pharmaceutical cost crisis is the use of the Drug Price Competition and Patent Term Restoration Act of 1984 in ways clearly unanticipated by Congress and which effectively block generic entry into the marketplace. The repeated use of the 30-month generic drug marketing prohibition provision and other legal barriers have resulted in increasingly unpredictable and unaffordable pharmaceutical cost increases.

Although the legislation as reported out of the Senate HELP Committee does not totally eliminate the 30-month marketing prohibition provision, as would be our preference, it does make important process changes that will lead to a more predictable, rational pharmaceutical marketplace. We recognize that compromises were necessary to garner the support of a bipartisan majority of the Members of the Committee. However, we would strongly oppose any additional amendments that would undermine the intent of this legislation by further delaying generic access or reducing competition and increasing costs to purchasers. We also remain opposed to legislation that would increase costs to purchasers either through extended monopolies or unnecessary and costly litigation.

We are convinced that the legislation currently pending before the full Senate will make a major difference in increasing competition in the marketplace and enhancing access to more affordable, high quality prescription drugs. We look forward to working with you and other Members of the Senate to ensure that this important legislation is enacted this year.

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COALITION FOR A COMPETITIVE
PHARMACEUTICAL MARKET,
*July 30, 2002.*

DEAR SENATOR: As a broad-based coalition of large employers, consumer groups, generic drug manufacturers, insurers, and others, we are writing to urge you to vote for cloture on the bipartisan Greater Access to Affordable Pharmaceuticals Act (S. 812). We believe it is critical that Congress act this year to pass legislation that would eliminate barriers to generic drug entry into the marketplace. This legislation would accomplish this key policy objective.

Prescription drug costs continue to skyrocket—adversely impacting consumers by increasing premiums, raising copayments, pressuring reductions in benefits, and undermining the ability of businesses to compete. We believe that a major contributor to the pharmaceutical cost crisis is the use of the Drug Price Competition and Patent Term Restoration Act of 1984 in ways clearly unanticipated by Congress and which effectively block entry of equivalent generic drugs into the marketplace.

Today's report from the Federal Trade Commission (FTC) supports the kind of reforms contained in S. 812. For example, the report supports limiting the availability of the automatic 30-month marketing prohibition to just one per product, per generic drug application. It also recognizes the value of

having a mechanism that would allow a generic company to remove or correct the listing of a frivolous patent with the FDA. According to the report, the lack of a mechanism to delist an improperly listed patent ''may have real world consequences'' given the FTC's knowledge of ''instances in which a 30-month stay was generated solely by a patent that raised legitimate listability questions.''

The Coalition believes that S. 812 makes important process changes that will lead to a more predictable, rational pharmaceutical marketplace. CCPM members would strongly oppose any additional amendments that would undermine the intent of this legislation by further delaying generic access or reducing competition and increasing costs to purchasers. We also remain opposed to legislation that would increase costs to purchasers either through extended monopolies or unnecessary and costly litigation.

We are convinced that the legislation currently pending before the full Senate will make a major difference in increasing competition in the marketplace and enhancing access to more affordable, high quality prescription drugs. We look forward to working with you and other Members of the Senate to ensure that this important legislation is enacted this year.

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Mr. BIDEN. Mr. President, today is a day of profound disappointment to me. We have completed a debate on proposals to provide prescription drug coverage to Medicare beneficiaries, the most vulnerable sector of our population, and we have come up empty.

I applaud my colleagues for their earnestness and conscientiousness as this issue was discussed on the Senate floor, but earnestness and conscientiousness do not help the senior citizen who cannot afford to pay for needed medications. I introduced a bill, the Prescription Drug Benefit Act of 2002, that would have provided an excellent benefit for Medicare beneficiaries by adding prescription drug coverage to Medicare Part B with no new premiums or deductibles, and I still believe that should be our goal. But at this point, we don't even have a consensus for a first step toward a Medicare prescription drug plan for seniors.

Last week, I voted for the Graham-Miller plan, a comprehensive approach to this problem that, although not as good as my own bill, was a worthy compromise. It was defeated. Today, I voted for the Graham-Smith plan that would at least offer us a starting point toward a comprehensive prescription drug plan. It was defeated. I and all of my colleagues who are concerned about the welfare of our seniors are regrouping with an eye toward taking another run at this critical problem in the very near future.

The seniors and the disabled still need their life-saving medications. They still have to pay large amounts out-of-pocket for drugs, even though the legislation we passed today should help reduce the overall cost of pharmaceuticals for everyone. The percentage of the population covered by Medicare is rising. Medical advances are leading to important new drugs for various diseases. Our nation's seniors cannot, and should not, be left behind in the race toward longer and healthier lives. We have moved this debate forward, but it is far from over, and we will need to continue to be resourceful and persistent in the future. The life and health of 40 million Americans hang in the balance.

Mr. KOHL. Mr. President, I rise to strongly support final passage of S. 812, the Greater Access to Affordable Pharmaceuticals Act. I cosponsored this important legislation because I believe it will benefit every American by ensuring that more affordable generic drugs get to market on time and lower costs for consumers as promised. The Congressional Budget Office estimates that this bill will save American consumers $60 billion over the next 10 years.

Prescription drug spending represents 9 percent of all health care costs, but drug spending grew 17 percent in 2001—and it's the fastest growing part of health care. Generic drugs can cost one-quarter of the price of their brand-name counterparts. In a time when health care costs are soaring in the double-digits annually, that is no small point.

The pharmaceutical industry enjoys the highest profit margins of any sector in the American economy. Drug companies argue that high retail costs reflect the high cost of investment in research and development. I applaud the drug companies' efforts to find new lifesaving treatments and cures for patients and I do not argue with their right to make a healthy profit from their work.

It is important to note that many of the gains in pharmaceutical research are made possible by the substantial, taxpayer-funded research investments of the National Institutes of Health and other Federal grants. All Americans should have access to the benefits of that research, and they should expect that once a drug company has recouped their costs, made a healthy profit, and the patents surrounding their drug expire, at that point consumers should benefit from generic competition that lowers drug prices.

Unfortunately, in recent years, many drug companies have used loopholes in our patent laws to keep less expensive generic drugs off the market. This raises health care costs for patients, employers and States that are already struggling with rising health costs.

There are three major loopholes that this bill closes. First, it would stop brand-name drug companies from filing endless, frivolous patents to keep a generic competitor off the market. These patents often border on the ridiculous, such as a patent on the color of the pill. But ridiculous as it may seem, each of these patents triggers a 30-month stay whereby the generic drug is kept off the market while the matter goes to court. And drug companies have every incentive to do this, after all, the cost of litigation is virtually nothing compared to the additional profits they can get by keeping their monopoly just a little longer. For example, the makers of the antidepressent Wellbutrin were able to make another $1.3 billion during the 31 months they were in litigation with the generic company. And the makers of Prilosec earned another $1 billion in just 7 months of delayed generic competition.

This bill would also close another loophole by outlawing sweetheart deals where a brand company pays a generic company to stay out of the market. In the case of Cardizem, which treats high blood pressure, the brand-name company paid the generic company $90 million to stay out of the market. Because the generic had won the right to have 180 days of market exclusivity before other generic competitors could enter the market, this sweetheart deal allowed the brand company to earn another $450 million before other generics could compete.

Finally, this bill puts some common sense back into the process by which brand companies list patents with the FDA in what is called the Orange Book. It enforces the law as it was originally intended by ensuring that only patents that claim the drug product or the approved method of use are listed in the Orange Book. It also gives generic companies the ability to challenge patents that may have been listed inappropriately just to keep generics off the market longer.

I believe that this legislation preserves the original intent of the Hatch-Waxman Act to balance the competing interests of the rights of innovative drug companies and the rights of consumers to affordable medicines. It preserves the ability of drug companies to invest in research and development to find lifesaving cures and treatments, but it also makes prescription drugs more affordable for all Americans by getting generic drugs to the market on time. It also makes any Medicare prescription drug benefit we pass more affordable for seniors and taxpayers.

This brings me to the real disappointment I have about the legislation we are about to pass today. I am extremely disappointed that the Senate was unable to also pass a real, comprehensive, affordable drug benefit within the Medicare Program. I am baffled by the unwillingness of many on the other side of the aisle to work together to help our Nation's seniors with skyrocketing drug costs.

When Medicare was first created in 1965, prescription drugs were a very small part of our health care system. But today, prescription drugs are a critical part of that system, keeping people healthier and living longer. Unfortunately, according to the Kaiser Family Foundation, 38 percent of our Nation's elderly have absolutely no prescription drug coverage at all. Many seniors who do have some prescription drug coverage find their plan inadequate and face large out-of-pocket costs. Too many seniors forgo needed medicines or are forced to choose between buying the medicine they need and buying food or paying rent.

Seniors and the disabled on Medicare need a comprehensive, universal, voluntary, affordable drug benefit, and that benefit should be part of the Medicare program that we've relied upon since 1965. While the Senate considered many different plans, I voted for the Graham-Miller approach because it was the only plan that met those important goals. And it was the only plan before the Senate that guaranteed that all Wisconsin senior citizens would have access to the medicines they need.

By contrast, I voted against the so-called ''tripartisan'' plan because it relied solely on HMOs to provide prescription drugs to seniors. This simply won't work in Wisconsin. In our State, because of inadequate Medicare reimbursement, we've already seen Medicare HMO plans leave every year and offer fewer benefits than in other States. The tripartisan plan had the same Medicare reimbursement problems. There was no guarantee that plans would participate in Wisconsin at all, and those plans that did participate could cover fewer drugs or charge seniors more in Wisconsin than in other States.

In fact, the HMOs themselves have said they are reluctant to offer such plans. And even if they do, there is no guaranteed drug benefit, from year to year, HMOs could change the premiums and copays seniors pay and which drugs will be covered. I do not believe we should hold Wisconsin seniors hostage to the business interests of HMOs. Seniors need a drug benefit that they can rely on every year to be affordable and one that ensures access to the medicines they need. The tripartisan plan did not meet that test.

In addition, under the tripartisan plan, many seniors would still have high drug costs and low-income seniors would not be protected. The HMOs could charge whatever premiums they want; there would be a $250 deductible; seniors would still pay 50 percent of their drug bills; and there is a big gap where there is no coverage at all and the senior pays 100 percent of their drug bills. Seniors would have to pay $3,700 out of their own pockets before they even reach the catastrophic level. And low-income seniors may not qualify for any extra help at all because of a strict asset test that prevents them from being covered if they own a car worth more than $4,500, clothing and furniture worth more than $2,000, or even a burial fund worth $1500. This asset test would automatically eliminate 40 percent of Wisconsin's low-income seniors from being eligible for the extra help they need.

Instead of the false promise of the tripartisan plan, I and 51 other Senators supported the Graham-Miller plan. This program provided a guaranteed benefit through the Medicare Program that would be available to all seniors, at the same price no matter where they live. It was voluntary, so seniors with drug coverage today could keep their plans. It had reasonable premiums and copays, no gaps in coverage, and low-income seniors would get extra help with no restrictive asset test. And it gave seniors choices. Seniors could choose an HMO plan if they wanted to, but the Graham-Miller bill offered them a drug benefit through the traditional Medicare program that seniors have relied on since 1965.

Unfortunately, even though a majority of Senators supported the Graham-Miller bill, it failed to gain the 60 votes that are necessary for any plan to pass under Senate budget rules. At that point, the Senate was faced the possibility of doing nothing and continuing to leave seniors stranded with high drug costs. For me, this was not an option. Seniors have waited too long for Congress to act, and it would be inexcusable for Congress to leave them with nothing.

That's why I supported a bipartisan compromise that represented a solid down payment on a real Medicare prescription drug benefit. First, it would help all low-income seniors below 200 percent of poverty, 45 percent of Wisconsin seniors, by providing comprehensive drug coverage through the Medicare program with nominal copays of $2 per generic prescription and $5 per brand-name prescription. Second, it would provide all seniors above 200 percent of poverty with discounts on prescription drugs of up to 30 percent. The Medicare program would utilize Pharmacy Benefit Managers, or PBMs, to negotiate these discounts the same system that is used today to manage benefits for nearly 200 Americans in the private sector.

Third, the Graham-Smith compromise would protect seniors with very high drug costs of more than $3,300 in out-of-pocket costs, which represents nearly 17 percent of Wisconsin seniors. At that point, seniors would receive full Medicare coverage for their medicines with copays of only $10 per prescription.

Let me be clear that I would much prefer a more comprehensive benefit and have voted for one. The original Graham-Miller plan would have been a comprehensive benefit for all Medicare beneficiaries, and I believe that is the direction we need to go. But the Graham-Smith compromise plan would have taken a real first step toward the universal benefit we need. It would have been a down payment upon which Congress must build so that all seniors have the coverage they need. But again, even this compromise was blocked from passing.

I am extremely disappointed in the outcome of this debate. We missed a tremendous opportunity to pass a comprehensive Medicare drug benefit. And then we were blocked from the opportunity to take even one real step toward that goal. I truly hope that this is not the end of our journey this year. Our senior citizens made our country what it is today, they paid their taxes and they played by the rules. They should not be forced to choose between paying the rent or buying groceries, or buying the life-saving medicines they need to be healthy in their retirement years. It's time to create a reliable, affordable Medicare prescription drug benefit for seniors. I hope the Senate will continue to work toward that goal this year.

Mr. THURMOND. Mr. President, I rise today to speak in favor of affordable prescription drugs. As a life-long health advocate, I recognize that prescription drugs are an important part of improving the health and quality of life for millions of Americans. These drugs allow Americans of every age to live a more productive and more enjoyable life. Our success in this area is due in large measure to our competitive system that allows for many different approaches to meet the many different needs of Americans.

The central features of any prescription drug bill should be increased competition, innovation in the marketplace and increased access to more affordable drugs. However, the current bill does not accomplish these objectives. Instead, it seeks to bypass the excellent consumer protection provided by the FDA, decreases the return on the development of newer and better drugs, and may actually increase the cost of prescription drugs in the long run.

This bill has been hastily assembled and rashly brought to the floor before committee consideration. This bill contains provisions that have not been analyzed for their impact upon our fine health care system. I fear these provisions will threaten the excellent healthcare system we currently enjoy. Indeed, the FTC released, just yesterday, a report entitled ''Generic Drug Entry Prior to Patent Expiration'' that showed that our system was working and that under the current Hatch-Waxman law innovative new drugs were being brought to market even as a thriving generic market was lowering overall drug costs. While the report does show that some minor changes may be in order, the place to make such important and complex changes is not the floor of the Senate after only a few hours study, it is in the appropriate committee with the requisite expertise.

The bill contains a provision allowing for large scale re-importation of prescription drugs. This presents a serious safety concern of a variety of public health officials and has been rejected in the past. I am concerned that the opinions of many relevant agencies on this matter have been disregarded. Agencies which oppose this provision include the Department of Health and Human Services, the Food and Drug Administration, the Customs Service, and the Center ;for Medicare and Medicaid Services.

Another provision which I strongly oppose which is in the bill relates to Medicaid recipients access to medicine. While it is presented as a price control, it will effectively make drugs unavailable to low-income Medicaid patients

by imposing restrictive ''prior authorization'' requirements on physicians. This policy is opposed by many patient groups and should not be part of this legislation.

Finally, I am deeply concerned that this bill does not contain a Medicare drug benefit plan. This is a very important issue that remains unresolved by this body. Therefore, I do not support cloture on this bill, nor do I support final passage of the measure. It is my hope that we will revisit this issue soon and craft a bill which will improve the availability of affordable prescription drugs and ensure advances continue in this industry.

Mr. HUTCHINSON. Mr. President, nearly 482,000 seniors in Arkansas desperately need a Medicare prescription drug benefit. Per capita, Arkansas has one of the poorest senior populations in the Nation, which means, more often than not, Arkansas seniors must choose between putting food on the table and buying much needed prescription medicines. I voted in favor of the Graham-Smith-Lincoln Medicare prescription drug compromise today, which has the full support of the AARP, because I believe in providing prescription drug assistance to as many people as possible and to those seniors who need it most. I regret, however, that it leaves out nearly 40 percent of Arkansas seniors and lacks measures to strengthen and protect Medicare. Rather, I believe that a universal benefit, accompanied by responsible Medicare reforms, is the most sensible approach to addressing the rising cost of drugs for our seniors and ensuring the long-term stability of the Medicare program. But most importantly, I am concerned about the impact of the Graham-Smith-Lincoln compromise on local pharmacies.

Seniors need a Medicare prescription drug benefit just as much as they need access to their local pharmacies, particularly in rural states like Arkansas. The discount drug card established under the Graham-Smith-Lincoln compromise is a concept I opposed last week when I voted against the Hagel drug card amendment. Requiring pharmacies to accept discounts while doing nothing to reduce the price at which drugs are bought could force local pharmacies to foot the bill of a Medicare prescription drug amendment. This is simply not right.

To help fix these problems, I filed an amendment to the Graham-Smith-Lincoln compromise which would have struck the drug discount card provisions in the bill as well as a provision giving special treatment for mail order pharmacies. If the Graham-Smith-Lincoln compromise garnered the 60 votes necessary for passage, I was prepared to offer my amendment so the Senate could have an open debate and vote on the impact of such legislation on local pharmacists. Since the Graham-Smith-Lincoln compromise was rejected, this debate will have to wait until another day. In the meantime, I will continue to work for a bipartisan solution that provides Medicare prescription drug coverage for all seniors, and particularly low-income seniors, while also preserving access to local pharmacies.

The PRESIDING OFFICER. Under the previous order, there are 2 minutes remaining equally divided.

Who yields time?

The Senator from New York is recognized.

Mr. SCHUMER. Madam President, again, I urge my colleagues to support this legislation. Admittedly, it is incomplete legislation. We have not extended access, but in terms of cost cutting, this legislation is strong.

The Schumer-McCain provisions will reduce the costs of so many drugs by 60, 65 percent for the senior citizen. For the family who has a child who desperately needs a drug, instead of $100 a prescription, it will only be $30, $35, or $40 a prescription. That is a godsend to many people these days.

These drugs are wonder drugs, but their cost is so high that if you are not very wealthy or don't have a good medical plan, you cannot afford them, and that is an awful choice for people.

This bill achieves the goal of reducing costs and reducing it very significantly—a $60 billion reduction over the next decade to our citizenry. I ask for your support of this measure.

Madam President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. Who yields time?

The Senator from Pennsylvania, Mr. SANTORUM, is recognized.

Mr. SANTORUM. Madam President, I encourage a ''no'' vote on this bill. The Senator from New York says these are wonder drugs. They do not drop out of the air. They come from a tremendous amount of investment from pharmaceutical companies which create new drugs and save people's lives and create a better quality of life for Americans.

We are sacrificing future cures for political payout today, which is cheaper drugs for our folks back home. The long-term consequence of what we are doing today is that more people will die as a result of drugs not being invented because of the reduction in the amount of research and development that will go on because we have now tipped the balance toward generic drug companies, which do no research and investment and create no new drugs.

So understand what you are doing. We are sacrificing, yes, a great vote to say we are going to provide cheaper drugs. But long-term we are providing less cures and a lower quality of life.

The PRESIDING OFFICER. The bill having been read the third time, the question is, Shall the bill pass?

The yeas and nays have been ordered, and the clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. NICKLES. I announce that the Senator from North Carolina (Mr. HELMS) is necessarily absent.

I further announce that if present and voting the Senator from North Carolina (Mr. HELMS) would vote ''no''.

The result was announced—yeas 78, nays 21, as follows:

[Rollcall Vote No. 201 Leg.]

YEAS—78

| | | |
|---|---|---|
| Akaka | Dodd | McCain |
| Allard | Domenici | McConnell |
| Allen | Dorgan | Mikulski |
| Baucus | Durbin | Miller |
| Bayh | Edwards | Murkowski |
| Biden | Ensign | Murray |
| Bingaman | Feingold | Nelson (FL) |
| Boxer | Feinstein | Nelson (NE) |
| Bunning | Fitzgerald | Reed |
| Burns | Graham | Reid |
| Byrd | Grassley | Rockefeller |
| Campbell | Harkin | Sarbanes |
| Cantwell | Hollings | Schumer |
| Carnahan | Hutchinson | Sessions |
| Carper | Inhofe | Shelby |
| Chafee | Inouye | Smith (NH) |
| Cleland | Jeffords | Smith (OR) |
| Clinton | Johnson | Snowe |
| Cochran | Kennedy | Specter |
| Collins | Kerry | Stabenow |
| Conrad | Kohl | Stevens |
| Corzine | Landrieu | Thomas |
| Craig | Leahy | Torricelli |
| Crapo | Levin | Warner |
| Daschle | Lieberman | Wellstone |
| Dayton | Lincoln | Wyden |

NAYS—21

| | | |
|---|---|---|
| Bennett | Gramm | Lugar |
| Bond | Gregg | Nickles |
| Breaux | Hagel | Roberts |
| Brownback | Hatch | Santorum |
| DeWine | Hutchison | Thompson |
| Enzi | Kyl | Thurmond |
| Frist | Lott | Voinovich |

NOT VOTING—1

Helms

The bill (S. 812), as amended, was passed, as follows:

Mr. KENNEDY. Madam President, I move to reconsider the vote.

Mr. DASCHLE. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

## EXECUTIVE SESSION

### NOMINATION OF D. BROOKS SMITH TO BE UNITED STATES CIRCUIT JUDGE

The PRESIDING OFFICER. Under the previous order, the Senate will proceed to executive session to consider the following nomination, which the clerk will report.

The legislative clerk read the nomination of D. Brooks Smith, of Pennsylvania, to United States Circuit Judge for the Third Circuit.

The PRESIDING OFFICER. There are now 5 minutes evenly divided on the nomination. Who yields time?

Mr. LEAHY. Madam President, we have at best a modicum of order in the Senate, but I will proceed.

The record before us does not demonstrate that Judge D. Brooks Smith merits a promotion to the Court of Appeals. He is already serving a lifetime position as a Federal judge, but he continued as a member of a discriminatory club more than a decade after he told

the Senate he would quit. He did not resign until 1999, and then only after this vacancy on the Third Circuit opened up.

It should make no difference whether this club discriminated against women, or people because of their race or creed; it is discriminatory. He acknowledged that continuing in the club would be inconsistent with ethical rules, but he continued to serve there, even after he told Senator Heflin under oath in 1988 that under these rules he would be required to resign.

I believe he did not keep his word. I think this is, frankly, the kind of lapse that, had it been somebody nominated by the previous President, my friends on the other side of the aisle would have voted against him. I think they should vote against this one, even though he is a member of their own party. We have the areas where he did not recuse himself in a case where he had a clear conflict of interest. He took special-interest-funded trips. I think his record as a whole calls into question his sensitivity, his fairness, his impartiality, and his judgment.

I reserve the remainder of my time.

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. SPECTER. Madam President, we debated the issue of Judge Smith's qualifications extensively last night. But by way of brief summary: He has an excellent educational background. He practiced law for 8 years. He served as district attorney of a major county in Pennsylvania. He was a State court judge for 4 years, and in 1988 the bipartisan judicial commission, which Senator Heinz and I had organized, found him qualified. He has served in a very distinguished way for the past almost 14 years on the Federal court in Pittsburgh. He is now the chief judge of the Western District Court. His reputation is excellent. I have known him for the past 14 years and can personally attest to his integrity and his qualification.

When an issue is raised about not resigning from a club and the contention has been made that there was false testimony under oath, that simply is not supported by the facts. When Judge Smith came up for confirmation in 1988, he made the statement that he would resign if he could not change the rules of the fishing club, which was viewed at that time as discriminatory because women were not permitted to join.

In 1992, there was a definitive ruling that a club which did not have business purpose—which is the kind of club that this was—did not practice what is called invidious discrimination. Since the club did not practice invidious discrimination, Judge Smith did not have to resign. Certainly it cannot be said that somebody made a false statement under oath in 1988 when he had an intention at that time to do precisely what he said.

When later circumstances arise, where there is a change of circumstance, nobody can say that what he testified to in 1988 was incorrect at that time, because the circumstances had changed.

When the argument is made that he resigned when a vacancy arose on the Third Circuit, there were lots of vacancies on the Third Circuit in the interim, so that if that was a motivating factor, he could have resigned at an earlier time.

Judge Smith has brought to Washington a virtual army of people who have supported him, including many women.

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

Mr. SPECTER. I urge my colleagues to vote for his confirmation.

The PRESIDING OFFICER. The Senator from Vermont.

Mr. LEAHY. Madam President, as much as I like and respect my distinguished colleague from Pennsylvania, I believe Judge Smith did not keep his commitment in testimony before the Senate, did not keep his commitment to Senator Howell Heflin, a commitment that was made under oath. This was the first opening of a Court of Appeals seat from the Western District of Pennsylvania.

When I look at this, I look at the way he misled us in his initial description of the club that he belonged to and then further misled us in his intention. Frankly, I cannot support him. Every Senator can vote how they want. I cannot vote for him.

Mr. KERRY. Mr. President, I regret that I will be opposing Judge Smith's nomination. I regret that this nomination has become a lightning rod for so many.

Let me state at the outset that I disagree very strongly with Judge Smith's rulings on a number of cases. I find serious fault with his stated comments on the Violence Against Women Act. In a 1993 speech, Judge Smith told the Federalist Society that he viewed VAWA as unconstitutional. The text of those remarks read in part ''There is no legitimate constitutional source for this new-found 'civil right' to be free from physical violence.'' I cannot overstate my objections to his callous view of domestic violence.

I understand that Judge Smith has received the American Bar Association's rating of ''well qualified.'' I also understand that Judge Smith has strong support across the political spectrum in western Pennsylvania, his home. We have heard his friends in the Senate point out that he is a respectful, friendly and unbiased judge. These are important qualifications, and I do not doubt them. However, we must look beyond such qualifications when considering a nomination of this importance.

It is critically important that a judge on a Circuit Court of Appeals, the court of last resort for the vast majority of cases, have an ethically spotless record. In 1992, Judge Smith testified under oath that he would leave the Spruce Creek Rod and Gun Club within a couple of years if he could not change the rules of the club preventing women members. He did not do that. It was not until the seat on the Third Circuit Court of Appeals to which he now seeks appointment became vacant that he resigned his membership in the club. To this day he denies any wrongdoing. However, several prominent judicial ethicists have pointed out that he clearly violated the Code of Conduct for U.S. Judges.

There is a model for cases such as Judge Smith's involvement in the Spruce Creek club. Judge Kenneth Ryskamp was denied an appellate court seat in 1991 because of his membership in a country club whose bylaws were uncertain regarding membership diversity. In 1986, he was nominated to be a district court judge, he declared himself to be a member of a club whose bylaws clearly exclude women. He also told the Judiciary Committee that he would resign from that club. He did so almost immediately. Unfortunately, this example stands in stark contrast to the actions of Judge Smith.

Judge Smith also conducted himself poorly in not immediately recusing himself from two cases involving Mid-States Bank which was both his wife's employer and a bank in which he owned significant stock. During his hearing he did agree that he erred in not recusing himself sooner, which I do appreciate. But nevertheless, he exercised judgement that was questionable at best.

The Court of Appeals is the court of last resort for thousands of critical cases each year. Judges who serve there must be in the highest moral standing. Judge Smith's failure to follow-through on a promise to the Senate in a timely matter and his handling of cases involving Mid-States bank are disappointing and call into question that moral standing. Therefore, I reluctantly must oppose his nomination.

Mr. WELLSTONE. Mr. President, I speak today in opposition to the nomination of D. Brooks Smith to the Third Circuit Court of Appeals. I oppose the nominee because I believe serious questions have been raised regarding his ethical integrity and judicial temperament. Mr. Smith misled the Judiciary Committee in 1988 when he promised he would resign from the all-male Spruce Creek Rod and Gun Club. Despite his promise, and after the committee passed a resolution asserting that belonging to exclusive clubs where business is conducted constitutes invidious discrimination, Mr. Smith did not resign. In fact, he did not resign until 1999, when the position on the Third Circuit opened up.

Mr. Smith appears to subscribe to a general judicial philosophy that neglects the rights of women, institutionalized persons, consumers, workers, prisoners and disabled persons. His judgments have been reversed by the Third Circuit Court of Appeals 51 times—a larger number of reversals

than any of the Appellate Court Nominees who have come before the Judiciary Committee this Congress. Many of these reversals concerned decisions affecting civil and individual rights and indicate a disturbing lack of sensitivity and failure to follow established rules of law and appellate court decisions when it comes to those rights.

I am particularly concerned about Mr. Smith's reported view that the Violence Against Women Act is unconstitutional. I believe the Act is a lifeline to women in danger around the country and find Mr. Smith's view to be extreme. He is not in my view a suitable judge to serve one level below the Supreme Court.

Ms. CANTWELL. Mr. President, I have carefully considered the record of Judge D. Brooks Smith, who has been nominated to the Third Circuit Court of Appeals, and it is with regret that I will be voting not to elevate Judge Smith. While I believe that he is intellectually qualified and personally respect, the fact remains that when he was confirmed as a judge to the District Court by this committee in 1988, Judge Smith stated under oath that he would follow the ethical rules governing Federal judges and resign from a discriminatory club if he was unable to change the men-only rule. Judge Smith failed to change that rule, but did not resign from the Club until more than a decade later, in December of 1999.

Since it became known that Judge Smith had not withdrawn from the club, he has made an attempt to justify his inaction by claiming the club is purely social and is thus does not engage in pervasive discrimination. While I believe that there is little difference between a club that affirmatively denies membership to women, and a club that denies membership to African Americans or to people of a particular religious affiliation, the issue is not whether or not the club's discriminatory membership policies are or are not ''pervasive.'' The issue is that Judge Smith told this Committee under oath that he would resign from the club and he did not do so.

Federal judges are appointed to lifetime terms and the confirmation process is the only democratic check on individuals conduct, unless he or she is appointed to a higher position. If a promise to the Committee like the one Judge Smith made can be so broken with no consequence, then promises and assurances made by other nominees to this Committee will mean very little.

I am also disturbed by Judge Smith's judicial decisions in the gender discrimination context. In at least two cases, Judge Smith's application of legal and constitutional standards for deciding gender discrimination complaints raises serious concerns about his willingness to reach decisions fairly and in a manner consistent with precedent in the Third Circuit. In Shafer v. Board of Education, Judge Smith dismissed the suit filed by a male teacher challenging his school board's family leave policy which entitled women, and not men, to one year unpaid leave for childbirth or ''childrearing.'' The Third Circuit reversed, finding the policy to be in violation of the father's Title VII rights. In Quirin v. City of Pittsburgh, Judge Smith interpreted the law in a way that made it nearly impossible for the City of Pittsburgh to remedy past discrimination in its hiring of only male firefighters, and he applied the law in a manner inconsistent with established precedent.

Judge Smith also has engaged in other questionable conduct. He has exercised dubious judgment in failing to promptly withdraw from a case that involved a bank in which he had a very significant investment, he has attended more corporate funded trips than any other sitting federal judge, and he has given speeches expressing his views of the constitutionality of statutes that could be challenged in cases before him. The combination of these factors suggests that Judge Smith simply has ethical blind spots that call into question his suitability to serve on the Circuit Court.

I am concerned by Judge Smith's failure to follow precedent and his troubling record of reversals, and by his actions on the bench that fail to meet the very highest standards of the legal profession. In addition, his failure to promptly abide by the promise given to this Committee in 1988 and withdraw from the Spruce Creek Rod and Gun club is simply a failure that cannot be ignored. Therefore, I cannot support his elevation to the Third Circuit.

Mr. HATCH. Mr. President, I stand in support of the confirmation of D. Brooks Smith, who has been nominated to be a judge on the Third Circuit Court of Appeals. Judge Smith is currently the Chief Judge for the Western District of Pennsylvania. He has compiled an impressive record as a judge since 1988, when, at age 36, he became one of the youngest Federal judges in the country. Prior to that, Judge Smith has served as a state court judge, as a prosecutor, and as a private practitioner with a law firm in Altoona, Pennsylvania. He is a 1973 graduate of Franklin and Marshall College and a 1976 graduate of the Dickinson School of Law in Pennsylvania.

Of course, anyone who has been reading the newspapers in the past few months knows that it would be impossible to comment on Judge Smith's credentials without mentioning the attack he has come under from the usual liberal lobbyist interest groups in Washington. As President Reagan would say, there they go again.

An editorial in Pittsburgh Post-Gazette noted,

> Critics of Smith, many aligned with Democratic Party interests, say he has been too quick to dismiss valid lawsuits brought by individuals against corporations, and too eager to travel to conferences paid for by businesses with interests in federal litigation. . . . But outside Washington's world of partisan poliitics, Smith seems to have no enemies, only admirers. Those who have watched him work say an exemplary 14-year record on the federal bench in Western Pennsylvania is being twisted by political opportunities. His popularity outside the capital extends even to members of the opposing political party, who describe him as fair, hard-working and respectful to all.

Well, it is an election year and we know the left of mainstream groups will not miss an opportunity to flex their muscles.

Those groups who are working to discredit Judge Smith apparently believe that President Bush's circuit court nominees deserve to have their records distorted and their reputations dragged through the mud. I think that no judicial nominee deserves such treatment, and that was something I practiced as Chairman for 6 of President Clinton's 8 years in office. I strongly agree with the Washington Post editorial of February 19, 2002, that ''opposing a nominee should not mean destroying him.''

Referring to our last confirmation hearing, the Post pointed out.

> The need on the part of liberal groups and Democratic senators to portray [a nominee] as a Neanderthal—all the while denying they are doing so—in order to justify voting him down is the latest example of the degradation of the confirmation process.

I hope that my colleagues in the Senate will be sensitive to the dangers to the judiciary and to the reputation of this body that will certainly result from the repeated practice of degrading honorable and accomplished people who are willing to put their talents to work in the public service. Again, I fully support a thorough and genuine review of a nominee's record and temperament, and in no way do I think we should shy away from our constitutional role of providing advice and consent.

We did that in the case of D. Brooks Smith and have found him to be one of the finist jurists serving today. The President was right to nominate him, we will do well to confirm him.

Mr. DURBIN. Mr. President, I have the utmost respect for Senator ARLEN SPECTER. During the Clinton Presidency, Senator SPECTER angered many in his own party by standing up to conservative special interest groups and supporting well-qualified mainstream judicial nominees, many of whom waited months or years for a confirmation hearing.

That said, Judge D. Brooks Smith of Pennsylvania has a track record that troubles me. His conservatism is not in dispute, on display in a 1993 speech to the ultra-conservative Federalist Society criticizing the Violence Against Women Act. He articulated a vision of constitutional federalism directly at odds with Congress's power to pass that important legislation, and many other important federal initiatives to fight crime, such as the highly successful ''Weed and Seed'' program. The Supreme Court subsequently invalidated a small portion of the Violence Against

Women Act, but Judge Smith's vision well exceeds the Court's own.

Judge Smith has also engaged in conduct that raises serious ethical questions.

First, as you have heard, Judge Smith has a long association with a prestigious private club that has a formal policy barring women from membership. Exclusive clubs are serious business, forging important commercial ties and blocking women from full opportunity in society. Justice Sandra Day O'Connor, who was offered a job as a legal secretary out of Stanford Law School, has endorsed limits on such clubs, noting that the government has a ''profoundly important goal of ensuring nondiscriminatory access to commercial opportunities in our society.''

We can debate back and forth the merits of whether the Spruce Creek Club is or is not a ''purely social'' organization, at least one club member told the Judiciary Committee investigator that he has attended several business conferences at the club. For me, though, it is even more significant that Judge Smith told this same Judiciary Committee in 1988 that he would comply with the ABA Code of Judicial Conduct and resign from the club if it did not change its policies. To his credit, he did try to change the policies. But he did not follow through on his commitment and resign for 10 more years.

Second, as a district court judge, Judge Smith sat on two fraud cases in which he and his wife had a conflict of interest. He did recuse himself from these cases, but only after a period of time had passed in which he was well aware of the conflict and continued to issue orders in both cases. His defense, that none of the parties asked him to recuse himself earlier, is weakened by the fact that he never told the parties, before or after, of his $100,000 plus investment in the bank in question.

Finally, I am troubled by Judge Smith's frequent attendance at judicial seminars sponsored by special interest groups and funded by corporations with litigation pending before his court. Most importantly, he remains to this day unwilling to report the value of those seminars on his financial disclosure forms and unwilling to accept responsibility to be attentive to the corporate sponsors of those seminars. Both of these positions are inconsistent with an advisory opinion of the Judicial Conference's Committee on Codes of Conduct.

For these, reasons, I am constrained to oppose Judge Smith's nomination.

Mr. FEINGOLD. Mr. President, I will vote ''no'' on the nomination of D. Brooks Smith to the U.S. Court of Appeals for the Third Circuit. Let me take a few minus to explain my decision.

First, let me not that I did not reach this decision lightly. After this vote, we will have considered 64 judicial nominations of President Bush on the floor and I will have voted against only two. And this will be the first Court of Appeals nominee I have voted against on the floor. I voted against one other nominee in Committee, while I have voted in favor of 12 circuit court nominations.

I also want again to commend the chairman of the Judiciary Committee and the majority leader for the way that they have handled judicial nominations. The pressure is intense, and the criticism quite harsh. It is my view that a process that gives a nominee a hearing, and then a vote in the committee, and then a vote on the floor is not an unfair process; it is the way the Senate is supposed to work.

During the previous six years, the Senate, and the Judiciary Committee did not work this way. Literally dozens of nominees never got a hearing, as Judge Smith did, and never got a vote, as Judge Smith did in committee and is about to on the floor. Those nominees were mistreated by the committee. Judge Smith has not been mistreated. I commend Chairman LEAHY for doing what he can to set a new course on the Judiciary Committee, even though most supporters of the President's nominees do not give him credit for that.

I chaired the hearing that the Judiciary Committee held on Judge Smith. He is obviously a very intelligent man, and talented lawyer. He is personable and respectful. My opposition to his nomination is not personal.

I oppose this nomination because I believe that Judge Smith has not demonstrated good judgment on certain ethical issues. Beyond that, I believe that he misled the Judiciary Committee when his conduct was fairly questioned. These are serious issues, not trifles, not excuses. I cannot in good conscience support his elevation to the Court of Appeals.

People who came to our courts for justice don't get to pick their judges. And, at least at the Federal level, they don't get to elect judges. If our system is to work, if the people are to respect the decisions that judges make, they have to have confidence that judges are fair and impartial. Judges, more than any other public figures, have to be beyond reproach. The success of the rule of law as an organizing principle of our society is based on the respect that the public has for judges. A legal system simply cannot function if the public does not believe its judges will be fair and impartial.

That is why I have focused on ethical issues on a number of nominations we have faced so far. I can't as a Senator assure my constituents that every decision made by a judge will be one with which they will agree, or even the correct one legally. But I should be able to assure them, indeed, I must be able to assure them, that those decisions will be reached fairly and impartially, that the judges I approve for the Federal bench are ethical, and beyond that, that they understand the importance of ethical behavior to the job that they have been selected to do.

In 1988, Judge Smith was nominated to the Federal District Court in Pennsylvania. He had a distinguished legal and academic record, and his nomination faced no serious opposition. The one issue that aroused controversy was his membership in a hunting and fishing club called the Spruce Creek Rod and Gun Club that did not then, and does not today, permit women to be members. Judge Smith told Chairman BIDEN in a letter that he would try to convince the club to change its policy and if he was unsuccessful he would resign from the club.

In answers to questions posed by Senator SCHUMER, Judge Smith stated: ''In my 1988 letter to the Judiciary Committee, I stated that I would resign from the Spruce Creek Rod & Gun Club if it did not amend its by-laws to admit women as members. I did not specify in my letter when I would resign.''

But Judge Smith also testified before this committee, under oath, in 1988. Senator Howell Heflin asked what steps he would take to change the restriction and how long he would wait. Judge Smith testified as follows:

> Well, first of all, Senator, I think the most important step would be to attempt an amendment to the bylaws. Failing that, I believe an additional step would and could be—and I would support, and have indicated to at least one member of the club that I would support and attempt—an application for membership from a woman. Failing that, I believe that I would be required to resign.
>
> I think it would be necessary for me to await an annual meeting which is, as I understand it—and I preface it with ''as I understand it'' because I have not been an active member in any real sense of the word, but I believe there to be an annual meeting every April—and I believe I would have to await that point in time to at least attempt a bylaws amendment.

Now I suppose that our former colleague Senator Heflin, who was a State supreme court judge earlier in this career, could have nailed him down even tighter than he did. But we don't have to do that in the Judiciary Committee. The committee is not a court of law. We have a right to rely on the clear implications of sworn testimony of nominees who come before us. I believe everyone at that hearing, and everyone reading it fairly today would conclude that Judge Smith promised that he would resign in 1989, if he was unsuccessful in getting the club to change its policies at the next annual meeting.

Judge Smith made that promise in October 1988. He was then confirmed by the Judiciary Committee and by the full Senate. We learned after Judge Smith was nominated to the Third Circuit last year that he didn't resign from the club until 1999, eleven years later. Indeed, he didn't resign until after a vacancy arose on the Third Circuit Club of Appeals in which he was interested. This is what he wrote to the club when he resigned on December 15, 1999:

> After considerable thought, and not without a measure of regret, I hereby submit my resignation from membership in the Spruce

Creek Rod and Gun Club, effective immediately. Certain of the Club's exclusive membership provisions, which I do not expect will change, continue to be at odds with certain expectations of federal judicial conduct.

At this point, it certainly appears that Judge Smith recognized that his continued membership in the club was not consistent with the Canons of Judicial Conduct.

After he was nominated to the Third Circuit vacancy last year, Judge Smith filled out of the Judiciary Committee's questionnaire. This is how he responded to a question about membership in organizations that disciminate:

I previously belonged to the Spruce Creek Rod and Gun Club, a rustic hunting and fishing club which admits only men to membership. I joined the club in 1982 largely for sentimental reasons: it is where my grandfather taught me to fish when I was seven or eight years old. I urged the club, through letters to club officers personal contacts with members, to consider changing its exclusive membership provision. These efforts were unsuccessful. Eventually, in late 1999, I voluntarily resigned my membership.

It is noteworthy that in this answer, Judge Smith makes no mention of the argument that he and his supporters now advance, that he had no obligation to resign from the club because it is a purely social club. Only when questions began to be raised about his continued membership did this argument arise.

Now I know that there is a dispute about whether business is conducted at this club. To be honest, I tend to credit the email and statements of Dr. Silverman, a supporter of Judge Smith, who said that a medical PAC held meetings there, rather than his letter to the committee saying that the events were just picnics, which was written after he learned that what he had said might be damaging to Judge Smith's confirmation. In my mind, if the club permits its members to invite business associates to the club and hold business meetings there, that is a club that should not discriminate against minorities or women. And the president of the club has confirmed that members can hold any meetings they want at the club.

But for me, that's not the crucial point. The crucial point is that this nominee made a commitment to the Judiciary Committee under oath. He broke that commitment. And then he compounded his problem by coming up with an after-the-fact rationalization for why he broke his commitment. Even if he were obviously correct that he need not have resigned his membership, I still believe he was untruthful when he suggested to the committee that the changes to the Code of Conduct in 1992 ''afforded me the opportunity to reexamine the entire Code and consider it's application to my membership in Spruce Creek.'' I don't believe that Judge believed between 1992 and 1999 that his obligation had changed after 1992. If he did, I don't think he would have had, and I am quoting from his written answers to Senator SCHUMER's questions:

numerous conversations with Club officers about changing the by-laws. In fact, in practically every conversation I had with members of the Club in which we talked of the Club, I recall discussing the by-law issue and advocating change.

Why would he do that if he thought the club was not engaging in invidious discrimination? And why would he say in his resignation letter that the club's membership policies: ''continue to be at odds with certain expectations of Federal judicial conduct''?

I have concluded that Judge Smith came up with his argument after questions were raised about his failure to resign. Some in the Senate may be convinced by this argument that they should ignore Judge Smith's failure to follow through on his commitment to the Judiciary Committee and the Senate in 1988. I cannot ignore that failure.

I am afraid that this is not the only instance where Judge Smith has come up with after-the-fact rationalizations of his behavior that don't hold up under scrutiny. At his hearing, I asked Judge Smith about numerous trips he had taken to judicial education seminars paid for by corporate interests. Judge Smith indicated that had studied and been guided by Advisory Opinion No. 67, which instructs judges to inquire into the sources of funding of such seminars before attending them in order to be sure that there was no conflict of interest. I asked him if before he went on the trips he had inquired about the source of funding sponsored by The Foundation for Research on Economics and the Environment, known as FREE, and the Law and Economics Center of George Mason University, known as LEC. Judge Smith answered the question with respect to FREE, saying that he remembered inquiring more than once about FREE's funding by telephone.

So I asked him a follow-up question in writing about whether he made a similar inquiry about the funding for seminars put on by the Law and Economics Center at George Mason University. Judge Smith gave an amazing answer. He said that because the trips were sponsored by a university, he had no obligation to inquire about the source of funding, and he claimed that he reached that conclusion in 1992 and 1993 when he was taking these trips.

Both ethics professors with whom I consulted state in no uncertain terms that Judge Smith is wrong in his interpretation of the ethical obligations of a judge who wishes to go on one of these trips. As Professor Gillers states: ''Obviously, there would be room for much mischief if a judge invited to an expense-paid judicial seminar could rely on the non-profit nature of an apparently neutral sponsor to immunize the judge's attendance. Judge Smith is therefore wrong in his assumption.''

I believe if Judge Smith really reached this conclusion with respect to LEC at the time of the hearing, he would have told us when he answered my question at the hearing. His written response to the follow-up question indicates that he in fact did not understand the import of Advisory Opinion No. 67, then, or now. I find that very troubling. It undercuts his assurances to me at the hearing that he would refrain from taking additional trips until he was ''satisfied that funding does not come from a source that is somehow implicated in a case before him.'' I don't know how I can rely on that assurance.

In addition, there is the question of Judge Smith's failure to recuse himself in two cases in 1997—SEC v. Black and United States v. Black. These are very complicated cases, so I sought the advice of two legal ethics experts. After reviewing Judge Smith's testimony and written answers to questions and all of the other materials submitted to the Judiciary Committee on this issue from both supporters and opponents of Judge Smith, both Professor Gillers and Professor Freedman conclude that Judge Smith violated the judicial disqualification statute, 28 U.S.C. §455, by not recusing himself earlier in SEC v. Black, and by not recusing himself immediately upon being assigned the criminal matter in United States v. Black. Professor Freedman called his violations ''among the most serious I have seen.''

I was particularly disturbed by Judge Smith's failure to disclose his financial interest in the bank involved in the case to the parties in the criminal case. He told them about his wife's employment and that he had recused himself in the civil case. But he didn't give the parties full and complete information upon which they could base a decision whether to ask him to recuse himself. This was Judge Smith's obligation, in my view.

In my opinion, these ethical questions individually raise serious concerns about Judge Smith's fitness to serve as a Circuit Court judge. Together, they are very significant. I cannot support a nomination plagued by such an ethical cloud, despite all of the heartfelt support he has received. I will therefore, reluctantly, vote no.

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

The Senator from Nevada.

ORDER OF PROCEDURE

Mr. REID. Madam President, on behalf of the majority leader, I ask unanimous consent that following the vote on the matter now pending, Judge Smith, we proceed to H.R. 5010, the Department of Defense appropriations bill.

The PRESIDING OFFICER. Is there objection?

Mr. MCCAIN. Reserving the right to object.

The PRESIDING OFFICER. The Senator from Arizona.

Mr. MCCAIN. I object to proceeding until I see the managers' amendment.

Mr. REID. There is no managers' amendment.

Mr. MCCAIN. On DOD appropriations?

Mr. REID. No.

I yield to my friend from Alaska.

Mr. STEVENS. We offered a list of amendments to staff. We informed the staff and we will be happy to show them the amendments when we see the amendments that Senator MCCAIN intends to offer.

Mr. REID. I also say that I misspoke. The majority leader does not need unanimous consent on his behalf.

I say to my friend from Arizona, as we have talked on a number of occasions on previous bills, any package of managers' amendments the Senator from Arizona will have a chance to review.

I withdraw the unanimous consent request and announce on behalf of the majority leader that following the vote on Judge Smith, the Senate will move to H.R. 5010, the Department of Defense appropriations bill.

Mr. BYRD. Reserving the right to object, and I will not object, let me say to the distinguished Senator from Arizona, that not only he will see the managers' amendments, but I will insist on the managers' amendments being read on all appropriations bills for the attention of the full Senate.

Mr. MCCAIN. Reserving the right to object, I thank the Senator from West Virginia.

We have had many occasions where late at night managers' amendments were agreed to without anyone ever having seen or heard of them. And I would still like to see the managers' amendment before some time late tomorrow night when everyone wants to get out of here and leave and I am the bad guy again. I want to see what is in the managers' amendment package.

It is not an illegitimate request to see the managers' amendment package before they vote on final passage, which then puts us in the uncomfortable position of having to be delayed. I think it is a fair request on the part of the taxpayers of America to see what we are voting.

Mr. REID. I yield to the Senator from Alaska.

Mr. STEVENS. Madam President, I am informed that 20 minutes ago those amendments went to Senator MCCAIN's office and we have not seen his amendments. We ask that we see his amendments, too. We cannot put a managers' package together until we see them all.

Mr. REID. Madam President, I ask the Senator from Arizona, do you have any problem with DOD appropriations after this vote?

Mr. MCCAIN. I don't.

I would like to say, any amendment that I have will be debated and voted on. I don't have the privilege of proposing a managers' amendment.

Mr. REID. Has the Senator withdrawn his objection?

Mr. BYRD. Parliamentary inquiry.

The PRESIDING OFFICER. The Senator from West Virginia.

Mr. BYRD. The Senator does not need consent, does he? The consent has already been given some days ago.

Mr. REID. As has been explained to me, the majority leader at this time—and I—can call this up, but would have to be, as I understand it, some later time.

I am asking for a time certain and that is why the Senator from Arizona, as I understand, has no problem bringing it up after this next matter.

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

Mr. LEAHY. I ask for the yeas and nays on the pending nomination.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The question is, will the Senate advise and consent to the nomination of D. Brooks Smith, of Pennsylvania, to be United States Circuit Judge for the Third Circuit? On this question the yeas and nays have been ordered and the clerk will call the roll.

The legislative clerk called the roll.

Mr. NICKLES, I announce that the Senator from North Carolina (Mr. HELMS) is necessarily absent.

I further announce that if present and voting the Senator from North Carolina (Mr. HELMS) would vote ''Yea''.

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

The result was announced—yeas 64, nays 35, as follows:

[Rollcall Vote No. 202 Ex.]

YEAS—64

| | | |
|---|---|---|
| Allard | Edwards | McConnell |
| Allen | Ensign | Miller |
| Bayh | Enzi | Murkowski |
| Bennett | Fitzgerald | Nelson (FL) |
| Biden | Frist | Nelson (NE) |
| Bond | Graham | Nickles |
| Breaux | Gramm | Roberts |
| Brownback | Grassley | Santorum |
| Bunning | Gregg | Sessions |
| Burns | Hagel | Shelby |
| Byrd | Hatch | Smith (NH) |
| Campbell | Hollings | Smith (OR) |
| Carnahan | Hutchinson | Snowe |
| Carper | Hutchison | Specter |
| Chafee | Inhofe | Stevens |
| Cochran | Kohl | Thomas |
| Collins | Kyl | Thompson |
| Craig | Landrieu | Thurmond |
| Crapo | Lincoln | Voinovich |
| DeWine | Lott | Warner |
| Domenici | Lugar | |
| Dorgan | McCain | |

NAYS—35

| | | |
|---|---|---|
| Akaka | Durbin | Mikulski |
| Baucus | Feingold | Murray |
| Bingaman | Feinstein | Reed |
| Boxer | Harkin | Reid |
| Cantwell | Inouye | Rockefeller |
| Cleland | Jeffords | Sarbanes |
| Clinton | Johnson | Schumer |
| Conrad | Kennedy | Stabenow |
| Corzine | Kerry | Torricelli |
| Daschle | Leahy | Wellstone |
| Dayton | Levin | Wyden |
| Dodd | Lieberman | |

NOT VOTING—1

Helms

The nomination was confirmed.

## LEGISLATIVE SESSION

The PRESIDING OFFICER. Under the previous order, the Senate will return to legislative session.

## DEPARTMENT OF DEFENSE APPROPRIATIONS ACT, 2003

The PRESIDING OFFICER. Under the previous order, the Senate will proceed to the consideration of H.R. 5010, which the clerk will report by title.

The legislative clerk read as follows:

A bill (H.R. 5010) making appropriations for the Department of Defense for fiscal year ending September 30, 2003, and for other purposes.

The Senate proceeded to consider the bill which had been reported from the Committee on Appropriations with an amendment.

[Strike the part shown in bold brackets and insert in lieu thereof the part shown in italic.]

H.R. 5010

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

**[**That the following sums are appropriated, out of any money in the Treasury not otherwise appropriated, for the fiscal year ending September 30, 2003, for military functions administered by the Department of Defense, and for other purposes, namely:

**[**TITLE I

**[**MILITARY PERSONNEL

**[**MILITARY PERSONNEL, ARMY

**[**For pay, allowances, individual clothing, subsistence, interest on deposits, gratuities, permanent change of station travel (including all expenses thereof for organizational movements), and expenses of temporary duty travel between permanent duty stations, for members of the Army on active duty (except members of reserve components provided for elsewhere), cadets, and aviation cadets; and for payments pursuant to section 156 of Public Law 97–377, as amended (42 U.S.C. 402 note), and to the Department of Defense Military Retirement Fund, $26,832,217,000.

**[**MILITARY PERSONNEL, NAVY

**[**For pay, allowances, individual clothing, subsistence, interest on deposits, gratuities, permanent change of station travel (including all expenses thereof for organizational movements), and expenses of temporary duty travel between permanent duty stations, for members of the Navy on active duty (except members of the Reserve provided for elsewhere), midshipmen, and aviation cadets; and for payments pursuant to section 156 of Public Law 97–377, as amended (42 U.S.C. 402 note), and to the Department of Defense Military Retirement Fund, $21,874,395,000.

**[**MILITARY PERSONNEL, MARINE CORPS

**[**For pay, allowances, individual clothing, subsistence, interest on deposits, gratuities, permanent change of station travel (including all expenses thereof for organizational movements), and expenses of temporary duty travel between permanent duty stations, for members of the Marine Corps on active duty (except members of the Reserve provided for elsewhere); and for payments pursuant to section 156 of Public Law 97–377, as amended (42 U.S.C. 402 note), and to the Department of Defense Military Retirement Fund, $8,504,172,000.

**[**MILITARY PERSONNEL, AIR FORCE

**[**For pay, allowances, individual clothing, subsistence, interest on deposits, gratuities, permanent change of station travel (including all expenses thereof for organizational movements), and expenses of temporary duty travel between permanent duty stations, for members of the Air Force on active duty (except members of reserve components provided for elsewhere), cadets, and aviation cadets; and for payments pursuant to section

156 of Public Law 97–377, as amended (42 U.S.C. 402 note), and to the Department of Defense Military Retirement Fund, $21,957,757,000.

[RESERVE PERSONNEL, ARMY

[For pay, allowances, clothing, subsistence, gratuities, travel, and related expenses for personnel of the Army Reserve on active duty under sections 10211, 10302, and 3038 of title 10, United States Code, or while serving on active duty under section 12301(d) of title 10, United States Code, in connection with performing duty specified in section 12310(a) of title 10, United States Code, or while undergoing reserve training, or while performing drills or equivalent duty or other duty, and for members of the Reserve Officers' Training Corps, and expenses authorized by section 16131 of title 10, United States Code; and for payments to the Department of Defense Military Retirement Fund, $3,373,455,000.

[RESERVE PERSONNEL, NAVY

[For pay, allowances, clothing, subsistence, gratuities, travel, and related expenses for personnel of the Navy Reserve on active duty under section 10211 of title 10, United States Code, or while serving on active duty under section 12301(d) of title 10, United States Code, in connection with performing duty specified in section 12310(a) of title 10, United States Code, or while undergoing reserve training, or while performing drills or equivalent duty, and for members of the Reserve Officers' Training Corps, and expenses authorized by section 16131 of title 10, United States Code; and for payments to the Department of Defense Military Retirement Fund, $1,897,352,000.

[RESERVE PERSONNEL, MARINE CORPS

[For pay, allowances, clothing, subsistence, gratuities, travel, and related expenses for personnel of the Marine Corps Reserve on active duty under section 10211 of title 10, United States Code, or while serving on active duty under section 12301(d) of title 10, United States Code, in connection with performing duty specified in section 12310(a) of title 10, United States Code, or while undergoing reserve training, or while performing drills or equivalent duty, and for members of the Marine Corps platoon leaders class, and expenses authorized by section 16131 of title 10, United States Code; and for payments to the Department of Defense Military Retirement Fund, $553,983,000.

[RESERVE PERSONNEL, AIR FORCE

[For pay, allowances, clothing, subsistence, gratuities, travel, and related expenses for personnel of the Air Force Reserve on active duty under sections 10211, 10305, and 8038 of title 10, United States Code, or while serving on active duty under section 12301(d) of title 10, United States Code, in connection with performing duty specified in section 12310(a) of title 10, United States Code, or while undergoing reserve training, or while performing drills or equivalent duty or other duty, and for members of the Air Reserve Officers' Training Corps, and expenses authorized by section 16131 of title 10, United States Code; and for payments to the Department of Defense Military Retirement Fund, $1,236,904,000.

[NATIONAL GUARD PERSONNEL, ARMY

[For pay, allowances, clothing, subsistence, gratuities, travel, and related expenses for personnel of the Army National Guard while on duty under section 10211, 10302, or 12402 of title 10 or section 708 of title 32, United States Code, or while serving on duty under section 12301(d) of title 10 or section 502(f) of title 32, United States Code, in connection with performing duty specified in section 12310(a) of title 10, United States Code, or while undergoing training, or while performing drills or equivalent duty or other duty, and expenses authorized by section 16131 of title 10, United States Code; and for payments to the Department of Defense Military Retirement Fund, $5,070,188,000.

[NATIONAL GUARD PERSONNEL, AIR FORCE

[For pay, allowances, clothing, subsistence, gratuities, travel, and related expenses for personnel of the Air National Guard on duty under section 10211, 10305, or 12402 of title 10 or section 708 of title 32, United States Code, or while serving on duty under section 12301(d) of title 10 or section 502(f) of title 32, United States Code, in connection with performing duty specified in section 12310(a) of title 10, United States Code, or while undergoing training, or while performing drills or equivalent duty or other duty, and expenses authorized by section 16131 of title 10, United States Code; and for payments to the Department of Defense Military Retirement Fund, $2,124,411,000.

[TITLE II

[OPERATION AND MAINTENANCE

[OPERATION AND MAINTENANCE, ARMY

[For expenses, not otherwise provided for, necessary for the operation and maintenance of the Army, as authorized by law; and not to exceed $10,818,000 can be used for emergencies and extraordinary expenses, to be expended on the approval or authority of the Secretary of the Army, and payments may be made on his certificate of necessity for confidential military purposes, $23,942,768,000: *Provided*, That of the funds appropriated in this paragraph, not less than $355,000,000 shall be made available only for conventional ammunition care and maintenance.

[OPERATION AND MAINTENANCE, NAVY

[For expenses, not otherwise provided for, necessary for the operation and maintenance of the Navy and the Marine Corps, as authorized by law; and not to exceed $4,415,000 can be used for emergencies and extraordinary expenses, to be expended on the approval or authority of the Secretary of the Navy, and payments may be made on his certificate of necessity for confidential military purposes, $29,121,836,000.

[OPERATION AND MAINTENANCE, MARINE CORPS

[For expenses, not otherwise provided for, necessary for the operation and maintenance of the Marine Corps, as authorized by law, $3,579,359,000.

[OPERATION AND MAINTENANCE, AIR FORCE

[For expenses, not otherwise provided for, necessary for the operation and maintenance of the Air Force, as authorized by law; and not to exceed $7,902,000 can be used for emergencies and extraordinary expenses, to be expended on the approval or authority of the Secretary of the Air Force, and payments may be made on his certificate of necessity for confidential military purposes, $27,587,959,000: *Provided*, That notwithstanding any other provision of law, that of the funds available under this heading, $750,000 shall only be available to the Secretary of the Air Force for a grant to Florida Memorial College for the purpose of funding minority aviation training: *Provided further*, That of the amount provided under this heading, not less than $2,000,000 shall be obligated for the deployment of Air Force active and Reserve aircrews that perform combat search and rescue operations to operate and evaluate the United Kingdom's Royal Air Force EH–101 helicopter, to receive training using that helicopter, and to exchange operational techniques and procedures regarding that helicopter.

[OPERATION AND MAINTENANCE, DEFENSE-WIDE

[(INCLUDING TRANSFER OF FUNDS)

[For expenses, not otherwise provided for, necessary for the operation and maintenance of activities and agencies of the Department of Defense (other than the military departments), as authorized by law, $14,850,377,000, of which not to exceed $25,000,000 may be available for the CINC initiative fund account; and of which not to exceed $34,500,000 can be used for emergencies and extraordinary expenses, to be expended on the approval or authority of the Secretary of Defense, and payments may be made on his certificate of necessity for confidential military purposes: *Provided*, That notwithstanding any other provision of law, of the funds provided in this Act for Civil Military programs under this heading, $750,000 shall be available for a grant for Outdoor Odyssey, Roaring Run, Pennsylvania, to support the Youth Development and Leadership program and Department of Defense STARBASE program: *Provided further*, That none of the funds appropriated or otherwise made available by this Act may be used to plan or implement the consolidation of a budget or appropriations liaison office of the Office of the Secretary of Defense, the office of the Secretary of a military department, or the service headquarters of one of the Armed Forces into a legislative affairs or legislative liaison office: *Provided further*, That $4,675,000, to remain available until expended, is available only for expenses relating to certain classified activities, and may be transferred as necessary by the Secretary to operation and maintenance appropriations or research, development, test and evaluation appropriations, to be merged with and to be available for the same time period as the appropriations to which transferred: *Provided further*, That any ceiling on the investment item unit cost of items that may be purchased with operation and maintenance funds shall not apply to the funds described in the preceding proviso: *Provided further*, That the transfer authority provided under this heading is in addition to any other transfer authority provided elsewhere in this Act.

[OPERATION AND MAINTENANCE, ARMY RESERVE

[For expenses, not otherwise provided for, necessary for the operation and maintenance, including training, organization, and administration, of the Army Reserve; repair of facilities and equipment; hire of passenger motor vehicles; travel and transportation; care of the dead; recruiting; procurement of services, supplies, and equipment; and communications, $1,976,710,000.

[OPERATION AND MAINTENANCE, NAVY RESERVE

[For expenses, not otherwise provided for, necessary for the operation and maintenance, including training, organization, and administration, of the Navy Reserve; repair of facilities and equipment; hire of passenger motor vehicles; travel and transportation; care of the dead; recruiting; procurement of services, supplies, and equipment; and communications, $1,239,309,000.

[OPERATION AND MAINTENANCE, MARINE CORPS RESERVE

[For expenses, not otherwise provided for, necessary for the operation and maintenance, including training, organization, and administration, of the Marine Corps Reserve; repair of facilities and equipment; hire of passenger motor vehicles; travel and transportation; care of the dead; recruiting; procurement of services, supplies, and equipment; and communications, $189,532,000.

[OPERATION AND MAINTENANCE, AIR FORCE RESERVE

[For expenses, not otherwise provided for, necessary for the operation and maintenance, including training, organization, and administration, of the Air Force Reserve; repair of facilities and equipment; hire of passenger motor vehicles; travel and transportation; care of the dead; recruiting; procurement of services, supplies, and equipment; and communications, $2,165,604,000.

[OPERATION AND MAINTENANCE, ARMY NATIONAL GUARD

[For expenses of training, organizing, and administering the Army National Guard, including medical and hospital treatment and related expenses in non-Federal hospitals; maintenance, operation, and repairs to structures and facilities; hire of passenger motor vehicles; personnel services in the National Guard Bureau; travel expenses (other than mileage), as authorized by law for Army personnel on active duty, for Army National Guard division, regimental, and battalion commanders while inspecting units in compliance with National Guard Bureau regulations when specifically authorized by the Chief, National Guard Bureau; supplying and equipping the Army National Guard as authorized by law; and expenses of repair, modification, maintenance, and issue of supplies and equipment (including aircraft), $4,231,967,000.

[OPERATION AND MAINTENANCE, AIR NATIONAL GUARD

[For operation and maintenance of the Air National Guard, including medical and hospital treatment and related expenses in non-Federal hospitals; maintenance, operation, repair, and other necessary expenses of facilities for the training and administration of the Air National Guard, including repair of facilities, maintenance, operation, and modification of aircraft; transportation of things, hire of passenger motor vehicles; supplies, materials, and equipment, as authorized by law for the Air National Guard; and expenses incident to the maintenance and use of supplies, materials, and equipment, including such as may be furnished from stocks under the control of agencies of the Department of Defense; travel expenses (other than mileage) on the same basis as authorized by law for Air National Guard personnel on active Federal duty, for Air National Guard commanders while inspecting units in compliance with National Guard Bureau regulations when specifically authorized by the Chief, National Guard Bureau, $4,113,010,000.

[UNITED STATES COURT OF APPEALS FOR THE ARMED FORCES

[For salaries and expenses necessary for the United States Court of Appeals for the Armed Forces, $9,614,000, of which not to exceed $2,500 can be used for official representation purposes.

[ENVIRONMENTAL RESTORATION, ARMY

[(INCLUDING TRANSFER OF FUNDS)

[For the Department of the Army, $395,900,000, to remain available until transferred: *Provided*, That the Secretary of the Army shall, upon determining that such funds are required for environmental restoration, reduction and recycling of hazardous waste, removal of unsafe buildings and debris of the Department of the Army, or for similar purposes, transfer the funds made available by this appropriation to other appropriations made available to the Department of the Army, to be merged with and to be available for the same purposes and for the same time period as the appropriations to which transferred: *Provided further*, That upon a determination that all or part of the funds transferred from this appropriation are not necessary for the purposes provided herein, such amounts may be transferred back to this appropriation.

[ENVIRONMENTAL RESTORATION, NAVY

[(INCLUDING TRANSFER OF FUNDS)

[For the Department of the Navy, $256,948,000, to remain available until transferred: *Provided*, That the Secretary of the Navy shall, upon determining that such funds are required for environmental restoration, reduction and recycling of hazardous waste, removal of unsafe buildings and debris of the Department of the Navy, or for similar purposes, transfer the funds made available by this appropriation to other appropriations made available to the Department of the Navy, to be merged with and to be available for the same purposes and for the same time period as the appropriations to which transferred: *Provided further*, That upon a determination that all or part of the funds transferred from this appropriation are not necessary for the purposes provided herein, such amounts may be transferred back to this appropriation.

[ENVIRONMENTAL RESTORATION, AIR FORCE

[(INCLUDING TRANSFER OF FUNDS)

[For the Department of the Air Force, $389,773,000, to remain available until transferred: *Provided*, That the Secretary of the Air Force shall, upon determining that such funds are required for environmental restoration, reduction and recycling of hazardous waste, removal of unsafe buildings and debris of the Department of the Air Force, or for similar purposes, transfer the funds made available by this appropriation to other appropriations made available to the Department of the Air Force, to be merged with and to be available for the same purposes and for the same time period as the appropriations to which transferred: *Provided further*, That upon a determination that all or part of the funds transferred from this appropriation are not necessary for the purposes provided herein, such amounts may be transferred back to this appropriation.

[ENVIRONMENTAL RESTORATION, DEFENSE-WIDE

[(INCLUDING TRANSFER OF FUNDS)

[For the Department of Defense, $23,498,000, to remain available until transferred: *Provided*, That the Secretary of Defense shall, upon determining that such funds are required for environmental restoration, reduction and recycling of hazardous waste, removal of unsafe buildings and debris of the Department of Defense, or for similar purposes, transfer the funds made available by this appropriation to other appropriations made available to the Department of Defense, to be merged with and to be available for the same purposes and for the same time period as the appropriations to which transferred: *Provided further*, That upon a determination that all or part of the funds transferred from this appropriation are not necessary for the purposes provided herein, such amounts may be transferred back to this appropriation.

[ENVIRONMENTAL RESTORATION, FORMERLY USED DEFENSE SITES

[(INCLUDING TRANSFER OF FUNDS)

[For the Department of the Army, $212,102,000, to remain available until transferred: *Provided*, That the Secretary of the Army shall, upon determining that such funds are required for environmental restoration, reduction and recycling of hazardous waste, removal of unsafe buildings and debris at sites formerly used by the Department of Defense, transfer the funds made available by this appropriation to other appropriations made available to the Department of the Army, to be merged with and to be available for the same purposes and for the same time period as the appropriations to which transferred: *Provided further*, That upon a determination that all or part of the funds transferred from this appropriation are not necessary for the purposes provided herein, such amounts may be transferred back to this appropriation.

[OVERSEAS HUMANITARIAN, DISASTER, AND CIVIC AID

[For expenses relating to the Overseas Humanitarian, Disaster, and Civic Aid programs of the Department of Defense (consisting of the programs provided under sections 401, 402, 404, 2547, and 2551 of title 10, United States Code), $58,400,000, to remain available until September 30, 2004.

[FORMER SOVIET UNION THREAT REDUCTION

[For assistance to the republics of the former Soviet Union, including assistance provided by contract or by grants, for facilitating the elimination and the safe and secure transportation and storage of nuclear, chemical and other weapons; for establishing programs to prevent the proliferation of weapons, weapons components, and weapon-related technology and expertise; for programs relating to the training and support of defense and military personnel for demilitarization and protection of weapons, weapons components and weapons technology and expertise, and for defense and military contacts, $416,700,000, to remain available until September 30, 2005.

[SUPPORT FOR INTERNATIONAL SPORTING COMPETITIONS, DEFENSE

[For logistical and security support for international sporting competitions (including pay and non-travel related allowances only for members of the Reserve Components of the Armed Forces of the United States called or ordered to active duty in connection with providing such support), $19,000,000, to remain available until expended.

[TITLE III

[PROCUREMENT

[AIRCRAFT PROCUREMENT, ARMY

[For construction, procurement, production, modification, and modernization of aircraft, equipment, including ordnance, ground handling equipment, spare parts, and accessories therefor; specialized equipment and training devices; expansion of public and private plants, including the land necessary therefor, for the foregoing purposes, and such lands and interests therein, may be acquired, and construction prosecuted thereon prior to approval of title; and procurement and installation of equipment, appliances, and machine tools in public and private plants; reserve plant and Government and contractor-owned equipment layaway; and other expenses necessary for the foregoing purposes, $2,214,369,000, to remain available for obligation until September 30, 2005, of which not less than $225,675,000 shall be available for the Army National Guard and Army Reserve: *Provided*, That of the funds made available under this heading, $45,000,000 shall be available only to support a restructured CH–47F helicopter upgrade program that increases the production rate to 48 helicopters per fiscal year by fiscal year 2005: *Provided further*, That funds in the immediately preceding proviso shall not be made available until the Secretary of the Army has certified to the congressional defense committees that the Army intends to budget for the upgrade of the entire CH–47 fleet that is planned to be part of the Objective Force.

[MISSILE PROCUREMENT, ARMY

[For construction, procurement, production, modification, and modernization of missiles, equipment, including ordnance,

ground handling equipment, spare parts, and accessories therefor; specialized equipment and training devices; expansion of public and private plants, including the land necessary therefor, for the foregoing purposes, and such lands and interests therein, may be acquired, and construction prosecuted thereon prior to approval of title; and procurement and installation of equipment, appliances, and machine tools in public and private plants; reserve plant and Government and contractor-owned equipment layaway; and other expenses necessary for the foregoing purposes, $1,112,772,000, to remain available for obligation until September 30, 2005, of which not less than $168,580,000 shall be available for the Army National Guard and Army Reserve.

[PROCUREMENT OF WEAPONS AND TRACKED COMBAT VEHICLES, ARMY

[For construction, procurement, production, and modification of weapons and tracked combat vehicles, equipment, including ordnance, spare parts, and accessories therefor; specialized equipment and training devices; expansion of public and private plants, including the land necessary therefor, for the foregoing purposes, and such lands and interests therein, may be acquired, and construction prosecuted thereon prior to approval of title; and procurement and installation of equipment, appliances, and machine tools in public and private plants; reserve plant and Government and contractor-owned equipment layaway; and other expenses necessary for the foregoing purposes, $2,248,358,000, to remain available for obligation until September 30, 2005, of which not less than $40,849,000 shall be available for the Army National Guard and Army Reserve.

[PROCUREMENT OF AMMUNITION, ARMY

[For construction, procurement, production, and modification of ammunition, and accessories therefor; specialized equipment and training devices; expansion of public and private plants, including ammunition facilities authorized by section 2854 of title 10, United States Code, and the land necessary therefor, for the foregoing purposes, and such lands and interests therein, may be acquired, and construction prosecuted thereon prior to approval of title; and procurement and installation of equipment, appliances, and machine tools in public and private plants; reserve plant and Government and contractor-owned equipment layaway; and other expenses necessary for the foregoing purposes, $1,207,560,000, to remain available for obligation until September 30, 2005, of which not less than $124,716,000 shall be available for the Army National Guard and Army Reserve.

[OTHER PROCUREMENT, ARMY

[For construction, procurement, production, and modification of vehicles, including tactical, support, and non-tracked combat vehicles; the purchase of not to exceed 40 passenger motor vehicles for replacement only; and the purchase of 6 vehicles required for physical security of personnel, notwithstanding price limitations applicable to passenger vehicles but not to exceed $180,000 per vehicle; communications and electronic equipment; other support equipment; spare parts, ordnance, and accessories therefor; specialized equipment and training devices; expansion of public and private plants, including the land necessary therefor, for the foregoing purposes, and such lands and interests therein, may be acquired, and construction prosecuted thereon prior to approval of title; and procurement and installation of equipment, appliances, and machine tools in public and private plants; reserve plant and Government and contractor-owned equipment layaway; and other expenses necessary for the foregoing purposes, $6,017,380,000, to remain available for obligation until September 30, 2005, of which not less than $1,129,578,000 shall be available for the Army National Guard and Army Reserve.

[AIRCRAFT PROCUREMENT, NAVY

[For construction, procurement, production, modification, and modernization of aircraft, equipment, including ordnance, spare parts, and accessories therefor; specialized equipment; expansion of public and private plants, including the land necessary therefor, and such lands and interests therein, may be acquired, and construction prosecuted thereon prior to approval of title; and procurement and installation of equipment, appliances, and machine tools in public and private plants; reserve plant and Government and contractor-owned equipment layaway, $8,682,655,000, to remain available for obligation until September 30, 2005, of which not less than $19,644,000 shall be available for the Navy Reserve and Marine Corps Reserve.

[WEAPONS PROCUREMENT, NAVY

[For construction, procurement, production, modification, and modernization of missiles, torpedoes, other weapons, and related support equipment including spare parts, and accessories therefor; expansion of public and private plants, including the land necessary therefor, and such lands and interests therein, may be acquired, and construction prosecuted thereon prior to approval of title; and procurement and installation of equipment, appliances, and machine tools in public and private plants; reserve plant and Government and contractor-owned equipment layaway, $2,384,617,000, to remain available for obligation until September 30, 2005.

[PROCUREMENT OF AMMUNITION, NAVY AND MARINE CORPS

[For construction, procurement, production, and modification of ammunition, and accessories therefor; specialized equipment and training devices; expansion of public and private plants, including ammunition facilities authorized by section 2854 of title 10, United States Code, and the land necessary therefor, for the foregoing purposes, and such lands and interests therein, may be acquired, and construction prosecuted thereon prior to approval of title; and procurement and installation of equipment, appliances, and machine tools in public and private plants; reserve plant and Government and contractor-owned equipment layaway; and other expenses necessary for the foregoing purposes, $1,167,130,000, to remain available for obligation until September 30, 2005, of which not less than $18,162,000 shall be for the Navy Reserve and Marine Corps Reserve.

[SHIPBUILDING AND CONVERSION, NAVY

[For expenses necessary for the construction, acquisition, or conversion of vessels as authorized by law, including armor and armament thereof, plant equipment, appliances, and machine tools and installation thereof in public and private plants; reserve plant and Government and contractor-owned equipment layaway; procurement of critical, long leadtime components and designs for vessels to be constructed or converted in the future; and expansion of public and private plants, including land necessary therefor, and such lands and interests therein, may be acquired, and construction prosecuted thereon prior to approval of title, as follows:

[Carrier Replacement Program (CY), $250,000,000;

[Carrier Replacement Program (AP–CY), $243,703,000;

[Virginia Class Submarine, $1,490,652,000;

[Virginia Class Submarine (AP–CY), $706,309,000;

[SSGN Conversion, $404,305,000;

[SSGN Conversion (AP–CY), $421,000,000;

[CVN Refueling Overhauls (AP–CY), $296,781,000;

[Submarine Refueling Overhauls, $231,292,000;

[Submarine Refueling Overhauls (AP–CY), $88,257,000;

[DDG–51, $2,273,002,000;

[DDG–51 (AP–CY), $74,000,000;

[LPD–17, $596,492,000;

[LPD–17 (AP–CY), $8,000,000;

[LCU (X), $9,756,000;

[Outfitting, $300,608,000;

[LCAC SLEP, $81,638,000;

[Mine Hunter SWATH, $7,000,000; and

[Completion of Prior Year Shipbuilding Programs, $644,899,000;

[In all: $8,127,694,000, to remain available for obligation until September 30, 2007: *Provided*, That additional obligations may be incurred after September 30, 2007, for engineering services, tests, evaluations, and other such budgeted work that must be performed in the final stage of ship construction: *Provided further*, That none of the funds provided under this heading for the construction or conversion of any naval vessel to be constructed in shipyards in the United States shall be expended in foreign facilities for the construction of major components of such vessel: *Provided further*, That none of the funds provided under this heading shall be used for the construction of any naval vessel in foreign shipyards.

[OTHER PROCUREMENT, NAVY

[For procurement, production, and modernization of support equipment and materials not otherwise provided for, Navy ordnance (except ordnance for new aircraft, new ships, and ships authorized for conversion); the purchase of not to exceed 141 passenger motor vehicles for replacement only, and the purchase of 3 vehicles required for physical security of personnel, notwithstanding price limitations applicable to passenger vehicles but not to exceed $240,000 per unit for one unit and not to exceed $125,000 per unit for the remaining two units; expansion of public and private plants, including the land necessary therefor, and such lands and interests therein, may be acquired, and construction prosecuted thereon prior to approval of title; and procurement and installation of equipment, appliances, and machine tools in public and private plants; reserve plant and Government and contractor-owned equipment layaway, $4,631,299,000, to remain available for obligation until September 30, 2005, of which not less than $19,869,000 shall be for the Naval Reserve.

[PROCUREMENT, MARINE CORPS

[For expenses necessary for the procurement, manufacture, and modification of missiles, armament, military equipment, spare parts, and accessories therefor; plant equipment, appliances, and machine tools, and installation thereof in public and private plants; reserve plant and Government and contractor-owned equipment layaway; vehicles for the Marine Corps, including the purchase of not to exceed 28 passenger motor vehicles for replacement only; and expansion of public and private plants, including land necessary therefor, and such lands and interests therein, may be acquired, and construction prosecuted thereon prior to approval of title, $1,369,383,000, to remain available for obligation until September 30, 2005, of which not less than $253,724,000 shall be available for the Marine Corps Reserve.

[AIRCRAFT PROCUREMENT, AIR FORCE

[For construction, procurement, lease, and modification of aircraft and equipment, including armor and armament, specialized ground handling equipment, and training devices, spare parts, and accessories therefor; specialized equipment; expansion of public

and private plants, Government-owned equipment and installation thereof in such plants, erection of structures, and acquisition of land, for the foregoing purposes, and such lands and interests therein, may be acquired, and construction prosecuted thereon prior to approval of title; reserve plant and Government and contractor-owned equipment layaway; and other expenses necessary for the foregoing purposes including rents and transportation of things, $12,492,730,000, to remain available for obligation until September 30, 2005, of which not less than $312,700,000 shall be available for the Air National Guard and Air Force Reserve: *Provided*, That of the amount provided under this heading, not less than $207,000,000 shall be used only for the producability improvement program directly related to the F–22 aircraft program: *Provided further*, That amounts provided under this heading shall be used for the advance procurement of 15 C–17 aircraft.

[MISSILE PROCUREMENT, AIR FORCE

[For construction, procurement, and modification of missiles, spacecraft, rockets, and related equipment, including spare parts and accessories therefor, ground handling equipment, and training devices; expansion of public and private plants, Government-owned equipment and installation thereof in such plants, erection of structures, and acquisition of land, for the foregoing purposes, and such lands and interests therein, may be acquired, and construction prosecuted thereon prior to approval of title; reserve plant and Government and contractor-owned equipment layaway; and other expenses necessary for the foregoing purposes including rents and transportation of things, $3,185,439,000, to remain available for obligation until September 30, 2005.

[PROCUREMENT OF AMMUNITION, AIR FORCE

[For construction, procurement, production, and modification of ammunition, and accessories therefor; specialized equipment and training devices; expansion of public and private plants, including ammunition facilities authorized by section 2854 of title 10, United States Code, and the land necessary therefor, for the foregoing purposes, and such lands and interests therein, may be acquired, and construction prosecuted thereon prior to approval of title; and procurement and installation of equipment, appliances, and machine tools in public and private plants; reserve plant and Government and contractor-owned equipment layaway; and other expenses necessary for the foregoing purposes, $1,290,764,000, to remain available for obligation until September 30, 2005, of which not less than $120,200,000 shall be available for the Air National Guard and Air Force Reserve.

[OTHER PROCUREMENT, AIR FORCE

[For procurement and modification of equipment (including ground guidance and electronic control equipment, and ground electronic and communication equipment), and supplies, materials, and spare parts therefor, not otherwise provided for; the purchase of not to exceed 263 passenger motor vehicles for replacement only, and the purchase of 2 vehicles required for physical security of personnel, notwithstanding price limitations applicable to passenger vehicles but not to exceed $232,000 per vehicle; lease of passenger motor vehicles; and expansion of public and private plants, Government-owned equipment and installation thereof in such plants, erection of structures, and acquisition of land, for the foregoing purposes, and such lands and interests therein, may be acquired, and construction prosecuted thereon, prior to approval of title; reserve plant and Government and contractor-owned equipment layaway, $10,622,660,000, to remain available for obligation until September 30, 2005, of which not less than $167,600,000 shall be available for the Air National Guard and Air Force Reserve.

[PROCUREMENT, DEFENSE-WIDE

[For expenses of activities and agencies of the Department of Defense (other than the military departments) necessary for procurement, production, and modification of equipment, supplies, materials, and spare parts therefor, not otherwise provided for; the purchase of not to exceed 99 passenger motor vehicles for replacement only; the purchase of 4 vehicles required for physical security of personnel, notwithstanding price limitations applicable to passenger vehicles but not to exceed $250,000 per vehicle; expansion of public and private plants, equipment, and installation thereof in such plants, erection of structures, and acquisition of land for the foregoing purposes, and such lands and interests therein, may be acquired, and construction prosecuted thereon prior to approval of title; reserve plant and Government and contractor-owned equipment layaway, $3,457,405,000, to remain available for obligation until September 30, 2005: *Provided*, That funds provided under this heading for Patriot Advanced Capability-3 (PAC–3) missiles may be used for procurement of critical parts for PAC–3 missiles to support production of such missiles in future fiscal years.

[DEFENSE PRODUCTION ACT PURCHASES

[For activities by the Department of Defense pursuant to sections 108, 301, 302, and 303 of the Defense Production Act of 1950 (50 U.S.C. App. 2078, 2091, 2092, and 2093), $73,057,000 to remain available until expended.

[TITLE IV

[RESEARCH, DEVELOPMENT, TEST AND EVALUATION

[RESEARCH, DEVELOPMENT, TEST AND EVALUATION, ARMY

[For expenses necessary for basic and applied scientific research, development, test and evaluation, including maintenance, rehabilitation, lease, and operation of facilities and equipment, $7,447,160,000, to remain available for obligation until September 30, 2004.

[RESEARCH, DEVELOPMENT, TEST AND EVALUATION, NAVY

[For expenses necessary for basic and applied scientific research, development, test and evaluation, including maintenance, rehabilitation, lease, and operation of facilities and equipment, $13,562,218,000, to remain available for obligation until September 30, 2004: *Provided*, That funds appropriated in this paragraph which are available for the V–22 may be used to meet unique operational requirements of the Special Operations Forces.

[RESEARCH, DEVELOPMENT, TEST AND EVALUATION, AIR FORCE

[For expenses necessary for basic and applied scientific research, development, test and evaluation, including maintenance, rehabilitation, lease, and operation of facilities and equipment, $18,639,392,000, to remain available for obligation until September 30, 2004.

[RESEARCH, DEVELOPMENT, TEST AND EVALUATION, DEFENSE-WIDE

[For expenses of activities and agencies of the Department of Defense (other than the military departments), necessary for basic and applied scientific research, development, test and evaluation; advanced research projects as may be designated and determined by the Secretary of Defense, pursuant to law; maintenance, rehabilitation, lease, and operation of facilities and equipment, $17,863,462,000 (reduced by $30,000,000) (increased by $30,000,000), to remain available for obligation until September 30, 2004.

[OPERATIONAL TEST AND EVALUATION, DEFENSE

[For expenses, not otherwise provided for, necessary for the independent activities of the Director, Operational Test and Evaluation, in the direction and supervision of operational test and evaluation, including initial operational test and evaluation which is conducted prior to, and in support of, production decisions; joint operational testing and evaluation; and administrative expenses in connection therewith, $242,054,000, to remain available for obligation until September 30, 2004.

[TITLE V

[REVOLVING AND MANAGEMENT FUNDS

[DEFENSE WORKING CAPITAL FUNDS

[For the Defense Working Capital Funds, $1,832,956,000: *Provided*, That during fiscal year 2003, funds in the Defense Working Capital Funds may be used for the purchase of not to exceed 315 passenger carrying motor vehicles for replacement only for the Defense Security Service, and the purchase of not to exceed 7 vehicles for replacement only for the Defense Logistics Agency.

[NATIONAL DEFENSE SEALIFT FUND

[For National Defense Sealift Fund programs, projects, and activities, and for expenses of the National Defense Reserve Fleet, as established by section 11 of the Merchant Ship Sales Act of 1946 (50 U.S.C. App. 1744), and for the necessary expenses to maintain and preserve a U.S.-flag merchant fleet to serve the national security needs of the United States, $944,129,000, to remain available until expended: *Provided*, That none of the funds provided in this paragraph shall be used to award a new contract that provides for the acquisition of any of the following major components unless such components are manufactured in the United States: auxiliary equipment, including pumps, for all shipboard services; propulsion system components (that is; engines, reduction gears, and propellers); shipboard cranes; and spreaders for shipboard cranes: *Provided further*, That the exercise of an option in a contract awarded through the obligation of previously appropriated funds shall not be considered to be the award of a new contract: *Provided further*, That the Secretary of the military department responsible for such procurement may waive the restrictions in the first proviso on a case-by-case basis by certifying in writing to the Committees on Appropriations of the House of Representatives and the Senate that adequate domestic supplies are not available to meet Department of Defense requirements on a timely basis and that such an acquisition must be made in order to acquire capability for national security purposes: *Provided further*, That, notwithstanding any other provision of law, $10,000,000 of the funds available under this heading shall be available in addition to other amounts otherwise available, only to finance the cost of constructing additional sealift capacity.

[TITLE VI

[OTHER DEPARTMENT OF DEFENSE PROGRAMS

[DEFENSE HEALTH PROGRAM

[For expenses, not otherwise provided for, for medical and health care programs of the Department of Defense, as authorized by law, $14,600,748,000, of which $13,916,791,000 shall be for Operation and maintenance, of which not to exceed 2 percent shall remain available until September 30, 2004; of which $283,743,000, to remain available for obligation until September 30, 2005, shall be for

Procurement; of which $400,214,000, to remain available for obligation until September 30, 2004, shall be for Research, development, test and evaluation, and of which not less than $10,000,000 shall be available for HIV prevention educational activities undertaken in connection with U.S. military training, exercises, and humanitarian assistance activities conducted primarily in African nations.

[CHEMICAL AGENTS AND MUNITIONS DESTRUCTION, ARMY

[For expenses, not otherwise provided for, necessary for the destruction of the United States stockpile of lethal chemical agents and munitions in accordance with the provisions of section 1412 of the Department of Defense Authorization Act, 1986 (50 U.S.C. 1521), and for the destruction of other chemical warfare materials that are not in the chemical weapon stockpile, $1,490,199,000, of which $974,238,000 shall be for Operation and maintenance to remain available until September 30, 2004, $213,278,000 shall be for Procurement to remain available until September 30, 2005, and $302,683,000 shall be for Research, development, test and evaluation to remain available until September 30, 2004.

[DRUG INTERDICTION AND COUNTER-DRUG ACTIVITIES, DEFENSE

[(INCLUDING TRANSFER OF FUNDS)

[For drug interdiction and counter-drug activities of the Department of Defense, for transfer to appropriations available to the Department of Defense for military personnel of the reserve components serving under the provisions of title 10 and title 32, United States Code; for Operation and maintenance; for Procurement; and for Research, development, test and evaluation, $859,907,000: *Provided*, That the funds appropriated under this heading shall be available for obligation for the same time period and for the same purpose as the appropriation to which transferred: *Provided further*, That upon a determination that all or part of the funds transferred from this appropriation are not necessary for the purposes provided herein, such amounts may be transferred back to this appropriation: *Provided further*, That the transfer authority provided under this heading is in addition to any other transfer authority contained elsewhere in this Act.

[OFFICE OF THE INSPECTOR GENERAL

[For expenses and activities of the Office of the Inspector General in carrying out the provisions of the Inspector General Act of 1978, as amended, $157,165,000, of which $155,165,000 shall be for Operation and maintenance, of which not to exceed $700,000 is available for emergencies and extraordinary expenses to be expended on the approval or authority of the Inspector General, and payments may be made on the Inspector General's certificate of necessity for confidential military purposes; and of which $2,000,000 to remain available until September 30, 2005, shall be for Procurement.

[TITLE VII

[RELATED AGENCIES

[CENTRAL INTELLIGENCE AGENCY RETIREMENT AND DISABILITY SYSTEM FUND

[For payment to the Central Intelligence Agency Retirement and Disability System Fund, to maintain the proper funding level for continuing the operation of the Central Intelligence Agency Retirement and Disability System, $212,000,000.

[INTELLIGENCE COMMUNITY MANAGEMENT ACCOUNT

[(INCLUDING TRANSFER OF FUNDS)

[For necessary expenses of the Intelligence Community Management Account, $162,254,000, of which $24,252,000 for the Advanced Research and Development Committee shall remain available until September 30, 2004: *Provided*, That of the funds appropriated under this heading, $34,100,000 shall be transferred to the Department of Justice for the National Drug Intelligence Center to support the Department of Defense's counter-drug intelligence responsibilities, and of the said amount, $1,500,000 for Procurement shall remain available until September 30, 2005 and $1,000,000 for Research, development, test and evaluation shall remain available until September 30, 2004: *Provided further*, That the National Drug Intelligence Center shall maintain the personnel and technical resources to provide timely support to law enforcement authorities and the intelligence community by conducting document and computer exploitation of materials collected in Federal, State, and local law enforcement activity associated with counter-drug, counter-terrorism, and national security investigations and operations.

[PAYMENT TO KAHO'OLAWE

[ISLAND CONVEYANCE, REMEDIATION, AND ENVIRONMENTAL RESTORATION FUND

[For payment to Kaho'olawe Island Conveyance, Remediation, and Environmental Restoration Fund, as authorized by law, $25,000,000, to remain available until expended.

[NATIONAL SECURITY EDUCATION TRUST FUND

[For the purposes of title VIII of Public Law 102–183, $8,000,000, to be derived from the National Security Education Trust Fund, to remain available until expended.

[TITLE VIII

[GENERAL PROVISIONS

[SEC. 8001. No part of any appropriation contained in this Act shall be used for publicity or propaganda purposes not authorized by the Congress.

[SEC. 8002. During the current fiscal year, provisions of law prohibiting the payment of compensation to, or employment of, any person not a citizen of the United States shall not apply to personnel of the Department of Defense: *Provided*, That salary increases granted to direct and indirect hire foreign national employees of the Department of Defense funded by this Act shall not be at a rate in excess of the percentage increase authorized by law for civilian employees of the Department of Defense whose pay is computed under the provisions of section 5332 of title 5, United States Code, or at a rate in excess of the percentage increase provided by the appropriate host nation to its own employees, whichever is higher: *Provided further*, That this section shall not apply to Department of Defense foreign service national employees serving at United States diplomatic missions whose pay is set by the Department of State under the Foreign Service Act of 1980: *Provided further*, That the limitations of this provision shall not apply to foreign national employees of the Department of Defense in the Republic of Turkey.

[SEC. 8003. No part of any appropriation contained in this Act shall remain available for obligation beyond the current fiscal year, unless expressly so provided herein.

[SEC. 8004. No more than 20 percent of the appropriations in this Act which are limited for obligation during the current fiscal year shall be obligated during the last 2 months of the fiscal year: *Provided*, That this section shall not apply to obligations for support of active duty training of reserve components or summer camp training of the Reserve Officers' Training Corps.

[(TRANSFER OF FUNDS)

[SEC. 8005. Upon determination by the Secretary of Defense that such action is necessary in the national interest, he may, with the approval of the Office of Management and Budget, transfer not to exceed $2,500,000,000 of working capital funds of the Department of Defense or funds made available in this Act to the Department of Defense for military functions (except military construction) between such appropriations or funds or any subdivision thereof, to be merged with and to be available for the same purposes, and for the same time period, as the appropriation or fund to which transferred: *Provided*, That such authority to transfer may not be used unless for higher priority items, based on unforeseen military requirements, than those for which originally appropriated and in no case where the item for which funds are requested has been denied by the Congress: *Provided further*, That the Secretary of Defense shall notify the Congress promptly of all transfers made pursuant to this authority or any other authority in this Act: *Provided further*, That no part of the funds in this Act shall be available to prepare or present a request to the Committees on Appropriations for reprogramming of funds, unless for higher priority items, based on unforeseen military requirements, than those for which originally appropriated and in no case where the item for which reprogramming is requested has been denied by the Congress: *Provided further*, That a request for multiple reprogrammings of funds using authority provided in this section must be made prior to May 1, 2003.

[(TRANSFER OF FUNDS)

[SEC. 8006. During the current fiscal year, cash balances in working capital funds of the Department of Defense established pursuant to section 2208 of title 10, United States Code, may be maintained in only such amounts as are necessary at any time for cash disbursements to be made from such funds: *Provided*, That transfers may be made between such funds: *Provided further*, That transfers may be made between working capital funds and the ''Foreign Currency Fluctuations, Defense'' appropriation and the ''Operation and Maintenance'' appropriation accounts in such amounts as may be determined by the Secretary of Defense, with the approval of the Office of Management and Budget, except that such transfers may not be made unless the Secretary of Defense has notified the Congress of the proposed transfer. Except in amounts equal to the amounts appropriated to working capital funds in this Act, no obligations may be made against a working capital fund to procure or increase the value of war reserve material inventory, unless the Secretary of Defense has notified the Congress prior to any such obligation.

[SEC. 8007. Funds appropriated by this Act may not be used to initiate a special access program without prior notification 30 calendar days in session in advance to the congressional defense committees.

[SEC. 8008. None of the funds provided in this Act shall be available to initiate: (1) a multiyear contract that employs economic order quantity procurement in excess of $20,000,000 in any 1 year of the contract or that includes an unfunded contingent liability in excess of $20,000,000; or (2) a contract for advance procurement leading to a multiyear contract that employs economic order quantity procurement in excess of $20,000,000 in any 1 year, unless the congressional defense committees have been notified at least 30 days in advance of the proposed contract award: *Provided*, That no part of any appropriation contained in this Act shall be available to initiate a multiyear contract for which the economic order quantity advance procurement is not funded at least to the limits of the Government's liability: *Provided further*, That no part of any appropriation contained in this Act shall be available

to initiate multiyear procurement contracts for any systems or component thereof if the value of the multiyear contract would exceed $500,000,000 unless specifically provided in this Act: *Provided further*, That no multiyear procurement contract can be terminated without 10–day prior notification to the congressional defense committees: *Provided further*, That the execution of multiyear authority shall require the use of a present value analysis to determine lowest cost compared to an annual procurement.

[Funds appropriated in title III of this Act may be used for multiyear procurement contracts as follows:

[C–130 aircraft; and

[F/A–18E and F engine.

[SEC. 8009. Within the funds appropriated for the operation and maintenance of the Armed Forces, funds are hereby appropriated pursuant to section 401 of title 10, United States Code, for humanitarian and civic assistance costs under chapter 20 of title 10, United States Code. Such funds may also be obligated for humanitarian and civic assistance costs incidental to authorized operations and pursuant to authority granted in section 401 of chapter 20 of title 10, United States Code, and these obligations shall be reported to the Congress as of September 30 of each year: *Provided*, That funds available for operation and maintenance shall be available for providing humanitarian and similar assistance by using Civic Action Teams in the Trust Territories of the Pacific Islands and freely associated states of Micronesia, pursuant to the Compact of Free Association as authorized by Public Law 99–239: *Provided further*, That upon a determination by the Secretary of the Army that such action is beneficial for graduate medical education programs conducted at Army medical facilities located in Hawaii, the Secretary of the Army may authorize the provision of medical services at such facilities and transportation to such facilities, on a nonreimbursable basis, for civilian patients from American Samoa, the Commonwealth of the Northern Mariana Islands, the Marshall Islands, the Federated States of Micronesia, Palau, and Guam.

[SEC. 8010. (a) During fiscal year 2003, the civilian personnel of the Department of Defense may not be managed on the basis of any end-strength, and the management of such personnel during that fiscal year shall not be subject to any constraint or limitation (known as an end-strength) on the number of such personnel who may be employed on the last day of such fiscal year.

[(b) The fiscal year 2004 budget request for the Department of Defense as well as all justification material and other documentation supporting the fiscal year 2004 Department of Defense budget request shall be prepared and submitted to the Congress as if subsections (a) and (b) of this provision were effective with regard to fiscal year 2004.

[(c) Nothing in this section shall be construed to apply to military (civilian) technicians.

[SEC. 8011. Notwithstanding any other provision of law, none of the funds made available by this Act shall be used by the Department of Defense to exceed, outside the 50 United States, its territories, and the District of Columbia, 125,000 civilian workyears: *Provided*, That workyears shall be applied as defined in the Federal Personnel Manual: *Provided further*, That workyears expended in dependent student hiring programs for disadvantaged youths shall not be included in this workyear limitation.

[SEC. 8012. None of the funds made available by this Act shall be used in any way, directly or indirectly, to influence congressional action on any legislation or appropriation matters pending before the Congress.

[SEC. 8013. None of the funds appropriated by this Act shall be available for the basic pay and allowances of any member of the Army participating as a full-time student and receiving benefits paid by the Secretary of Veterans Affairs from the Department of Defense Education Benefits Fund when time spent as a full-time student is credited toward completion of a service commitment: *Provided*, That this subsection shall not apply to those members who have reenlisted with this option prior to October 1, 1987: *Provided further*, That this subsection applies only to active components of the Army.

[SEC. 8014. None of the funds appropriated by this Act shall be available to convert to contractor performance an activity or function of the Department of Defense that, on or after the date of the enactment of this Act, is performed by more than 10 Department of Defense civilian employees until a most efficient and cost-effective organization analysis is completed on such activity or function and certification of the analysis is made to the Committees on Appropriations of the House of Representatives and the Senate: *Provided*, That this section and subsections (a), (b), and (c) of 10 U.S.C. 2461 shall not apply to a commercial or industrial type function of the Department of Defense that: (1) is included on the procurement list established pursuant to section 2 of the Act of June 25, 1938 (41 U.S.C. 47), popularly referred to as the Javits-Wagner-O'Day Act; (2) is planned to be converted to performance by a qualified nonprofit agency for the blind or by a qualified nonprofit agency for other severely handicapped individuals in accordance with that Act; or (3) is planned to be converted to performance by a qualified firm under 51 percent ownership by an Indian tribe, as defined in section 450b(e) of title 25, United States Code, or a Native Hawaiian organization, as defined in section 637(a)(15) of title 15, United States Code.

[(TRANSFER OF FUNDS)

[SEC. 8015. Funds appropriated in title III of this Act for the Department of Defense Pilot Mentor-Protege Program may be transferred to any other appropriation contained in this Act solely for the purpose of implementing a Mentor-Protege Program developmental assistance agreement pursuant to section 831 of the National Defense Authorization Act for Fiscal Year 1991 (Public Law 101–510; 10 U.S.C. 2301 note), as amended, under the authority of this provision or any other transfer authority contained in this Act.

[SEC. 8016. None of the funds in this Act may be available for the purchase by the Department of Defense (and its departments and agencies) of welded shipboard anchor and mooring chain 4 inches in diameter and under unless the anchor and mooring chain are manufactured in the United States from components which are substantially manufactured in the United States: *Provided*, That for the purpose of this section manufactured will include cutting, heat treating, quality control, testing of chain and welding (including the forging and shot blasting process): *Provided further*, That for the purpose of this section substantially all of the components of anchor and mooring chain shall be considered to be produced or manufactured in the United States if the aggregate cost of the components produced or manufactured in the United States exceeds the aggregate cost of the components produced or manufactured outside the United States: *Provided further*, That when adequate domestic supplies are not available to meet Department of Defense requirements on a timely basis, the Secretary of the service responsible for the procurement may waive this restriction on a case-by-case basis by certifying in writing to the Committees on Appropriations that such an acquisition must be made in order to acquire capability for national security purposes.

[SEC. 8017. None of the funds appropriated by this Act available for the Civilian Health and Medical Program of the Uniformed Services (CHAMPUS) or TRICARE shall be available for the reimbursement of any health care provider for inpatient mental health service for care received when a patient is referred to a provider of inpatient mental health care or residential treatment care by a medical or health care professional having an economic interest in the facility to which the patient is referred: *Provided*, That this limitation does not apply in the case of inpatient mental health services provided under the program for persons with disabilities under subsection (d) of section 1079 of title 10, United States Code, provided as partial hospital care, or provided pursuant to a waiver authorized by the Secretary of Defense because of medical or psychological circumstances of the patient that are confirmed by a health professional who is not a Federal employee after a review, pursuant to rules prescribed by the Secretary, which takes into account the appropriate level of care for the patient, the intensity of services required by the patient, and the availability of that care.

[SEC. 8018. Notwithstanding any other provision of law, during the current fiscal year, the Secretary of Defense may, by executive agreement, establish with host nation governments in NATO member states a separate account into which such residual value amounts negotiated in the return of United States military installations in NATO member states may be deposited, in the currency of the host nation, in lieu of direct monetary transfers to the United States Treasury: *Provided*, That such credits may be utilized only for the construction of facilities to support United States military forces in that host nation, or such real property maintenance and base operating costs that are currently executed through monetary transfers to such host nations: *Provided further*, That the Department of Defense's budget submission for fiscal year 2004 shall identify such sums anticipated in residual value settlements, and identify such construction, real property maintenance or base operating costs that shall be funded by the host nation through such credits: *Provided further*, That all military construction projects to be executed from such accounts must be previously approved in a prior Act of Congress: *Provided further*, That each such executive agreement with a NATO member host nation shall be reported to the congressional defense committees, the Committee on International Relations of the House of Representatives and the Committee on Foreign Relations of the Senate 30 days prior to the conclusion and endorsement of any such agreement established under this provision.

[SEC. 8019. None of the funds available to the Department of Defense may be used to demilitarize or dispose of M–1 Carbines, M–1 Garand rifles, M–14 rifles, .22 caliber rifles, .30 caliber rifles, or M–1911 pistols.

[SEC. 8020. No more than $500,000 of the funds appropriated or made available in this Act shall be used during a single fiscal year for any single relocation of an organization, unit, activity or function of the Department of Defense into or within the National Capital Region: *Provided*, That the Secretary of Defense may waive this restriction on a case-by-case basis by certifying in writing to the congressional defense committees that such a relocation is required in the best interest of the Government.

[SEC. 8021. In addition to the funds provided elsewhere in this Act, $8,000,000 is appropriated only for incentive payments authorized by section 504 of the Indian Financing Act of 1974 (25 U.S.C. 1544): *Provided*, That a subcontractor at any tier shall be considered a contractor for the purposes of being allowed additional compensation under section 504 of the Indian Financing Act of 1974 (25 U.S.C. 1544).

[SEC. 8022. None of the funds appropriated by this Act shall be available to perform any cost study pursuant to the provisions of OMB Circular A–76 if the study being performed exceeds a period of 24 months after initiation of such study with respect to a single function activity or 48 months after initiation of such study for a multi-function activity.

[SEC. 8023. Funds appropriated by this Act for the American Forces Information Service shall not be used for any national or international political or psychological activities.

[SEC. 8024. Notwithstanding any other provision of law or regulation, the Secretary of Defense may adjust wage rates for civilian employees hired for certain health care occupations as authorized for the Secretary of Veterans Affairs by section 7455 of title 38, United States Code.

[SEC. 8025. (a) Of the funds for the procurement of supplies or services appropriated by this Act, qualified nonprofit agencies for the blind or other severely handicapped shall be afforded the maximum practicable opportunity to participate as subcontractors and suppliers in the performance of contracts let by the Department of Defense.

[(b) During the current fiscal year, a business concern which has negotiated with a military service or defense agency a subcontracting plan for the participation by small business concerns pursuant to section 8(d) of the Small Business Act (15 U.S.C. 637(d)) shall be given credit toward meeting that subcontracting goal for any purchases made from qualified nonprofit agencies for the blind or other severely handicapped.

[(c) For the purpose of this section, the phrase ''qualified nonprofit agency for the blind or other severely handicapped'' means a nonprofit agency for the blind or other severely handicapped that has been approved by the Committee for the Purchase from the Blind and Other Severely Handicapped under the Javits-Wagner-O'Day Act (41 U.S.C. 46–48).

[SEC. 8026. During the current fiscal year, net receipts pursuant to collections from third party payers pursuant to section 1095 of title 10, United States Code, shall be made available to the local facility of the uniformed services responsible for the collections and shall be over and above the facility's direct budget amount.

[SEC. 8027. During the current fiscal year, and from any funds available to the Department of Defense, the Department is authorized to incur obligations of not to exceed $350,000,000 for purposes specified in section 2350j(c) of title 10, United States Code, in anticipation of receipt of contributions, only from the Government of Kuwait, under that section: *Provided*, That upon receipt, such contributions from the Government of Kuwait shall be credited to the appropriations or fund which incurred such obligations.

[SEC. 8028. Of the funds made available in this Act, not less than $23,003,000 shall be available for the Civil Air Patrol Corporation, of which $21,503,000 shall be available for Civil Air Patrol Corporation operation and maintenance to support readiness activities which includes $1,500,000 for the Civil Air Patrol counterdrug program: *Provided*, That funds identified for ''Civil Air Patrol'' under this section are intended for and shall be for the exclusive use of the Civil Air Patrol Corporation and not for the Air Force or any unit thereof.

[SEC. 8029. (a) None of the funds appropriated in this Act are available to establish a new Department of Defense (department) federally funded research and development center (FFRDC), either as a new entity, or as a separate entity administrated by an organization managing another FFRDC, or as a nonprofit membership corporation consisting of a consortium of other FFRDCs and other non-profit entities.

[(b) No member of a Board of Directors, Trustees, Overseers, Advisory Group, Special Issues Panel, Visiting Committee, or any similar entity of a defense FFRDC, and no paid consultant to any defense FFRDC, except when acting in a technical advisory capacity, may be compensated for his or her services as a member of such entity, or as a paid consultant by more than one FFRDC in a fiscal year: *Provided*, That a member of any such entity referred to previously in this subsection shall be allowed travel expenses and per diem as authorized under the Federal Joint Travel Regulations, when engaged in the performance of membership duties.

[(c) Notwithstanding any other provision of law, none of the funds available to the department from any source during fiscal year 2003 may be used by a defense FFRDC, through a fee or other payment mechanism, for construction of new buildings, for payment of cost sharing for projects funded by Government grants, for absorption of contract overruns, or for certain charitable contributions, not to include employee participation in community service and/or development.

[(d) Notwithstanding any other provision of law, of the funds available to the department during fiscal year 2003, not more than 6,277 staff years of technical effort (staff years) may be funded for defense FFRDCs: *Provided*, That of the specific amount referred to previously in this subsection, not more than 1,029 staff years may be funded for the defense studies and analysis FFRDCs.

[(e) The Secretary of Defense shall, with the submission of the department's fiscal year 2004 budget request, submit a report presenting the specific amounts of staff years of technical effort to be allocated for each defense FFRDC during that fiscal year.

[SEC. 8030. None of the funds appropriated or made available in this Act shall be used to procure carbon, alloy or armor steel plate for use in any Government-owned facility or property under the control of the Department of Defense which were not melted and rolled in the United States or Canada: *Provided*, That these procurement restrictions shall apply to any and all Federal Supply Class 9515, American Society of Testing and Materials (ASTM) or American Iron and Steel Institute (AISI) specifications of carbon, alloy or armor steel plate: *Provided further*, That the Secretary of the military department responsible for the procurement may waive this restriction on a case-by-case basis by certifying in writing to the Committees on Appropriations of the House of Representatives and the Senate that adequate domestic supplies are not available to meet Department of Defense requirements on a timely basis and that such an acquisition must be made in order to acquire capability for national security purposes: *Provided further*, That these restrictions shall not apply to contracts which are in being as of the date of the enactment of this Act.

[SEC. 8031. For the purposes of this Act, the term ''congressional defense committees'' means the Armed Services Committee of the House of Representatives, the Armed Services Committee of the Senate, the Subcommittee on Defense of the Committee on Appropriations of the Senate, and the Subcommittee on Defense of the Committee on Appropriations of the House of Representatives.

[SEC. 8032. During the current fiscal year, the Department of Defense may acquire the modification, depot maintenance and repair of aircraft, vehicles and vessels as well as the production of components and other Defense-related articles, through competition between Department of Defense depot maintenance activities and private firms: *Provided*, That the Senior Acquisition Executive of the military department or defense agency concerned, with power of delegation, shall certify that successful bids include comparable estimates of all direct and indirect costs for both public and private bids: *Provided further*, That Office of Management and Budget Circular A–76 shall not apply to competitions conducted under this section.

[SEC. 8033. (a)(1) If the Secretary of Defense, after consultation with the United States Trade Representative, determines that a foreign country which is party to an agreement described in paragraph (2) has violated the terms of the agreement by discriminating against certain types of products produced in the United States that are covered by the agreement, the Secretary of Defense shall rescind the Secretary's blanket waiver of the Buy American Act with respect to such types of products produced in that foreign country.

[(2) An agreement referred to in paragraph (1) is any reciprocal defense procurement memorandum of understanding, between the United States and a foreign country pursuant to which the Secretary of Defense has prospectively waived the Buy American Act for certain products in that country.

[(b) The Secretary of Defense shall submit to the Congress a report on the amount of Department of Defense purchases from foreign entities in fiscal year 2002. Such report shall separately indicate the dollar value of items for which the Buy American Act was waived pursuant to any agreement described in subsection (a)(2), the Trade Agreement Act of 1979 (19 U.S.C. 2501 et seq.), or any international agreement to which the United States is a party.

[(c) For purposes of this section, the term ''Buy American Act'' means title III of the Act entitled ''An Act making appropriations for the Treasury and Post Office Departments for the fiscal year ending June 30, 1934, and for other purposes'', approved March 3, 1933 (41 U.S.C. 10a et seq.).

[SEC. 8034. Appropriations contained in this Act that remain available at the end of the current fiscal year as a result of energy cost savings realized by the Department of Defense shall remain available for obligation for the next fiscal year to the extent, and for the purposes, provided in section 2865 of title 10, United States Code.

[(INCLUDING TRANSFER OF FUNDS)

[SEC. 8035. Amounts deposited during the current fiscal year to the special account established under 40 U.S.C. 485(h)(2) and to the special account established under 10 U.S.C. 2667(d)(1) are appropriated and shall be available until transferred by the Secretary of Defense to current applicable appropriations or funds of the Department of Defense under the terms and conditions specified by 40 U.S.C. 485(h)(2)(A) and (B) and 10 U.S.C. 2667(d)(1)(B), to be merged with and to be available for the same time period and the same purposes as the appropriation to which transferred.

[SEC. 8036. The President shall include with each budget for a fiscal year submitted to the Congress under section 1105 of title 31, United States Code, materials that shall identify clearly and separately the amounts requested in the budget for appropriation for that fiscal year for salaries and expenses related to administrative activities of the Department of Defense, the military departments, and the defense agencies.

[SEC. 8037. Notwithstanding any other provision of law, funds available for ''Drug Interdiction and Counter-Drug Activities, Defense'' may be obligated for the Young Marines program.

[(INCLUDING TRANSFER OF FUNDS)

[SEC. 8038. During the current fiscal year, amounts contained in the Department of Defense Overseas Military Facility Investment Recovery Account established by section 2921(c)(1) of the National Defense Authorization Act of 1991 (Public Law 101–510; 10 U.S.C. 2687 note) shall be available until expended for the payments specified by section 2921(c)(2) of that Act.

[SEC. 8039. (a) IN GENERAL.—Notwithstanding any other provision of law, the Secretary of the Air Force may convey at no cost to the Air Force, without consideration, to Indian tribes located in the States of North Dakota, South Dakota, Montana, and Minnesota relocatable military housing units located at Grand Forks Air Force Base and Minot Air Force Base that are excess to the needs of the Air Force.

[(b) PROCESSING OF REQUESTS.—The Secretary of the Air Force shall convey, at no cost to the Air Force, military housing units under subsection (a) in accordance with the request for such units that are submitted to the Secretary by the Operation Walking Shield Program on behalf of Indian tribes located in the States of North Dakota, South Dakota, Montana, and Minnesota.

[(c) RESOLUTION OF HOUSING UNIT CONFLICTS.—The Operation Walking Shield program shall resolve any conflicts among requests of Indian tribes for housing units under subsection (a) before submitting requests to the Secretary of the Air Force under subsection (b).

[(d) INDIAN TRIBE DEFINED.—In this section, the term ''Indian tribe'' means any recognized Indian tribe included on the current list published by the Secretary of the Interior under section 104 of the federally Recognized Indian Tribe Act of 1994 (Public Law 103–454; 108 Stat. 4792; 25 U.S.C. 479a–1).

[SEC. 8040. During the current fiscal year, appropriations which are available to the Department of Defense for operation and maintenance may be used to purchase items having an investment item unit cost of not more than $100,000.

[SEC. 8041. (a) During the current fiscal year, none of the appropriations or funds available to the Department of Defense Working Capital Funds shall be used for the purchase of an investment item for the purpose of acquiring a new inventory item for sale or anticipated sale during the current fiscal year or a subsequent fiscal year to customers of the Department of Defense Working Capital Funds if such an item would not have been chargeable to the Department of Defense Business Operations Fund during fiscal year 1994 and if the purchase of such an investment item would be chargeable during the current fiscal year to appropriations made to the Department of Defense for procurement.

[(b) The fiscal year 2004 budget request for the Department of Defense as well as all justification material and other documentation supporting the fiscal year 2004 Department of Defense budget shall be prepared and submitted to the Congress on the basis that any equipment which was classified as an end item and funded in a procurement appropriation contained in this Act shall be budgeted for in a proposed fiscal year 2004 procurement appropriation and not in the supply management business area or any other area or category of the Department of Defense Working Capital Funds.

[SEC. 8042. None of the funds appropriated by this Act for programs of the Central Intelligence Agency shall remain available for obligation beyond the current fiscal year, except for funds appropriated for the Reserve for Contingencies, which shall remain available until September 30, 2004: *Provided*, That funds appropriated, transferred, or otherwise credited to the Central Intelligence Agency Central Services Working Capital Fund during this or any prior or subsequent fiscal year shall remain available until expended: *Provided further*, That any funds appropriated or transferred to the Central Intelligence Agency for agent operations and for covert action programs authorized by the President under section 503 of the National Security Act of 1947, as amended, shall remain available until September 30, 2004.

[SEC. 8043. Notwithstanding any other provision of law, funds made available in this Act for the Defense Intelligence Agency may be used for the design, development, and deployment of General Defense Intelligence Program intelligence communications and intelligence information systems for the Services, the Unified and Specified Commands, and the component commands.

[SEC. 8044. Of the funds appropriated to the Department of Defense under the heading ''Operation and Maintenance, Defense-Wide'', not less than $10,000,000 shall be made available only for the mitigation of environmental impacts, including training and technical assistance to tribes, related administrative support, the gathering of information, documenting of environmental damage, and developing a system for prioritization of mitigation and cost to complete estimates for mitigation, on Indian lands resulting from Department of Defense activities.

[SEC. 8045. Amounts collected for the use of the facilities of the National Science Center for Communications and Electronics during the current fiscal year and hereafter pursuant to section 1459(g) of the Department of Defense Authorization Act, 1986, and deposited to the special account established under subsection 1459(g)(2) of that Act are appropriated and shall be available until expended for the operation and maintenance of the Center as provided for in subsection 1459(g)(2).

[SEC. 8046. (a) None of the funds appropriated in this Act may be expended by an entity of the Department of Defense unless the entity, in expending the funds, complies with the Buy American Act. For purposes of this subsection, the term ''Buy American Act'' means title III of the Act entitled ''An Act making appropriations for the Treasury and Post Office Departments for the fiscal year ending June 30, 1934, and for other purposes'', approved March 3, 1933 (41 U.S.C. 10a et seq.).

[(b) If the Secretary of Defense determines that a person has been convicted of intentionally affixing a label bearing a ''Made in America'' inscription to any product sold in or shipped to the United States that is not made in America, the Secretary shall determine, in accordance with section 2410f of title 10, United States Code, whether the person should be debarred from contracting with the Department of Defense.

[(c) In the case of any equipment or products purchased with appropriations provided under this Act, it is the sense of the Congress that any entity of the Department of Defense, in expending the appropriation, purchase only American-made equipment and products, provided that American-made equipment and products are cost-competitive, quality-competitive, and available in a timely fashion.

[SEC. 8047. None of the funds appropriated by this Act shall be available for a contract for studies, analysis, or consulting services entered into without competition on the basis of an unsolicited proposal unless the head of the activity responsible for the procurement determines—

[(1) as a result of thorough technical evaluation, only one source is found fully qualified to perform the proposed work;

[(2) the purpose of the contract is to explore an unsolicited proposal which offers significant scientific or technological promise, represents the product of original thinking, and was submitted in confidence by one source; or

[(3) the purpose of the contract is to take advantage of unique and significant industrial accomplishment by a specific concern, or to insure that a new product or idea of a specific concern is given financial support:

[*Provided*, That this limitation shall not apply to contracts in an amount of less than $25,000, contracts related to improvements of equipment that is in development or production, or contracts as to which a civilian official of the Department of Defense, who has been confirmed by the Senate, determines that the award of such contract is in the interest of the national defense.

[SEC. 8048. (a) Except as provided in subsections (b) and (c), none of the funds made available by this Act may be used—

[(1) to establish a field operating agency; or

[(2) to pay the basic pay of a member of the Armed Forces or civilian employee of the department who is transferred or reassigned from a headquarters activity if the member or employee's place of duty remains at the location of that headquarters.

[(b) The Secretary of Defense or Secretary of a military department may waive the limitations in subsection (a), on a case-by-case basis, if the Secretary determines, and certifies to the Committees on Appropriations of the House of Representatives and Senate that the granting of the waiver will reduce the personnel requirements or the financial requirements of the department.

[(c) This section does not apply to field operating agencies funded within the National Foreign Intelligence Program.

[SEC. 8049. Notwithstanding section 303 of Public Law 96–487 or any other provision of law, the Secretary of the Navy is authorized to lease real and personal property at Naval Air Facility, Adak, Alaska, pursuant to 10 U.S.C. 2667(f), for commercial, industrial or other purposes: *Provided*, That notwithstanding any other provision of law, the Secretary of the Navy may remove hazardous materials from facilities, buildings, and structures at Adak, Alaska, and may demolish or otherwise dispose of such facilities, buildings, and structures.

[(RESCISSIONS)

[SEC. 8050. Of the funds provided in Department of Defense Appropriations Acts, the following funds are hereby rescinded from the following accounts and programs in the specified amounts:

[''Aircraft Procurement, Army, 2002/2004'', $3,000,000;

[''Missile Procurement, Army, 2002/2004'', $28,350,000;

[''Procurement of Weapons and Tracked Combat Vehicles, Army, 2002/2004'', $9,500,000;

[''Procurement of Ammunition, Army, 2002/2004'', $25,500,000;

[''Procurement, Marine Corps, 2002/2004'', $4,682,000;

[''Aircraft Procurement, Air Force, 2002/2004'', $23,500,000;

[''Missile Procurement, Air Force, 2002/2004'', $26,900,000;

[''Research, Development, Test and Evaluation, Army, 2002/2003'', $2,500,000;

[''Research, Development, Test and Evaluation, Navy, 2002/2003'', $2,000,000; and

[''Research, Development, Test and Evaluation, Air Force, 2002/2003'', $67,000,000.

[SEC. 8051. None of the funds available in this Act may be used to reduce the authorized positions for military (civilian) technicians of the Army National Guard, the Air National Guard, Army Reserve and Air Force Reserve for the purpose of applying any administratively imposed civilian personnel ceiling, freeze, or reduction on military (civilian) technicians, unless such reductions are a direct result of a reduction in military force structure.

[SEC. 8052. None of the funds appropriated or otherwise made available in this Act may be obligated or expended for assistance to the Democratic People's Republic of North Korea unless specifically appropriated for that purpose.

[SEC. 8053. During the current fiscal year, funds appropriated in this Act are available to compensate members of the National Guard for duty performed pursuant to a plan submitted by a Governor of a State and approved by the Secretary of Defense under section 112 of title 32, United States Code: *Provided*, That during the performance of such duty, the members of the National Guard shall be under State command and control: *Provided further*, That such duty shall be treated as full-time National Guard duty for purposes of sections 12602(a)(2) and (b)(2) of title 10, United States Code.

[SEC. 8054. Funds appropriated in this Act for operation and maintenance of the Military Departments, Combatant Commands and Defense Agencies shall be available for reimbursement of pay, allowances and other expenses which would otherwise be incurred against appropriations for the National Guard and Reserve when members of the National Guard and Reserve provide intelligence or counterintelligence support to Combatant Commands, Defense Agencies and Joint Intelligence Activities, including the activities and programs included within the National Foreign Intelligence Program (NFIP), the Joint Military Intelligence Program (JMIP), and the Tactical Intelligence and Related Activities (TIARA) aggregate: *Provided*, That nothing in this section authorizes deviation from established Reserve and National Guard personnel and training procedures.

[SEC. 8055. During the current fiscal year, none of the funds appropriated in this Act may be used to reduce the civilian medical and medical support personnel assigned to military treatment facilities below the September 30, 2002 level: *Provided*, That the Service Surgeons General may waive this section by certifying to the congressional defense committees that the beneficiary population is declining in some catchment areas and civilian strength reductions may be consistent with responsible resource stewardship and capitation-based budgeting.

[SEC. 8056. (a) LIMITATION ON PENTAGON RENOVATION COSTS.—Not later than the date each year on which the President submits to Congress the budget under section 1105 of title 31, United States Code, the Secretary of Defense shall submit to Congress a certification that the total cost for the planning, design, construction, and installation of equipment for the renovation of wedges 2 through 5 of the Pentagon Reservation, cumulatively, will not exceed four times the total cost for the planning, design, construction, and installation of equipment for the renovation of wedge 1.

[(b) ANNUAL ADJUSTMENT.—For purposes of applying the limitation in subsection (a), the Secretary shall adjust the cost for the renovation of wedge 1 by any increase or decrease in costs attributable to economic inflation, based on the most recent economic assumptions issued by the Office of Management and Budget for use in preparation of the budget of the United States under section 1104 of title 31, United States Code.

[(c) EXCLUSION OF CERTAIN COSTS.—For purposes of calculating the limitation in subsection (a), the total cost for wedges 2 through 5 shall not include—

[(1) any repair or reconstruction cost incurred as a result of the terrorist attack on the Pentagon that occurred on September 11, 2001;

[(2) any increase in costs for wedges 2 through 5 attributable to compliance with new requirements of Federal, State, or local laws; and

[(3) any increase in costs attributable to additional security requirements that the Secretary of Defense considers essential to provide a safe and secure working environment.

[(d) CERTIFICATION COST REPORTS.—As part of the annual certification under subsection (a), the Secretary shall report the projected cost (as of the time of the certification) for—

[(1) the renovation of each wedge, including the amount adjusted or otherwise excluded for such wedge under the authority of paragraphs (2) and (3) of subsection (c) for the period covered by the certification; and

[(2) the repair and reconstruction of wedges 1 and 2 in response to the terrorist attack on the Pentagon that occurred on September 11, 2001.

[(e) DURATION OF CERTIFICATION REQUIREMENT.—The requirement to make an annual certification under subsection (a) shall apply until the Secretary certifies to Congress that the renovation of the Pentagon Reservation is completed.

[SEC. 8057. Notwithstanding any other provision of law, that not more than 35 percent of funds provided in this Act for environmental remediation may be obligated under indefinite delivery/indefinite quantity contracts with a total contract value of $130,000,000 or higher.

[SEC. 8058. (a) None of the funds available to the Department of Defense for any fiscal year for drug interdiction or counter-drug activities may be transferred to any other department or agency of the United States except as specifically provided in an appropriations law.

[(b) None of the funds available to the Central Intelligence Agency for any fiscal year for drug interdiction and counter-drug activities may be transferred to any other department or agency of the United States except as specifically provided in an appropriations law.

[(TRANSFER OF FUNDS)

[SEC. 8059. Appropriations available in this Act under the heading ''Operation and Maintenance, Defense-Wide'' for increasing energy and water efficiency in Federal buildings may, during their period of availability, be transferred to other appropriations or funds of the Department of Defense for projects related to increasing energy and water efficiency, to be merged with and to be available for the same general purposes, and for the same time period, as the appropriation or fund to which transferred.

[SEC. 8060. None of the funds appropriated by this Act may be used for the procurement of ball and roller bearings other than those produced by a domestic source and of domestic origin: *Provided*, That the Secretary of the military department responsible for such procurement may waive this restriction on a case-by-case basis by certifying in writing to the Committees on Appropriations of the House of Representatives and the Senate, that adequate domestic supplies are not available to meet Department of Defense requirements on a timely basis and that such an acquisition must be made in order to acquire capability for national security purposes: *Provided further*, That this restriction shall not apply to the purchase of ''commercial items'', as defined by section 4(12) of the Office of Federal Procurement Policy Act, except that the restriction shall apply to ball or roller bearings purchased as end items.

[SEC. 8061. Notwithstanding any other provision of law, funds available to the Department of Defense shall be made available to provide transportation of medical supplies and equipment, on a nonreimbursable basis, to American Samoa, and funds available to the Department of Defense shall be made available to provide transportation of medical supplies and equipment, on a nonreimbursable basis, to the Indian Health Service when it is in conjunction with a civil-military project.

[SEC. 8062. None of the funds in this Act may be used to purchase any supercomputer which is not manufactured in the United States, unless the Secretary of Defense certifies to the congressional defense committees that such an acquisition must be made in order to acquire capability for national security purposes that is not available from United States manufacturers.

[SEC. 8063. Notwithstanding any other provision of law, the Naval shipyards of the United States shall be eligible to participate in any manufacturing extension program financed by funds appropriated in this or any other Act.

[SEC. 8064. Notwithstanding any other provision of law, each contract awarded by the Department of Defense during the current fiscal year for construction or service performed in whole or in part in a State (as defined in section 381(d) of title 10, United States Code) which is not contiguous with another State and has an unemployment rate in excess of the national average rate of unemployment as determined by the Secretary of Labor, shall include a provision requiring the contractor to employ, for the purpose of performing that portion of the contract in such State that is not contiguous with another State, individuals who are residents of such State and who, in the case of any craft or trade, possess or would be able to acquire promptly the necessary skills: *Provided*, That the Secretary of Defense may waive the requirements of this section, on a case-by-case basis, in the interest of national security.

[SEC. 8065. None of the funds made available in this or any other Act may be used to pay the salary of any officer or employee of the Department of Defense who approves or implements the transfer of administrative responsibilities or budgetary resources of any program, project, or activity financed by this Act to the jurisdiction of another Federal agency not financed by this Act without the express authorization of Congress: *Provided*, That this limitation shall not apply to transfers of funds expressly provided for in Defense Appropriations Acts, or provisions of Acts providing supplemental appropriations for the Department of Defense.

[SEC. 8066. (a) LIMITATION ON TRANSFER OF DEFENSE ARTICLES AND SERVICES.—Notwithstanding any other provision of law, none of the funds available to the Department of Defense for the current fiscal year may be obligated or expended to transfer to another nation or an international organization any defense articles or services (other than intelligence services) for use in the activities described in subsection (b) unless the congressional defense committees, the Committee on International Relations of the House of Representatives, and the Committee on Foreign Relations of the Senate are notified 15 days in advance of such transfer.

[(b) COVERED ACTIVITIES.—This section applies to—

[(1) any international peacekeeping or peace-enforcement operation under the authority of chapter VI or chapter VII of the

United Nations Charter under the authority of a United Nations Security Council resolution; and

[(2) any other international peacekeeping, peace-enforcement, or humanitarian assistance operation.

[(c) REQUIRED NOTICE.—A notice under subsection (a) shall include the following:

[(1) A description of the equipment, supplies, or services to be transferred.

[(2) A statement of the value of the equipment, supplies, or services to be transferred.

[(3) In the case of a proposed transfer of equipment or supplies—

[(A) a statement of whether the inventory requirements of all elements of the Armed Forces (including the reserve components) for the type of equipment or supplies to be transferred have been met; and

[(B) a statement of whether the items proposed to be transferred will have to be replaced and, if so, how the President proposes to provide funds for such replacement.

[SEC. 8067. To the extent authorized by subchapter VI of chapter 148 of title 10, United States Code, the Secretary of Defense may issue loan guarantees in support of United States defense exports not otherwise provided for: *Provided*, That the total contingent liability of the United States for guarantees issued under the authority of this section may not exceed $15,000,000,000: *Provided further*, That the exposure fees charged and collected by the Secretary for each guarantee shall be paid by the country involved and shall not be financed as part of a loan guaranteed by the United States: *Provided further*, That the Secretary shall provide quarterly reports to the Committees on Appropriations, Armed Services, and Foreign Relations of the Senate and the Committees on Appropriations, Armed Services, and International Relations in the House of Representatives on the implementation of this program: *Provided further*, That amounts charged for administrative fees and deposited to the special account provided for under section 2540c(d) of title 10, shall be available for paying the costs of administrative expenses of the Department of Defense that are attributable to the loan guarantee program under subchapter VI of chapter 148 of title 10, United States Code.

[SEC. 8068. None of the funds available to the Department of Defense under this Act shall be obligated or expended to pay a contractor under a contract with the Department of Defense for costs of any amount paid by the contractor to an employee when—

[(1) such costs are for a bonus or otherwise in excess of the normal salary paid by the contractor to the employee; and

[(2) such bonus is part of restructuring costs associated with a business combination.

[SEC. 8069. (a) None of the funds appropriated or otherwise made available in this Act may be used to transport or provide for the transportation of chemical munitions or agents to the Johnston Atoll for the purpose of storing or demilitarizing such munitions or agents.

[(b) The prohibition in subsection (a) shall not apply to any obsolete World War II chemical munition or agent of the United States found in the World War II Pacific Theater of Operations.

[(c) The President may suspend the application of subsection (a) during a period of war in which the United States is a party.

[(INCLUDING TRANSFER OF FUNDS)

[SEC. 8070. During the current fiscal year, no more than $30,000,000 of appropriations made in this Act under the heading ''Operation and Maintenance, Defense-Wide'' may be transferred to appropriations available for the pay of military personnel, to be merged with, and to be available for the same time period as the appropriations to which transferred, to be used in support of such personnel in connection with support and services for eligible organizations and activities outside the Department of Defense pursuant to section 2012 of title 10, United States Code.

[SEC. 8071. During the current fiscal year, in the case of an appropriation account of the Department of Defense for which the period of availability for obligation has expired or which has closed under the provisions of section 1552 of title 31, United States Code, and which has a negative unliquidated or unexpended balance, an obligation or an adjustment of an obligation may be charged to any current appropriation account for the same purpose as the expired or closed account if—

[(1) the obligation would have been properly chargeable (except as to amount) to the expired or closed account before the end of the period of availability or closing of that account;

[(2) the obligation is not otherwise properly chargeable to any current appropriation account of the Department of Defense; and

[(3) in the case of an expired account, the obligation is not chargeable to a current appropriation of the Department of Defense under the provisions of section 1405(b)(8) of the National Defense Authorization Act for Fiscal Year 1991, Public Law 101–510, as amended (31 U.S.C. 1551 note): *Provided*, That in the case of an expired account, if subsequent review or investigation discloses that there was not in fact a negative unliquidated or unexpended balance in the account, any charge to a current account under the authority of this section shall be reversed and recorded against the expired account: *Provided further*, That the total amount charged to a current appropriation under this section may not exceed an amount equal to 1 percent of the total appropriation for that account.

[SEC. 8072. Funds appropriated in title II of this Act and for the Defense Health Program in title VI of this Act for supervision and administration costs for facilities maintenance and repair, minor construction, or design projects may be obligated at the time the reimbursable order is accepted by the performing activity: *Provided*, That for the purpose of this section, supervision and administration costs includes all in-house Government cost.

[SEC. 8073. During the current fiscal year, the Secretary of Defense may waive reimbursement of the cost of conferences, seminars, courses of instruction, or similar educational activities of the Asia-Pacific Center for Security Studies for military officers and civilian officials of foreign nations if the Secretary determines that attendance by such personnel, without reimbursement, is in the national security interest of the United States: *Provided*, That costs for which reimbursement is waived pursuant to this section shall be paid from appropriations available for the Asia-Pacific Center.

[SEC. 8074. (a) Notwithstanding any other provision of law, the Chief of the National Guard Bureau may permit the use of equipment of the National Guard Distance Learning Project by any person or entity on a space-available, reimbursable basis. The Chief of the National Guard Bureau shall establish the amount of reimbursement for such use on a case-by-case basis.

[(b) Amounts collected under subsection (a) shall be credited to funds available for the National Guard Distance Learning Project and be available to defray the costs associated with the use of equipment of the project under that subsection. Such funds shall be available for such purposes without fiscal year limitation.

[SEC. 8075. Using funds available by this Act or any other Act, the Secretary of the Air Force, pursuant to a determination under section 2690 of title 10, United States Code, may implement cost-effective agreements for required heating facility modernization in the Kaiserslautern Military Community in the Federal Republic of Germany: *Provided*, That in the City of Kaiserslautern such agreements will include the use of United States anthracite as the base load energy for municipal district heat to the United States Defense installations: *Provided further*, That at Landstuhl Army Regional Medical Center and Ramstein Air Base, furnished heat may be obtained from private, regional or municipal services, if provisions are included for the consideration of United States coal as an energy source.

[SEC. 8076. None of the funds appropriated in title IV of this Act may be used to procure end-items for delivery to military forces for operational training, operational use or inventory requirements: *Provided*, That this restriction does not apply to end-items used in development, prototyping, and test activities preceding and leading to acceptance for operational use: *Provided further*, That this restriction does not apply to programs funded within the National Foreign Intelligence Program: *Provided further*, That the Secretary of Defense may waive this restriction on a case-by-case basis by certifying in writing to the Committees on Appropriations of the House of Representatives and the Senate that it is in the national security interest to do so.

[SEC. 8077. None of the funds made available in this Act may be used to approve or license the sale of the F–22 advanced tactical fighter to any foreign government.

[SEC. 8078. (a) The Secretary of Defense may, on a case-by-case basis, waive with respect to a foreign country each limitation on the procurement of defense items from foreign sources provided in law if the Secretary determines that the application of the limitation with respect to that country would invalidate cooperative programs entered into between the Department of Defense and the foreign country, or would invalidate reciprocal trade agreements for the procurement of defense items entered into under section 2531 of title 10, United States Code, and the country does not discriminate against the same or similar defense items produced in the United States for that country.

[(b) Subsection (a) applies with respect to—

[(1) contracts and subcontracts entered into on or after the date of the enactment of this Act; and

[(2) options for the procurement of items that are exercised after such date under contracts that are entered into before such date if the option prices are adjusted for any reason other than the application of a waiver granted under subsection (a).

[(c) Subsection (a) does not apply to a limitation regarding construction of public vessels, ball and roller bearings, food, and clothing or textile materials as defined by section 11 (chapters 50–65) of the Harmonized Tariff Schedule and products classified under headings 4010, 4202, 4203, 6401 through 6406, 6505, 7019, 7218 through 7229, 7304.41 through 7304.49, 7306.40, 7502 through 7508, 8105, 8108, 8109, 8211, 8215, and 9404.

[SEC. 8079. Funds made available to the Civil Air Patrol in this Act under the heading ''Drug Interdiction and Counter-Drug Activities, Defense'' may be used for the Civil Air Patrol Corporation's counterdrug program, including its demand reduction program involving youth programs, as well as operational and training drug reconnaissance missions for Federal, State, and local government agencies; and for equipment needed for mission support or performance: *Provided*, That the Department of the Air

Force should waive reimbursement from the Federal, State, and local government agencies for the use of these funds.

[SEC. 8080. (a) PROHIBITION.—None of the funds made available by this Act may be used to support any training program involving a unit of the security forces of a foreign country if the Secretary of Defense has received credible information from the Department of State that the unit has committed a gross violation of human rights, unless all necessary corrective steps have been taken.

[(b) MONITORING.—The Secretary of Defense, in consultation with the Secretary of State, shall ensure that prior to a decision to conduct any training program referred to in subsection (a), full consideration is given to all credible information available to the Department of State relating to human rights violations by foreign security forces.

[(c) WAIVER.—The Secretary of Defense, after consultation with the Secretary of State, may waive the prohibition in subsection (a) if he determines that such waiver is required by extraordinary circumstances.

[(d) REPORT.—Not more than 15 days after the exercise of any waiver under subsection (c), the Secretary of Defense shall submit a report to the congressional defense committees describing the extraordinary circumstances, the purpose and duration of the training program, the United States forces and the foreign security forces involved in the training program, and the information relating to human rights violations that necessitates the waiver.

[SEC. 8081. The Secretary of Defense, in coordination with the Secretary of Health and Human Services, may carry out a program to distribute surplus dental equipment of the Department of Defense, at no cost to the Department of Defense, to Indian health service facilities and to federally-qualified health centers (within the meaning of section 1905(l)(2)(B) of the Social Security Act (42 U.S.C. 1396d(l)(2)(B))).

[SEC. 8082. The total amount appropriated in this Act is hereby reduced by $615,000,000 to reflect savings from favorable foreign currency fluctuations, to be derived as follows:

[''Military Personnel, Army'', $154,000,000;

[''Military Personnel, Navy'', $11,000,000;

[''Military Personnel, Marine Corps'', $21,000,000;

[''Military Personnel, Air Force'', $49,000,000;

[''Operation and Maintenance, Army'', $189,000,000;

[''Operation and Maintenance, Navy'', $40,000,000;

[''Operation and Maintenance, Marine Corps'', $3,000,000;

[''Operation and Maintenance, Air Force'', $80,000,000; and

[''Operation and Maintenance, Defense-Wide'', $68,000,000.

[SEC. 8083. None of the funds appropriated or made available in this Act to the Department of the Navy shall be used to develop, lease or procure the T–AKE class of ships unless the main propulsion diesel engines and propulsors are manufactured in the United States by a domestically operated entity: *Provided*, That the Secretary of Defense may waive this restriction on a case-by-case basis by certifying in writing to the Committees on Appropriations of the House of Representatives and the Senate that adequate domestic supplies are not available to meet Department of Defense requirements on a timely basis and that such an acquisition must be made in order to acquire capability for national security purposes or there exists a significant cost or quality difference.

[SEC. 8084. None of the funds appropriated or otherwise made available by this or other Department of Defense Appropriations Acts may be obligated or expended for the purpose of performing repairs or maintenance to military family housing units of the Department of Defense, including areas in such military family housing units that may be used for the purpose of conducting official Department of Defense business.

[SEC. 8085. Notwithstanding any other provision of law, funds appropriated in this Act under the heading ''Research, Development, Test and Evaluation, Defense-Wide'' for any advanced concept technology demonstration project may only be obligated 30 days after a report, including a description of the project and its estimated annual and total cost, has been provided in writing to the congressional defense committees: *Provided*, That the Secretary of Defense may waive this restriction on a case-by-case basis by certifying to the congressional defense committees that it is in the national interest to do so.

[SEC. 8086. Notwithstanding any other provision of law, for the purpose of establishing all Department of Defense policies governing the provision of care provided by and financed under the military health care system's case management program under 10 U.S.C. 1079(a)(17), the term ''custodial care'' shall be defined as care designed essentially to assist an individual in meeting the activities of daily living and which does not require the supervision of trained medical, nursing, paramedical or other specially trained individuals: *Provided*, That the case management program shall provide that members and retired members of the military services, and their dependents and survivors, have access to all medically necessary health care through the health care delivery system of the military services regardless of the health care status of the person seeking the health care: *Provided further*, That the case management program shall be the primary obligor for payment of medically necessary services and shall not be considered as secondarily liable to title XIX of the Social Security Act, other welfare programs or charity based care.

[SEC. 8087. During the current fiscal year, refunds attributable to the use of the Government travel card, refunds attributable to the use of the Government Purchase Card and refunds attributable to official Government travel arranged by Government Contracted Travel Management Centers may be credited to operation and maintenance accounts of the Department of Defense which are current when the refunds are received.

[SEC. 8088. (a) REGISTERING FINANCIAL MANAGEMENT INFORMATION TECHNOLOGY SYSTEMS WITH DOD CHIEF INFORMATION OFFICER.—None of the funds appropriated in this Act may be used for a mission critical or mission essential financial management information technology system (including a system funded by the defense working capital fund) that is not registered with the Chief Information Officer of the Department of Defense. A system shall be considered to be registered with that officer upon the furnishing to that officer of notice of the system, together with such information concerning the system as the Secretary of Defense may prescribe. A financial management information technology system shall be considered a mission critical or mission essential information technology system as defined by the Under Secretary of Defense (Comptroller).

[(b) CERTIFICATIONS AS TO COMPLIANCE WITH FINANCIAL MANAGEMENT MODERNIZATION PLAN.—(1) During the current fiscal year, a financial management major automated information system may not receive Milestone A approval, Milestone B approval, or full rate production, or their equivalent, within the Department of Defense until the Under Secretary of Defense (Comptroller) certifies, with respect to that milestone, that the system is being developed and managed in accordance with the Department's Financial Management Modernization Plan. The Under Secretary of Defense (Comptroller) may require additional certifications, as appropriate, with respect to any such system.

[(2) The Chief Information Officer shall provide the congressional defense committees timely notification of certifications under paragraph (1).

[(c) CERTIFICATIONS AS TO COMPLIANCE WITH CLINGER-COHEN ACT.—(1) During the current fiscal year, a major automated information system may not receive Milestone A approval, Milestone B approval, or full rate production approval, or their equivalent, within the Department of Defense until the Chief Information Officer certifies, with respect to that milestone, that the system is being developed in accordance with the Clinger-Cohen Act of 1996 (40 U.S.C. 1401 et seq.). The Chief Information Officer may require additional certifications, as appropriate, with respect to any such system.

[(2) The Chief Information Officer shall provide the congressional defense committees timely notification of certifications under paragraph (1). Each such notification shall include, at a minimum, the funding baseline and milestone schedule for each system covered by such a certification and confirmation that the following steps have been taken with respect to the system:

[(A) Business process reengineering.

[(B) An analysis of alternatives.

[(C) An economic analysis that includes a calculation of the return on investment.

[(D) Performance measures.

[(E) An information assurance strategy consistent with the Department's Global Information Grid.

[(d) DEFINITIONS.—For purposes of this section:

[(1) The term ''Chief Information Officer'' means the senior official of the Department of Defense designated by the Secretary of Defense pursuant to section 3506 of title 44, United States Code.

[(2) The term ''information technology system'' has the meaning given the term ''information technology'' in section 5002 of the Clinger-Cohen Act of 1996 (40 U.S.C. 1401).

[(3) The term ''major automated information system'' has the meaning given that term in Department of Defense Directive 5000.1.

[SEC. 8089. During the current fiscal year, none of the funds available to the Department of Defense may be used to provide support to another department or agency of the United States if such department or agency is more than 90 days in arrears in making payment to the Department of Defense for goods or services previously provided to such department or agency on a reimbursable basis: *Provided*, That this restriction shall not apply if the department is authorized by law to provide support to such department or agency on a nonreimbursable basis, and is providing the requested support pursuant to such authority: *Provided further*, That the Secretary of Defense may waive this restriction on a case-by-case basis by certifying in writing to the Committees on Appropriations of the House of Representatives and the Senate that it is in the national security interest to do so.

[SEC. 8090. None of the funds provided in this Act may be used to transfer to any nongovernmental entity ammunition held by the Department of Defense that has a centerfire cartridge and a United States military nomenclature designation of ''armor penetrator'', ''armor piercing (AP)'', ''armor piercing incendiary (API)'', or ''armor-piercing incendiary-tracer (API–T)'', except to an entity performing demilitarization services

for the Department of Defense under a contract that requires the entity to demonstrate to the satisfaction of the Department of Defense that armor piercing projectiles are either: (1) rendered incapable of reuse by the demilitarization process; or (2) used to manufacture ammunition pursuant to a contract with the Department of Defense or the manufacture of ammunition for export pursuant to a License for Permanent Export of Unclassified Military Articles issued by the Department of State.

[SEC. 8091. Notwithstanding any other provision of law, the Chief of the National Guard Bureau, or his designee, may waive payment of all or part of the consideration that otherwise would be required under 10 U.S.C. 2667, in the case of a lease of personal property for a period not in excess of 1 year to any organization specified in 32 U.S.C. 508(d), or any other youth, social, or fraternal non-profit organization as may be approved by the Chief of the National Guard Bureau, or his designee, on a case-by-case basis.

[SEC. 8092. None of the funds appropriated by this Act shall be used for the support of any nonappropriated funds activity of the Department of Defense that procures malt beverages and wine with nonappropriated funds for resale (including such alcoholic beverages sold by the drink) on a military installation located in the United States unless such malt beverages and wine are procured within that State, or in the case of the District of Columbia, within the District of Columbia, in which the military installation is located: *Provided*, That in a case in which the military installation is located in more than one State, purchases may be made in any State in which the installation is located: *Provided further*, That such local procurement requirements for malt beverages and wine shall apply to all alcoholic beverages only for military installations in States which are not contiguous with another State: *Provided further*, That alcoholic beverages other than wine and malt beverages, in contiguous States and the District of Columbia shall be procured from the most competitive source, price and other factors considered.

[SEC. 8093. During the current fiscal year, under regulations prescribed by the Secretary of Defense, the Center of Excellence for Disaster Management and Humanitarian Assistance may also pay, or authorize payment for, the expenses of providing or facilitating education and training for appropriate military and civilian personnel of foreign countries in disaster management, peace operations, and humanitarian assistance.

[SEC. 8094. (a) The Department of Defense is authorized to enter into agreements with the Veterans Administration and federally-funded health agencies providing services to Native Hawaiians for the purpose of establishing a partnership similar to the Alaska Federal Health Care Partnership, in order to maximize Federal resources in the provision of health care services by federally-funded health agencies, applying telemedicine technologies. For the purpose of this partnership, Native Hawaiians shall have the same status as other Native Americans who are eligible for the health care services provided by the Indian Health Service.

[(b) The Department of Defense is authorized to develop a consultation policy, consistent with Executive Order No. 13084 (issued May 14, 1998), with Native Hawaiians for the purpose of assuring maximum Native Hawaiian participation in the direction and administration of governmental services so as to render those services more responsive to the needs of the Native Hawaiian community.

[(c) For purposes of this section, the term ''Native Hawaiian'' means any individual who is a descendant of the aboriginal people who, prior to 1778, occupied and exercised sovereignty in the area that now comprises the State of Hawaii.

[SEC. 8095. Of the amounts appropriated in this Act for the Arrow missile defense program under the heading ''Research, Development, Test and Evaluation, Defense-Wide'', $131,700,000 shall be made available for the purpose of continuing the Arrow System Improvement Program (ASIP), continuing ballistic missile defense interoperability with Israel, and continuing development of an Arrow production capability in the United States.

[SEC. 8096. Funds available to the Department of Defense for the Global Positioning System during the current fiscal year may be used to fund civil requirements associated with the satellite and ground control segments of such system's modernization program.

[(INCLUDING TRANSFER OF FUNDS)

[SEC. 8097. Of the amounts appropriated in this Act under the heading, ''Operation and Maintenance, Defense-Wide'', $68,000,000 shall remain available until expended: *Provided*, That notwithstanding any other provision of law, the Secretary of Defense is authorized to transfer such funds to other activities of the Federal Government.

[SEC. 8098. Section 8106 of the Department of Defense Appropriations Act, 1997 (titles I through VIII of the matter under subsection 101(b) of Public Law 104–208; 110 Stat. 3009–111; 10 U.S.C. 113 note) shall continue in effect to apply to disbursements that are made by the Department of Defense in fiscal year 2003.

[SEC. 8099. In addition to amounts provided in this Act, $2,000,000 is hereby appropriated for ''Defense Health Program'', to remain available for obligation until expended: *Provided*, That notwithstanding any other provision of law, these funds shall be available only for a grant to the Fisher House Foundation, Inc., only for the construction and furnishing of additional Fisher Houses to meet the needs of military family members when confronted with the illness or hospitalization of an eligible military beneficiary.

[SEC. 8100. The total amount appropriated in Title II of this Act is hereby reduced by $51,000,000, to reflect savings attributable to improvements in the management of advisory and assistance services contracted by the military departments, to be derived as follows:

[''Operation and Maintenance, Army'', $11,000,000;

[''Operation and Maintenance, Navy'', $10,000,000; and

[''Operation and Maintenance, Air Force'', $30,000,000.

[(INCLUDING TRANSFER OF FUNDS)

[SEC. 8101. Of the amounts appropriated in this Act under the heading ''Shipbuilding and Conversion, Navy,'' $644,899,000 shall be available until September 30, 2003, to fund prior year shipbuilding cost increases: *Provided*, That upon enactment of this Act, the Secretary of Defense shall transfer such funds to the following appropriations in the amount specified: *Provided further*, That the amounts transferred shall be merged with and shall be available for the same purposes as the appropriations to which transferred:

[To:

[Under the heading, ''Shipbuilding and Conversion, Navy, 1996/2003'':

[LPD–17 Amphibious Transport Dock Ship Program, $232,681,000;

[Under the heading, ''Shipbuilding and Conversion, Navy, 1998/2003'':

[DDG–51 Destroyer Program, $47,400,000;

[New SSN, $156,682,000;

[Under the heading, ''Shipbuilding and Conversion, Navy, 1999/2003'':

[LPD–17 Amphibious Transport Dock Ship Program, $10,000,000;

[DDG–51 Destroyer Program, $56,736,000;

[New SSN, $120,000,000;

[Under the heading, ''Shipbuilding and Conversion, Navy, 2000/2003'':

[DDG–51 Destroyer Program, $21,200,000;

[Under the heading, ''Shipbuilding and Conversion, Navy, 2001/2008'':

[DDG–51 Destroyer Program, $200,000.

[SEC. 8102. The Secretary of the Navy may settle, or compromise, and pay any and all admiralty claims under 10 U.S.C. 7622 arising out of the collision involving the U.S.S. GREENEVILLE and the EHIME MARU, in any amount and without regard to the monetary limitations in subsections (a) and (b) of that section: *Provided*, That such payments shall be made from funds available to the Department of the Navy for operation and maintenance.

[SEC. 8103. The total amount appropriated in Title II of this Act is hereby reduced by $97,000,000, to reflect savings attributable to improved supervision in determining appropriate purchases to be made using the Government purchase card, to be derived as follows:

[''Operation and Maintenance, Army'', $24,000,000;

[''Operation and Maintenance, Navy'', $29,000,000;

[''Operation and Maintenance, Marine Corps'', $3,000,000;

[''Operation and Maintenance, Air Force'', $27,000,000; and

[''Operation and Maintenance, Defense-Wide'', $14,000,000.

[SEC. 8104. Funds provided for the current fiscal year or hereafter for Operation and Maintenance for the Armed Forces may be used, notwithstanding any other provision of law, for the purchase of ultralightweight camouflage net systems as unit spares.

[(INCLUDING TRANSFER OF FUNDS)

[SEC. 8105. During the current fiscal year and hereafter, notwithstanding any other provision of law, the Secretary of Defense may transfer not more than $20,000,000 of unobligated balances remaining in a Research, Development, Test and Evaluation, Army appropriation account during the last fiscal year before the account closes under section 1552 of title 31 United States Code, to a current Research, Development, Test and Evaluation, Army appropriation account to be used only for the continuation of the Venture Capital Fund demonstration, as originally approved in Section 8150 of Public Law 107–117, to pursue high payoff technology and innovations in science and technology: *Provided*, That any such transfer shall be made not later than July 31 of each year: *Provided further*, That funds so transferred shall be merged with and shall be available for the same purposes and for the same time period as the appropriation to which transferred: *Provided further*, That the transfer authority provided in this section is in addition to any other transfer authority available to the Department of Defense: *Provided further*, That, no funds for programs, projects, or activities designated as special congressional interest items in DD Form 1414 shall be eligible for transfer under the authority of this section: *Provided further*, That any unobligated balances transferred under this authority may be restored to the original appropriation if required to cover unexpected upward adjustments: *Provided further*, That the Secretary of the Army shall provide an annual report to the House and Senate Appropriations Committees no later than 15 days prior to the annual transfer of funds under authority

of this section describing the sources and amounts of funds proposed to be transfered, summarizing the projects funded under this demonstration program (including the name and location of project sponsors) to date, a description of the major program accomplishments to date, and an overall assessment of the benefits of this demonstration program compared to the goals expressed in the legislative history accompanying Section 8150 of Public Law 107–117.

[SEC. 8106. Notwithstanding any other provision of law or regulation, the Secretary of Defense may exercise the provisions of 38 U.S.C. 7403(g) for occupations listed in 38 U.S.C. 7403(a)(2) as well as the following:

[Pharmacists, Audiologists, and Dental Hygienists.

[(A) The requirements of 38 U.S.C. 7403(g)(1)(A) shall apply.

[(B) The limitations of 38 U.S.C. 7403(g)(1)(B) shall not apply.

[SEC. 8107. Funds appropriated by this Act, or made available by the transfer of funds in this Act, for intelligence activities are deemed to be specifically authorized by the Congress for purposes of section 504 of the National Security Act of 1947 (50 U.S.C. 414) during fiscal year 2003 until the enactment of the Intelligence Authorization Act for fiscal year 2003.

[SEC. 8108. Section 1111(c) of title 10 is amended in the first sentence by striking ''may'' after the Secretary of Defense and inserting ''shall'' after the Secretary of Defense.

[(INCLUDING TRANSFER OF FUNDS)

[SEC. 8109. During the current fiscal year, amounts in or credited to the Defense Cooperation Account under 10 U.S.C. 2608(b) are hereby appropriated and shall be available for obligation and expenditure consistent with the purposes for which such amounts were contributed and accepted for transfer by the Secretary of Defense to such appropriations or funds of the Department of Defense as the Secretary shall determine, to be merged with and to be available for the same purposes and for the same time period as the appropriation or fund to which transferred: *Provided*, That the Secretary shall provide written notification to the congressional defense committees 30 days prior to such transfer: *Provided further*, That the Secretary of Defense shall report to the Congress quarterly all transfers made pursuant to this authority: *Provided further*, That this transfer authority is in addition to any other transfer authority available to the Department of Defense.

[SEC. 8110. Notwithstanding section 1116(c) of title 10, United States Code, payments into the Department of Defense Medicare-Eligible Retiree Health Care Fund for fiscal year 2003 under section 1116(a) of such title shall be made from funds available in this Act for the pay of military personnel.

[SEC. 8111. None of the funds in this Act may be used to initiate a new start program without prior notification to the Office of Secretary of Defense and the congressional defense committees.

[SEC. 8112. The amount appropriated in title II of this Act is hereby reduced by $470,000,000 to reflect Working Capital Fund cash balance and rate stabilization adjustments, to be derived as follows:

[''Operation and Maintenance, Navy'', $440,000,000; and

[''Operation and Maintenance, Air Force'', $30,000,000.

[SEC. 8113. Notwithstanding any other provision in this Act, the total amount appropriated in this Act is hereby reduced by $475,000,000, to reduce excess funded carryover, to be derived as follows:

[''Operation and Maintenance, Army'', $48,000,000;

[''Operation and Maintenance, Navy'', $285,000,000;

[''Operation and Maintenance, Marine Corps'', $8,000,000; and

[''Operation and Maintenance, Air Force'', $134,000,000.

[SEC. 8114. Notwithstanding any other provision of law, none of the funds appropriated or otherwise made available by this or any other appropriations Acts may be obligated for the purpose of transferring the Medical Free Electron Laser (MFEL) Program from the Department of Defense to any other Government agency.

[SEC. 8115. (a) In addition to the amounts provided elsewhere in this Act, the amount of $4,000,000 is hereby appropriated to the Department of Defense for ''Operation and Maintenance, Army National Guard''. Such amount shall be made available to the Secretary of the Army only to make a grant in the amount of $4,000,000 to the entity specified in subsection (b) to facilitate access by veterans to opportunities for skilled employment in the construction industry.

[(b) The entity referred to in subsection (a) is the Center for Military Recruitment, Assessment and Veterans Employment, a nonprofit labor-management co-operation committee provided for by section 302(c)(9) of the Labor-Management Relations Act, 1947 (29 U.S.C. 186(c)(9)), for the purposes set forth in section 6(b) of the Labor Management Cooperation Act of 1978 (29 U.S.C. 175a note).

[SEC. 8116. (a) During the current fiscal year, funds available to the Secretary of a military department for Operation and Maintenance may be used for the purposes stated in subsection (b) to support chaplain-led programs to assist members of the Armed Forces and their immediate family members in building and maintaining a strong family structure.

[(b) The purposes referred to in subsection (a) are costs of transportation, food, lodging, supplies, fees, and training materials for members of the Armed Forces and their family members while participating in such programs, including participation at retreats and conferences.

[SEC. 8117. (a) COMMISSION ON ADEQUACY OF ARMED FORCES TRAINING FACILITIES.—The Secretary of Defense shall establish an advisory committee under section 173 of title 10, United States Code, to assess the availability of adequate training facilities for the Armed Forces in the United States and overseas and the adverse impact of residential and industrial encroachment, requirements of environmental laws, and other factors on military training and the coordination of military training among the United States and its allies.

[(b) MEMBERS.—The advisory committee shall be composed of persons who are not active-duty members of the Armed Forces or officers or employees of the Department of Defense.

[(c) REPORT.—Not later than July 31, 2003, the advisory committee shall submit to the Secretary of Defense and the congressional defense committees a report containing the results of the assessment and such recommendations as the committee considers necessary.

[(d) FUNDING.—Funds for the activities of the advisory committee shall be provided from amounts appropriated for operation and maintenance for Defense-Wide activities for fiscal year 2003.

[SEC. 8118. (a) LIMITATION ON ADDITIONAL NMCI CONTRACT WORK STATIONS.—Notwithstanding section 814 of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001 (as enacted into law by Public Law 106–398; 114 Stat. 1654A–215) or any other provision of law, the total number of work stations provided under the Navy-Marine Corps Intranet contract (as defined in subsection (i) of such section 814) may not exceed 160,000 work stations until the Under Secretary of Defense for Acquisition, Technology, and Logistics and the Chief Information Officer of the Department of Defense certify to the congressional defense committees that all of the conditions specified in subsection (b) have been satisfied.

[(b) CONDITIONS.—The conditions referred to in subsection (a) are the following:

[(1) There is a full transition of not less than 20,000 work stations to the Navy-Marine Corps Intranet.

[(2) Those work stations undergo operational test and evaluation—

[(A) to evaluate and demonstrate the ability of the infrastructure and services of the Navy-Marine Corps Intranet to support Department of the Navy operational, office, and business functionality and processes; and

[(B) to evaluate the effectiveness and suitability of the Navy-Marine Corps Intranet to support accomplishment of Navy and Marine Corps missions.

[(3) The Director of Operational Test and Evaluation of the Department of Defense completes an assessment of the operational test and evaluation and provides the results of the assessment and recommendations to the Under Secretary of Defense for Acquisition, Technology, and Logistics and the Chief Information Officer of the Department of Defense.

[(4) The Under Secretary of Defense for Acquisition, Technology, and Logistics and the Chief Information Officer of the Department of Defense determine that the results of the test and evaluation are acceptable.

[SEC. 8119. None of the funds in this Act, excluding funds provided for advance procurement of fiscal year 2004 aircraft, may be obligated for acquisition of more than 16 F–22 aircraft until the Under Secretary of Defense for Acquisition, Technology, and Logistics has provided to the congressional defense committees:

[(a) A formal risk assessment which identifies and characterizes the potential cost, technical, schedule or other significant risks resulting from increasing the F–22 procurement quantities prior to the conclusion of Dedicated Initial Operational Test and Evaluation (DIOT&E) of the aircraft: *Provided*, That such risk assessment shall evaluate based on the best available current information (1) the range of potential additional program costs (compared to the program costs assumed in the President's fiscal year 2003 budget) that could result from retrofit modifications to F–22 production aircraft that are placed under contract or delivered to the government prior to the conclusion of DIOT&E and (2) a cost-benefit analysis comparing, in terms of unit cost and total program cost, the cost advantages of increasing aircraft production at this time to the potential cost of retrofitting production aircraft once DIOT&E has been completed;

[(b) Certification that any future retrofit costs to F–22 production aircraft, ordered or delivered prior to the conclusion of DIOT&E, that result from changes required from developmental or operational test and evaluation will not increase the total F–22 program cost as estimated in the President's fiscal year 2003 budget; and

[(c) Certification that increasing the F–22 production quantity for fiscal year 2003 beyond 16 airplanes involves lower risk and lower total program cost than staying at that quantity, or he submits a revised production plan, funding plan and test schedule.

[(INCLUDING TRANSFER OF FUNDS)

[SEC. 8120. Section 305(a) of the Emergency Supplemental Act, 2002 (division B of Public Law 107–117; 115 Stat. 2300), is amended by

adding at the end the following new sentences: ''From amounts transferred to the Pentagon Reservation Maintenance Revolving Fund pursuant to the preceding sentence, not to exceed $305,000,000 may be transferred to the Defense Emergency Response Fund, but only in amounts necessary to reimburse that fund (and the category of that fund designated as 'Pentagon Repair/Upgrade') for expenses charged to that fund (and that category) between September 11, 2001, and January 10, 2002, for reconstruction costs of the Pentagon Reservation. Funds transferred to the Defense Emergency Response Fund pursuant to this section shall be available only for reconstruction, recovery, force protection, or security enhancements for the Pentagon Reservation.''.

[SEC. 8121. (a) TERMINATION OF CRUSADER ARTILLERY SYSTEM.—Consistent with the budget amendment to the fiscal year 2003 President's Budget submitted to Congress on May 29, 2002, for termination of the Crusader Artillery System, the Department of Defense is authorized to terminate the Crusader program. Such termination shall be carried out in a prudent and deliberate manner in order to provide for the orderly termination of the program.

[(b) ACCELERATION OF OTHER INDIRECT FIRE SYSTEMS.—Of the funds appropriated or otherwise made available in this Act, under the heading ''Research, Development, Test, and Evaluation, Army'', $305,109,000 shall be available only to accelerate the development, demonstration, and fielding of indirect fire platforms, precision munitions, and related technology.

[(c) ACCELERATION OF OBJECTIVE FORCE ARTILLERY AND RESUPPLY SYSTEMS.—(1) Immediately upon termination of the Crusader Artillery System program, the Department of the Army shall enter into a contract to leverage technologies developed with funds invested in fiscal year 2002 and prior years under the Crusader Artillery System program, the Future Scout and Cavalry System program, the Composite Armored Vehicle program, and other Army development programs in order to develop and field, by 2008, a Non-Line of Sight (NLOS) Objective Force artillery system and Resupply Vehicle variants of the Future Combat System.

[(2) Of the funds appropriated or otherwise made available in this Act under the heading ''Research, Development, Test, and Evaluation, Army'', $368,500,000 is available only for the Objective Force Indirect Fire Systems for the Army to implement this subsection: *Provided*, That none of the funds in this or any other Act shall be available for research, development, test, or evaluation of any Objective Force or Future Combat System indirect fire system until the Secretary of the Army has submitted a written certification to the congressional defense committees that a contract has been awarded pursuant to subsection (c)(1) containing a program plan and schedule for production and fielding a Future Combat System Non-Line of Sight Objective Force artillery system and Resupply Vehicle variants by 2008.

[SEC. 8122. None of the funds made available in this Act may be transferred to any department, agency, or instrumentality of the United States Government, except pursuant to a transfer made by, or transfer authority provided in, this Act or any other appropriations Act.

[SEC. 8123. Of the total amount appropriated pursuant to this Act for any component of the Department of Defense that the Director of the Office of Management and Budget has identified (as of the date of the enactment of this Act) under subsection (c) of section 3515 of title 31, United States Code, as being required to have audited financial statements meeting the requirements of subsection (b) of that section, not more than 99 percent may be obligated until the Inspector General of the Department of Defense submits an audit of that component pursuant to section 3521(e) of title 31, United States Code.

[SEC. 8124. None of the funds provided in this Act may be used to relocate the headquarters of the United States Army, South, from Fort Buchanan, Puerto Rico, to a location in the continental United States.

[This Act may be cited as the ''Department of Defense Appropriations Act, 2003''.]

*That the following sums are appropriated, out of any money in the Treasury not otherwise appropriated, for the fiscal year ending September 30, 2003, for military functions administered by the Department of Defense, and for other purposes, namely:*

*TITLE I*

*MILITARY PERSONNEL*

*MILITARY PERSONNEL, ARMY*

*For pay, allowances, individual clothing, subsistence, interest on deposits, gratuities, permanent change of station travel (including all expenses thereof for organizational movements), and expenses of temporary duty travel between permanent duty stations, for members of the Army on active duty (except members of reserve components provided for elsewhere), cadets, and aviation cadets; and for payments pursuant to section 156 of Public Law 97–377, as amended (42 U.S.C. 402 note), and to the Department of Defense Military Retirement Fund, $26,939,792,000.*

*MILITARY PERSONNEL, NAVY*

*For pay, allowances, individual clothing, subsistence, interest on deposits, gratuities, permanent change of station travel (including all expenses thereof for organizational movements), and expenses of temporary duty travel between permanent duty stations, for members of the Navy on active duty (except members of the Reserve provided for elsewhere), midshipmen, and aviation cadets; and for payments pursuant to section 156 of Public Law 97–377, as amended (42 U.S.C. 402 note), and to the Department of Defense Military Retirement Fund, $21,975,201,000.*

*MILITARY PERSONNEL, MARINE CORPS*

*For pay, allowances, individual clothing, subsistence, interest on deposits, gratuities, permanent change of station travel (including all expenses thereof for organizational movements), and expenses of temporary duty travel between permanent duty stations, for members of the Marine Corps on active duty (except members of the Reserve provided for elsewhere); and for payments pursuant to section 156 of Public Law 97–377, as amended (42 U.S.C. 402 note), and to the Department of Defense Military Retirement Fund, $8,507,187,000.*

*MILITARY PERSONNEL, AIR FORCE*

*For pay, allowances, individual clothing, subsistence, interest on deposits, gratuities, permanent change of station travel (including all expenses thereof for organizational movements), and expenses of temporary duty travel between permanent duty stations, for members of the Air Force on active duty (except members of reserve components provided for elsewhere), cadets, and aviation cadets; and for payments pursuant to section 156 of Public Law 97–377, as amended (42 U.S.C. 402 note), and to the Department of Defense Military Retirement Fund, $22,036,405,000.*

*RESERVE PERSONNEL, ARMY*

*For pay, allowances, clothing, subsistence, gratuities, travel, and related expenses for personnel of the Army Reserve on active duty under sections 10211, 10302, and 3038 of title 10, United States Code, or while serving on active duty under section 12301(d) of title 10, United States Code, in connection with performing duty specified in section 12310(a) of title 10, United States Code, or while undergoing reserve training, or while performing drills or equivalent duty or other duty, and for members of the Reserve Officers' Training Corps, and expenses authorized by section 16131 of title 10, United States Code; and for payments to the Department of Defense Military Retirement Fund, $3,402,055,000.*

*RESERVE PERSONNEL, NAVY*

*For pay, allowances, clothing, subsistence, gratuities, travel, and related expenses for personnel of the Navy Reserve on active duty under section 10211 of title 10, United States Code, or while serving on active duty under section 12301(d) of title 10, United States Code, in connection with performing duty specified in section 12310(a) of title 10, United States Code, or while undergoing reserve training, or while performing drills or equivalent duty, and for members of the Reserve Officers' Training Corps, and expenses authorized by section 16131 of title 10, United States Code; and for payments to the Department of Defense Military Retirement Fund, $1,918,352,000.*

*RESERVE PERSONNEL, MARINE CORPS*

*For pay, allowances, clothing, subsistence, gratuities, travel, and related expenses for personnel of the Marine Corps Reserve on active duty under section 10211 of title 10, United States Code, or while serving on active duty under section 12301(d) of title 10, United States Code, in connection with performing duty specified in section 12310(a) of title 10, United States Code, or while undergoing reserve training, or while performing drills or equivalent duty, and for members of the Marine Corps platoon leaders class, and expenses authorized by section 16131 of title 10, United States Code; and for payments to the Department of Defense Military Retirement Fund, $554,383,000.*

*RESERVE PERSONNEL, AIR FORCE*

*For pay, allowances, clothing, subsistence, gratuities, travel, and related expenses for personnel of the Air Force Reserve on active duty under sections 10211, 10305, and 8038 of title 10, United States Code, or while serving on active duty under section 12301(d) of title 10, United States Code, in connection with performing duty specified in section 12310(a) of title 10, United States Code, or while undergoing reserve training, or while performing drills or equivalent duty or other duty, and for members of the Air Reserve Officers' Training Corps, and expenses authorized by section 16131 of title 10, United States Code; and for payments to the Department of Defense Military Retirement Fund, $1,237,504,000.*

*NATIONAL GUARD PERSONNEL, ARMY*

*For pay, allowances, clothing, subsistence, gratuities, travel, and related expenses for personnel of the Army National Guard while on duty under section 10211, 10302, or 12402 of title 10 or section 708 of title 32, United States Code, or while serving on duty under section 12301(d) of title 10 or section 502(f) of title 32, United States Code, in connection with performing duty specified in section 12310(a) of title 10, United States Code, or while undergoing training, or while performing drills or equivalent duty or other duty, and expenses authorized by section 16131 of title 10, United States Code; and for payments to the Department of Defense Military Retirement Fund, $5,128,588,000.*

*NATIONAL GUARD PERSONNEL, AIR FORCE*

*For pay, allowances, clothing, subsistence, gratuities, travel, and related expenses for personnel of the Air National Guard on duty under section 10211, 10305, or 12402 of title 10 or section 708 of title 32, United States Code, or while serving on duty under section 12301(d) of title 10 or section 502(f) of title 32, United States Code, in connection with performing duty specified in section 12310(a) of title 10, United States Code, or while undergoing training, or while performing drills or equivalent duty or other duty, and expenses authorized by section 16131 of title 10, United States Code; and for payments to the Department of Defense Military Retirement Fund, $2,126,061,000.*

TITLE II

OPERATION AND MAINTENANCE

OPERATION AND MAINTENANCE, ARMY

For expenses, not otherwise provided for, necessary for the operation and maintenance of the Army, as authorized by law; and not to exceed $10,818,000 can be used for emergencies and extraordinary expenses, to be expended on the approval or authority of the Secretary of the Army, and payments may be made on his certificate of necessity for confidential military purposes, $24,048,107,000: Provided, That of the funds appropriated in this paragraph, not less than $355,000,000 shall be made available only for conventional ammunition care and maintenance.

OPERATION AND MAINTENANCE, NAVY

For expenses, not otherwise provided for, necessary for the operation and maintenance of the Navy and the Marine Corps, as authorized by law; and not to exceed $4,415,000 can be used for emergencies and extraordinary expenses, to be expended on the approval or authority of the Secretary of the Navy, and payments may be made on his certificate of necessity for confidential military purposes, $29,410,276,000.

OPERATION AND MAINTENANCE, MARINE CORPS

For expenses, not otherwise provided for, necessary for the operation and maintenance of the Marine Corps, as authorized by law, $3,576,142,000.

OPERATION AND MAINTENANCE, AIR FORCE

For expenses, not otherwise provided for, necessary for the operation and maintenance of the Air Force, as authorized by law; and not to exceed $7,902,000 can be used for emergencies and extraordinary expenses, to be expended on the approval or authority of the Secretary of the Air Force, and payments may be made on his certificate of necessity for confidential military purposes, $27,463,678,000.

OPERATION AND MAINTENANCE, DEFENSE-WIDE

For expenses, not otherwise provided for, necessary for the operation and maintenance of activities and agencies of the Department of Defense (other than the military departments), as authorized by law, $14,527,853,000, of which not to exceed $25,000,000 may be available for the CINC initiative fund account; and of which not to exceed $34,500,000 can be used for emergencies and extraordinary expenses, to be expended on the approval or authority of the Secretary of Defense, and payments may be made on his certificate of necessity for confidential military purposes.

OPERATION AND MAINTENANCE, ARMY RESERVE

For expenses, not otherwise provided for, necessary for the operation and maintenance, including training, organization, and administration, of the Army Reserve; repair of facilities and equipment; hire of passenger motor vehicles; travel and transportation; care of the dead; recruiting; procurement of services, supplies, and equipment; and communications, $1,963,710,000.

OPERATION AND MAINTENANCE, NAVY RESERVE

For expenses, not otherwise provided for, necessary for the operation and maintenance, including training, organization, and administration, of the Navy Reserve; repair of facilities and equipment; hire of passenger motor vehicles; travel and transportation; care of the dead; recruiting; procurement of services, supplies, and equipment; and communications, $1,233,759,000.

OPERATION AND MAINTENANCE, MARINE CORPS RESERVE

For expenses, not otherwise provided for, necessary for the operation and maintenance, including training, organization, and administration, of the Marine Corps Reserve; repair of facilities and equipment; hire of passenger motor vehicles; travel and transportation; care of the dead; recruiting; procurement of services, supplies, and equipment; and communications, $185,532,000.

OPERATION AND MAINTENANCE, AIR FORCE RESERVE

For expenses, not otherwise provided for, necessary for the operation and maintenance, including training, organization, and administration, of the Air Force Reserve; repair of facilities and equipment; hire of passenger motor vehicles; travel and transportation; care of the dead; recruiting; procurement of services, supplies, and equipment; and communications, $2,160,604,000.

OPERATION AND MAINTENANCE, ARMY NATIONAL GUARD

For expenses of training, organizing, and administering the Army National Guard, including medical and hospital treatment and related expenses in non-Federal hospitals; maintenance, operation, and repairs to structures and facilities; hire of passenger motor vehicles; personnel services in the National Guard Bureau; travel expenses (other than mileage), as authorized by law for Army personnel on active duty, for Army National Guard division, regimental, and battalion commanders while inspecting units in compliance with National Guard Bureau regulations when specifically authorized by the Chief, National Guard Bureau; supplying and equipping the Army National Guard as authorized by law; and expenses of repair, modification, maintenance, and issue of supplies and equipment (including aircraft), $4,266,412,000.

OPERATION AND MAINTENANCE, AIR NATIONAL GUARD

For operation and maintenance of the Air National Guard, including medical and hospital treatment and related expenses in non-Federal hospitals; maintenance, operation, repair, and other necessary expenses of facilities for the training and administration of the Air National Guard, including repair of facilities, maintenance, operation, and modification of aircraft; transportation of things, hire of passenger motor vehicles; supplies, materials, and equipment, as authorized by law for the Air National Guard; and expenses incident to the maintenance and use of supplies, materials, and equipment, including such as may be furnished from stocks under the control of agencies of the Department of Defense; travel expenses (other than mileage) on the same basis as authorized by law for Air National Guard personnel on active Federal duty, for Air National Guard commanders while inspecting units in compliance with National Guard Bureau regulations when specifically authorized by the Chief, National Guard Bureau, $4,113,460,000.

OVERSEAS CONTINGENCY OPERATIONS TRANSFER ACCOUNT

(INCLUDING TRANSFER OF FUNDS)

For expenses directly relating to Overseas Contingency Operations by United States military forces, $50,000,000, to remain available until expended: Provided, That the Secretary of Defense may transfer these funds only to military personnel accounts; operation and maintenance accounts within this title; the Defense Health Program appropriation; procurement accounts; research, development, test and evaluation accounts; and to working capital funds: Provided further, That the funds transferred shall be merged with and shall be available for the same purposes and for the same time period, as the appropriation to which transferred: Provided further, That upon a determination that all or part of the funds transferred from this appropriation are not necessary for the purposes provided herein, such amounts may be transferred back to this appropriation: Provided further, That the transfer authority provided in this paragraph is in addition to any other transfer authority contained elsewhere in this Act.

UNITED STATES COURTS OF APPEALS FOR THE ARMED FORCES

For salaries and expenses necessary for the United States Court of Appeals for the Armed Forces, $9,614,000, of which not to exceed $2,500 can be used for official representation purposes.

ENVIRONMENTAL RESTORATION, ARMY

(INCLUDING TRANSFER OF FUNDS)

For the Department of the Army, $395,900,000, to remain available until transferred: Provided, That the Secretary of the Army shall, upon determining that such funds are required for environmental restoration, reduction and recycling of hazardous waste, removal of unsafe buildings and debris of the Department of the Army, or for similar purposes, transfer the funds made available by this appropriation to other appropriations made available to the Department of the Army, to be merged with and to be available for the same purposes and for the same time period as the appropriations to which transferred: Provided further, That upon a determination that all or part of the funds transferred from this appropriation are not necessary for the purposes provided herein, such amounts may be transferred back to this appropriation.

ENVIRONMENTAL RESTORATION, NAVY

(INCLUDING TRANSFER OF FUNDS)

For the Department of the Navy, $256,948,000, to remain available until transferred: Provided, That the Secretary of the Navy shall, upon determining that such funds are required for environmental restoration, reduction and recycling of hazardous waste, removal of unsafe buildings and debris of the Department of the Navy, or for similar purposes, transfer the funds made available by this appropriation to other appropriations made available to the Department of the Navy, to be merged with and to be available for the same purposes and for the same time period as the appropriations to which transferred: Provided further, That upon a determination that all or part of the funds transferred from this appropriation are not necessary for the purposes provided herein, such amounts may be transferred back to this appropriation.

ENVIRONMENTAL RESTORATION, AIR FORCE

(INCLUDING TRANSFER OF FUNDS)

For the Department of the Air Force, $389,773,000, to remain available until transferred: Provided, That the Secretary of the Air Force shall, upon determining that such funds are required for environmental restoration, reduction and recycling of hazardous waste, removal of unsafe buildings and debris of the Department of the Air Force, or for similar purposes, transfer the funds made available by this appropriation to other appropriations made available to the Department of the Air Force, to be merged with and to be available for the same purposes and for the same time period as the appropriations to which transferred: Provided further, That upon a determination that all or part of the funds transferred from this appropriation are not necessary for the purposes provided herein, such amounts may be transferred back to this appropriation.

ENVIRONMENTAL RESTORATION, DEFENSE-WIDE

(INCLUDING TRANSFER OF FUNDS)

For the Department of Defense, $23,498,000, to remain available until transferred: Provided, That the Secretary of Defense shall, upon determining that such funds are required for environmental restoration, reduction and recycling of hazardous waste, removal of unsafe buildings and debris of the Department of Defense, or for similar purposes, transfer the funds made available by this appropriation to other appropriations made available to the Department of Defense, to be merged with and to be available for the same purposes and for the same time period as the appropriations to which transferred: Provided further, That upon a determination that all or part of the funds transferred from this appropriation are not necessary for the purposes provided herein, such amounts may be transferred back to this appropriation.

ENVIRONMENTAL RESTORATION, FORMERLY USED DEFENSE SITES

(INCLUDING TRANSFER OF FUNDS)

For the Department of the Army, $252,102,000, to remain available until transferred: Provided,

That the Secretary of the Army shall, upon determining that such funds are required for environmental restoration, reduction and recycling of hazardous waste, removal of unsafe buildings and debris at sites formerly used by the Department of Defense, transfer the funds made available by this appropriation to other appropriations made available to the Department of the Army, to be merged with and to be available for the same purposes and for the same time period as the appropriations to which transferred: Provided further, That upon a determination that all or part of the funds transferred from this appropriation are not necessary for the purposes provided herein, such amounts may be transferred back to this appropriation.

OVERSEAS HUMANITARIAN, DISASTER, AND CIVIC AID

For expenses relating to the Overseas Humanitarian, Disaster, and Civic Aid programs of the Department of Defense (consisting of the programs provided under sections 401, 402, 404, 2547, and 2551 of title 10, United States Code), $58,400,000, to remain available until September 30, 2004.

FORMER SOVIET UNION THREAT REDUCTION

For assistance to the republics of the former Soviet Union, including assistance provided by contract or by grants, for facilitating the elimination and the safe and secure transportation and storage of nuclear, chemical and other weapons; for establishing programs to prevent the proliferation of weapons, weapons components, and weapon-related technology and expertise; for programs relating to the training and support of defense and military personnel for demilitarization and protection of weapons, weapons components and weapons technology and expertise, and for defense and military contacts, $416,700,000, to remain available until September 30, 2005: Provided, That of the amounts provided under this heading, $10,000,000 shall be available only to support the dismantling and disposal of nuclear submarines and submarine reactor components in the Russian Far East.

SUPPORT FOR INTERNATIONAL SPORTING COMPETITIONS, DEFENSE

For logistical and security support for international sporting competitions (including pay and non-travel related allowances only for members of the Reserve Components of the Armed Forces of the United States called or ordered to active duty in connection with providing such support), $19,000,000, to remain available until expended.

## TITLE III

## PROCUREMENT

AIRCRAFT PROCUREMENT, ARMY

For construction, procurement, production, modification, and modernization of aircraft, equipment, including ordnance, ground handling equipment, spare parts, and accessories therefor; specialized equipment and training devices; expansion of public and private plants, including the land necessary therefor, for the foregoing purposes, and such lands and interests therein, may be acquired, and construction prosecuted thereon prior to approval of title; and procurement and installation of equipment, appliances, and machine tools in public and private plants; reserve plant and Government and contractor-owned equipment layaway; and other expenses necessary for the foregoing purposes, $2,249,389,000, to remain available for obligation until September 30, 2005.

MISSILE PROCUREMENT, ARMY

For construction, procurement, production, modification, and modernization of missiles, equipment, including ordnance, ground handling equipment, spare parts, and accessories therefor; specialized equipment and training devices; expansion of public and private plants, including the land necessary therefor, for the foregoing purposes, and such lands and interests therein, may be acquired, and construction prosecuted thereon prior to approval of title; and procurement and installation of equipment, appliances, and machine tools in public and private plants; reserve plant and Government and contractor-owned equipment layaway; and other expenses necessary for the foregoing purposes, $1,585,672,000, to remain available for obligation until September 30, 2005.

PROCUREMENT OF WEAPONS AND TRACKED COMBAT VEHICLES, ARMY

For construction, procurement, production, and modification of weapons and tracked combat vehicles, equipment, including ordnance, spare parts, and accessories therefor; specialized equipment and training devices; expansion of public and private plants, including the land necessary therefor, for the foregoing purposes, and such lands and interests therein, may be acquired, and construction prosecuted thereon prior to approval of title; and procurement and installation of equipment, appliances, and machine tools in public and private plants; reserve plant and Government and contractor-owned equipment layaway; and other expenses necessary for the foregoing purposes, $2,242,058,000, to remain available for obligation until September 30, 2005.

PROCUREMENT OF AMMUNITION, ARMY

For construction, procurement, production, and modification of ammunition, and accessories therefor; specialized equipment and training devices; expansion of public and private plants, including ammunition facilities authorized by section 2854 of title 10, United States Code, and the land necessary therefor, for the foregoing purposes, and such lands and interests therein, may be acquired, and construction prosecuted thereon prior to approval of title; and procurement and installation of equipment, appliances, and machine tools in public and private plants; reserve plant and Government and contractor-owned equipment layaway; and other expenses necessary for the foregoing purposes, $1,258,599,000, to remain available for obligation until September 30, 2005.

OTHER PROCUREMENT, ARMY

For construction, procurement, production, and modification of vehicles, including tactical, support, and non-tracked combat vehicles; the purchase of passenger motor vehicles for replacement only; and the purchase of 6 vehicles required for physical security of personnel, notwithstanding price limitations applicable to passenger vehicles but not to exceed $180,000 per vehicle; communications and electronic equipment; other support equipment; spare parts, ordnance, and accessories therefor; specialized equipment and training devices; expansion of public and private plants, including the land necessary therefor, for the foregoing purposes, and such lands and interests therein, may be acquired, and construction prosecuted thereon prior to approval of title; and procurement and installation of equipment, appliances, and machine tools in public and private plants; reserve plant and Government and contractor-owned equipment layaway; and other expenses necessary for the foregoing purposes, $5,783,439,000, to remain available for obligation until September 30, 2005.

AIRCRAFT PROCUREMENT, NAVY

For construction, procurement, production, modification, and modernization of aircraft, equipment, including ordnance, spare parts, and accessories therefor; specialized equipment; expansion of public and private plants, including the land necessary therefor, and such lands and interests therein, may be acquired, and construction prosecuted thereon prior to approval of title; and procurement and installation of equipment, appliances, and machine tools in public and private plants; reserve plant and Government and contractor-owned equipment layaway, $8,849,955,000, to remain available for obligation until September 30, 2005.

WEAPONS PROCUREMENT, NAVY

For construction, procurement, production, modification, and modernization of missiles, torpedoes, other weapons, and related support equipment including spare parts, and accessories therefor; expansion of public and private plants, including the land necessary therefor, and such lands and interests therein, may be acquired, and construction prosecuted thereon prior to approval of title; and procurement and installation of equipment, appliances, and machine tools in public and private plants; reserve plant and Government and contractor-owned equipment layaway, $1,856,617,000, to remain available for obligation until September 30, 2005.

PROCUREMENT OF AMMUNITION, NAVY AND MARINE CORPS

For construction, procurement, production, and modification of ammunition, and accessories therefor; specialized equipment and training devices; expansion of public and private plants, including ammunition facilities authorized by section 2854 of title 10, United States Code, and the land necessary therefor, for the foregoing purposes, and such lands and interests therein, may be acquired, and construction prosecuted thereon prior to approval of title; and procurement and installation of equipment, appliances, and machine tools in public and private plants; reserve plant and Government and contractor-owned equipment layaway; and other expenses necessary for the foregoing purposes, $1,169,152,000, to remain available for obligation until September 30, 2005.

SHIPBUILDING AND CONVERSION, NAVY

For expenses necessary for the construction, acquisition, or conversion of vessels as authorized by law, including armor and armament thereof, plant equipment, appliances, and machine tools and installation thereof in public and private plants; reserve plant and Government and contractor-owned equipment layaway; procurement of critical, long leadtime components and designs for vessels to be constructed or converted in the future; and expansion of public and private plants, including land necessary therefor, and such lands and interests therein, may be acquired, and construction prosecuted thereon prior to approval of title, as follows:

Carrier Replacement Program (AP), $472,703,000;
SSGN, $404,305,000;
SSGN (AP), $421,000,000;
NSSN, $1,512,652,000;
NSSN (AP), $645,209,000;
CVN Refuelings, $24,000,000;
CVN Refuelings (AP), $195,781,000;
Submarine Refuelings, $435,792,000;
DDG–51 Destroyer, $2,321,502,000;
LPD–17, $596,492,000;
LHD–8, $243,000,000;
LCAC Landing Craft Air Cushion, $89,638,000;
Prior year shipbuilding costs, $1,481,955,000;
Service Craft, $6,756,000; and
For outfitting, post delivery, conversions, and first destination transportation, $300,608,000;

In all: $9,151,393,000, to remain available for obligation until September 30, 2007: Provided, That additional obligations may be incurred after September 30, 2007, for engineering services, tests, evaluations, and other such budgeted work that must be performed in the final stage of ship construction: Provided further, That none of the funds provided under this heading for the construction or conversion of any naval vessel to be constructed in shipyards in the United States shall be expended in foreign facilities for the construction of major components of such vessel: Provided further, That none of the funds provided under this heading shall be used for the construction of any naval vessel in foreign shipyards.

OTHER PROCUREMENT, NAVY

For procurement, production, and modernization of support equipment and materials not

otherwise provided for, Navy ordnance (except ordnance for new aircraft, new ships, and ships authorized for conversion); the purchase of passenger motor vehicles for replacement only, and the purchase of 3 vehicles required for physical security of personnel, notwithstanding price limitations applicable to passenger vehicles but not to exceed $180,000 per vehicle; expansion of public and private plants, including the land necessary therefor, and such lands and interests therein, may be acquired, and construction prosecuted thereon prior to approval of title; and procurement and installation of equipment, appliances, and machine tools in public and private plants; reserve plant and Government and contractor-owned equipment layaway, $4,500,710,000, to remain available for obligation until September 30, 2005.

PROCUREMENT, MARINE CORPS

For expenses necessary for the procurement, manufacture, and modification of missiles, armament, military equipment, spare parts, and accessories therefor; plant equipment, appliances, and machine tools, and installation thereof in public and private plants; reserve plant and Government and contractor-owned equipment layaway; vehicles for the Marine Corps, including the purchase of passenger motor vehicles for replacement only; and expansion of public and private plants, including land necessary therefor, and such lands and interests therein, may be acquired, and construction prosecuted thereon prior to approval of title, $1,357,383,000, to remain available for obligation until September 30, 2005.

AIRCRAFT PROCUREMENT, AIR FORCE

For construction, procurement, lease, and modification of aircraft and equipment, including armor and armament, specialized ground handling equipment, and training devices, spare parts, and accessories therefor; specialized equipment; expansion of public and private plants, Government-owned equipment and installation thereof in such plants, erection of structures, and acquisition of land, for the foregoing purposes, and such lands and interests therein, may be acquired, and construction prosecuted thereon prior to approval of title; reserve plant and Government and contractor-owned equipment layaway; and other expenses necessary for the foregoing purposes including rents and transportation of things, $13,085,555,000, to remain available for obligation until September 30, 2005.

MISSILE PROCUREMENT, AIR FORCE

For construction, procurement, and modification of missiles, spacecraft, rockets, and related equipment, including spare parts and accessories therefor, ground handling equipment, and training devices; expansion of public and private plants, Government-owned equipment and installation thereof in such plants, erection of structures, and acquisition of land, for the foregoing purposes, and such lands and interests therein, may be acquired, and construction prosecuted thereon prior to approval of title; reserve plant and Government and contractor-owned equipment layaway; and other expenses necessary for the foregoing purposes including rents and transportation of things, $3,364,639,000, to remain available for obligation until September 30, 2005.

PROCUREMENT OF AMMUNITION, AIR FORCE

For construction, procurement, production, and modification of ammunition, and accessories therefor; specialized equipment and training devices; expansion of public and private plants, including ammunition facilities authorized by section 2854 of title 10, United States Code, and the land necessary therefor, for the foregoing purposes, and such lands and interests therein, may be acquired, and construction prosecuted thereon prior to approval of title; and procurement and installation of equipment, appliances, and machine tools in public and private plants; reserve plant and Government and contractor-owned equipment layaway; and other expenses necessary for the foregoing purposes, $1,281,864,000, to remain available for obligation until September 30, 2005.

OTHER PROCUREMENT, AIR FORCE

For procurement and modification of equipment (including ground guidance and electronic control equipment, and ground electronic and communication equipment), and supplies, materials, and spare parts therefor, not otherwise provided for; the purchase of passenger motor vehicles for replacement only, and the purchase of 2 vehicles required for physical security of personnel, notwithstanding price limitations applicable to passenger vehicles but not to exceed $180,000 per vehicle; lease of passenger motor vehicles; and expansion of public and private plants, Government-owned equipment and installation thereof in such plants, erection of structures, and acquisition of land, for the foregoing purposes, and such lands and interests therein, may be acquired, and construction prosecuted thereon, prior to approval of title; reserve plant and Government and contractor-owned equipment layaway, $10,628,958,000, to remain available for obligation until September 30, 2005.

PROCUREMENT, DEFENSE-WIDE

For expenses of activities and agencies of the Department of Defense (other than the military departments) necessary for procurement, production, and modification of equipment, supplies, materials, and spare parts therefor, not otherwise provided for; the purchase of passenger motor vehicles for replacement only; the purchase of 4 vehicles required for physical security of personnel, notwithstanding price limitations applicable to passenger vehicles but not to exceed $180,000 per vehicle; expansion of public and private plants, equipment, and installation thereof in such plants, erection of structures, and acquisition of land for the foregoing purposes, and such lands and interests therein, may be acquired, and construction prosecuted thereon prior to approval of title; reserve plant and Government and contractor-owned equipment layaway, $2,958,285,000, to remain available for obligation until September 30, 2005.

NATIONAL GUARD AND RESERVE EQUIPMENT

For procurement of aircraft, missiles, tracked combat vehicles, ammunition, other weapons, and other procurement for the reserve components of the Armed Forces, $130,000,000, to remain available for obligation until September 30, 2005: Provided, That the Chiefs of the Reserve and National Guard components shall, not later than 30 days after the enactment of this Act, individually submit to the congressional defense committees the modernization priority assessment for their respective Reserve or National Guard component.

DEFENSE PRODUCTION ACT PURCHASES

For activities by the Department of Defense pursuant to sections 108, 301, 302, and 303 of the Defense Production Act of 1950 (50 U.S.C. App. 2078, 2091, 2092, and 2093), $73,057,000, to remain available until expended, of which, $5,000,000 may be used for a Processable Rigid-Rod Polymeric Material Supplier Initiative under title III of the Defense Production Act of 1950 (50 U.S.C. App 2091 et seq.) to develop affordable production methods and a domestic supplier for military and commercial processable rigid-rod polymeric materials.

TITLE IV

RESEARCH, DEVELOPMENT, TEST AND EVALUATION

RESEARCH, DEVELOPMENT, TEST AND EVALUATION, ARMY

For expenses necessary for basic and applied scientific research, development, test and evaluation, including maintenance, rehabilitation, lease, and operation of facilities and equipment, $7,410,168,000, to remain available for obligation until September 30, 2004.

RESEARCH, DEVELOPMENT, TEST AND EVALUATION, NAVY

For expenses necessary for basic and applied scientific research, development, test and evaluation, including maintenance, rehabilitation, lease, and operation of facilities and equipment, $13,275,735,000, to remain available for obligation until September 30, 2004: Provided, That funds appropriated in this paragraph which are available for the V–22 may be used to meet unique operational requirements of the Special Operations Forces.

RESEARCH, DEVELOPMENT, TEST AND EVALUATION, AIR FORCE

For expenses necessary for basic and applied scientific research, development, test and evaluation, including maintenance, rehabilitation, lease, and operation of facilities and equipment, $18,537,679,000, to remain available for obligation until September 30, 2004.

RESEARCH, DEVELOPMENT, TEST AND EVALUATION, DEFENSE-WIDE

For expenses of activities and agencies of the Department of Defense (other than the military departments), necessary for basic and applied scientific research, development, test and evaluation; advanced research projects as may be designated and determined by the Secretary of Defense, pursuant to law; maintenance, rehabilitation, lease, and operation of facilities and equipment, $16,611,107,000, to remain available for obligation until September 30, 2004.

OPERATIONAL TEST AND EVALUATION, DEFENSE

For expenses, not otherwise provided for, necessary for the independent activities of the Director, Operational Test and Evaluation, in the direction and supervision of operational test and evaluation, including initial operational test and evaluation which is conducted prior to, and in support of, production decisions; joint operational testing and evaluation; and administrative expenses in connection therewith, $302,554,000, to remain available for obligation until September 30, 2004.

TITLE V

REVOLVING AND MANAGEMENT FUNDS

DEFENSE WORKING CAPITAL FUNDS

For the Defense Working Capital Funds, $1,784,956,000: Provided, That during fiscal year 2003, funds in the Defense Working Capital Funds may be used for the purchase of not to exceed 315 passenger carrying motor vehicles for replacement only for the Defense Security Service, and the purchase of not to exceed 7 vehicles for replacement only for the Defense Logistics Agency.

NATIONAL DEFENSE SEALIFT FUND

For National Defense Sealift Fund programs, projects, and activities, and for expenses of the National Defense Reserve Fleet, as established by section 11 of the Merchant Ship Sales Act of 1946 (50 U.S.C. App. 1744), and for the necessary expenses to maintain and preserve a U.S.-flag merchant fleet to serve the national security needs of the United States, $934,129,000, to remain available until expended: Provided, That none of the funds provided in this paragraph shall be used to award a new contract that provides for the acquisition of any of the following major components unless such components are manufactured in the United States: auxiliary equipment, including pumps, for all shipboard services; propulsion system components (that is; engines, reduction gears, and propellers); shipboard cranes; and spreaders for shipboard cranes: Provided further, That the exercise of an option in a contract awarded through the obligation of previously appropriated funds shall not be considered to be the award of a new contract: Provided further, That the Secretary of the military department responsible for such procurement may waive the restrictions in the first proviso on a case-by-case basis by certifying in writing to the Committees on Appropriations of the House of Representatives and

*the Senate that adequate domestic supplies are not available to meet Department of Defense requirements on a timely basis and that such an acquisition must be made in order to acquire capability for national security purposes.*

## TITLE VI

## OTHER DEPARTMENT OF DEFENSE PROGRAMS

### DEFENSE HEALTH PROGRAM

*For expenses, not otherwise provided for, for medical and health care programs of the Department of Defense, as authorized by law, $14,961,497,000, of which $14,283,041,000 shall be for Operation and maintenance, of which not to exceed 2 percent shall remain available until September 30, 2004; of which $284,242,000, to remain available for obligation until September 30, 2005, shall be for Procurement; of which $394,214,000, to remain available for obligation until September 30, 2004, shall be for Research, development, test and evaluation.*

### CHEMICAL AGENTS AND MUNITIONS DESTRUCTION, ARMY

*For expenses, not otherwise provided for, necessary for the destruction of the United States stockpile of lethal chemical agents and munitions in accordance with the provisions of section 1412 of the Department of Defense Authorization Act, 1986 (50 U.S.C. 1521), and for the destruction of other chemical warfare materials that are not in the chemical weapon stockpile, $1,490,199,000, of which $974,238,000 shall be for Operation and maintenance to remain available until September 30, 2004, $213,278,000 shall be for Procurement to remain available until September 30, 2005, and $302,683,000 shall be for Research, development, test and evaluation to remain available until September 30, 2004: Provided, That of these funds $507,500,000 shall not be available until five days after the Army notifies the Committees on Appropriations of the House and Senate that it is able to meet milestones agreed upon by the Office of the Secretary of Defense and the Office of Management and Budget.*

### DRUG INTERDICTION AND COUNTER-DRUG ACTIVITIES, DEFENSE

*(INCLUDING TRANSFER OF FUNDS)*

*For drug interdiction and counter-drug activities of the Department of Defense, for transfer to appropriations available to the Department of Defense for military personnel of the reserve components serving under the provisions of title 10 and title 32, United States Code; for Operation and maintenance; for Procurement; and for Research, development, test and evaluation, $916,107,000: Provided, That the funds appropriated under this heading shall be available for obligation for the same time period and for the same purpose as the appropriation to which transferred: Provided further, That upon a determination that all or part of the funds transferred from this appropriation are not necessary for the purposes provided herein, such amounts may be transferred back to this appropriation: Provided further, That the transfer authority provided under this heading is in addition to any other transfer authority contained elsewhere in this Act.*

### OFFICE OF THE INSPECTOR GENERAL

*For expenses and activities of the Office of the Inspector General in carrying out the provisions of the Inspector General Act of 1978, as amended, $157,165,000, of which $155,165,000 shall be for Operation and maintenance, of which not to exceed $700,000 is available for emergencies and extraordinary expenses to be expended on the approval or authority of the Inspector General, and payments may be made on the Inspector General's certificate of necessity for confidential military purposes; and of which $2,000,000 to remain available until September 30, 2005, shall be for Procurement.*

## TITLE VII

## RELATED AGENCIES

### CENTRAL INTELLIGENCE AGENCY RETIREMENT AND DISABILITY SYSTEM FUND

*For payment to the Central Intelligence Agency Retirement and Disability System Fund, to maintain the proper funding level for continuing the operation of the Central Intelligence Agency Retirement and Disability System, $212,000,000.*

### INTELLIGENCE COMMUNITY MANAGEMENT ACCOUNT

*(INCLUDING TRANSFER OF FUNDS)*

*For necessary expenses of the Intelligence Community Management Account, $122,754,000 of which $24,252,000 for the Advanced Research and Development Committee shall remain available until September 30, 2004: Provided, That of the funds appropriated under this heading, $34,100,000 shall be transferred to the Department of Justice for the National Drug Intelligence Center to support the Department of Defense's counter-drug intelligence responsibilities, and of the said amount, $1,500,000 for Procurement shall remain available until September 30, 2005 and $1,000,000 for Research, development, test and evaluation shall remain available until September 30, 2004: Provided further, That the National Drug Intelligence Center shall maintain the personnel and technical resources to provide timely support to law enforcement authorities to conduct document exploitation of materials collected in Federal, State, and local law enforcement activity.*

### PAYMENT TO KAHO'OLAWE ISLAND CONVEYANCE, REMEDIATION, AND ENVIRONMENTAL RESTORATION FUND

*For payment to Kaho'olawe Island Conveyance, Remediation, and Environmental Restoration Fund, as authorized by law, $80,000,000, to remain available until expended.*

### NATIONAL SECURITY EDUCATION TRUST FUND

*For the purposes of title VIII of Public Law 102–183, $8,000,000, to be derived from the National Security Education Trust Fund, to remain available until expended.*

## TITLE VIII

## GENERAL PROVISIONS

*SEC. 8001. No part of any appropriation contained in this Act shall be used for publicity or propaganda purposes not authorized by the Congress.*

*SEC. 8002. During the current fiscal year, provisions of law prohibiting the payment of compensation to, or employment of, any person not a citizen of the United States shall not apply to personnel of the Department of Defense: Provided, That salary increases granted to direct and indirect hire foreign national employees of the Department of Defense funded by this Act shall not be at a rate in excess of the percentage increase authorized by law for civilian employees of the Department of Defense whose pay is computed under the provisions of section 5332 of title 5, United States Code, or at a rate in excess of the percentage increase provided by the appropriate host nation to its own employees, whichever is higher: Provided further, That this section shall not apply to Department of Defense foreign service national employees serving at United States diplomatic missions whose pay is set by the Department of State under the Foreign Service Act of 1980: Provided further, That the limitations of this provision shall not apply to foreign national employees of the Department of Defense in the Republic of Turkey.*

*SEC. 8003. No part of any appropriation contained in this Act shall remain available for obligation beyond the current fiscal year, unless expressly so provided herein.*

*SEC. 8004. No more than 20 percent of the appropriations in this Act which are limited for obligation during the current fiscal year shall be obligated during the last 2 months of the fiscal year: Provided, That this section shall not apply to obligations for support of active duty training of reserve components or summer camp training of the Reserve Officers' Training Corps.*

*(TRANSFER OF FUNDS)*

*SEC. 8005. Upon determination by the Secretary of Defense that such action is necessary in the national interest, he may, with the approval of the Office of Management and Budget, transfer not to exceed $2,000,000,000 of working capital funds of the Department of Defense or funds made available in this Act to the Department of Defense for military functions (except military construction) between such appropriations or funds or any subdivision thereof, to be merged with and to be available for the same purposes, and for the same time period, as the appropriation or fund to which transferred: Provided, That such authority to transfer may not be used unless for higher priority items, based on unforeseen military requirements, than those for which originally appropriated and in no case where the item for which funds are requested has been denied by the Congress: Provided further, That the Secretary of Defense shall notify the Congress promptly of all transfers made pursuant to this authority or any other authority in this Act: Provided further, That no part of the funds in this Act shall be available to prepare or present a request to the Committees on Appropriations for reprogramming of funds, unless for higher priority items, based on unforeseen military requirements, than those for which originally appropriated and in no case where the item for which reprogramming is requested has been denied by the Congress: Provided further, That a request for multiple reprogrammings of funds using authority provided in this section must be made prior to May 31, 2003.*

*(TRANSFER OF FUNDS)*

*SEC. 8006. During the current fiscal year, cash balances in working capital funds of the Department of Defense established pursuant to section 2208 of title 10, United States Code, may be maintained in only such amounts as are necessary at any time for cash disbursements to be made from such funds: Provided, That transfers may be made between such funds: Provided further, That transfers may be made between working capital funds and the ''Foreign Currency Fluctuations, Defense'' appropriation and the ''Operation and Maintenance'' appropriation accounts in such amounts as may be determined by the Secretary of Defense, with the approval of the Office of Management and Budget, except that such transfers may not be made unless the Secretary of Defense has notified the Congress of the proposed transfer. Except in amounts equal to the amounts appropriated to working capital funds in this Act, no obligations may be made against a working capital fund to procure or increase the value of war reserve material inventory, unless the Secretary of Defense has notified the Congress prior to any such obligation.*

*SEC. 8007. Funds appropriated by this Act may not be used to initiate a special access program without prior notification 30 calendar days in session in advance to the congressional defense committees.*

*SEC. 8008. None of the funds provided in this Act shall be available to initiate: (1) a multiyear contract that employs economic order quantity procurement in excess of $20,000,000 in any 1 year of the contract or that includes an unfunded contingent liability in excess of $20,000,000; or (2) a contract for advance procurement leading to a multiyear contract that employs economic order quantity procurement in excess of $20,000,000 in any 1 year, unless the congressional defense committees have been notified at least 30 days in advance of the proposed contract award: Provided, That no part of any appropriation contained in this Act shall be available to initiate a multiyear contract for which the economic order quantity advance procurement is not funded at least to the limits of the Government's liability: Provided further,*

That no part of any appropriation contained in this Act shall be available to initiate multiyear procurement contracts for any systems or component thereof if the value of the multiyear contract would exceed $500,000,000 unless specifically provided in this Act: Provided further, That no multiyear procurement contract can be terminated without 10-day prior notification to the congressional defense committees: Provided further, That the execution of multiyear authority shall require the use of a present value analysis to determine lowest cost compared to an annual procurement.

Funds appropriated in title III of this Act may be used for multiyear procurement contracts as follows:

C–130 aircraft;

FMTV; and

F/A–18E and F engine.

SEC. 8009. Within the funds appropriated for the operation and maintenance of the Armed Forces, funds are hereby appropriated pursuant to section 401 of title 10, United States Code, for humanitarian and civic assistance costs under chapter 20 of title 10, United States Code. Such funds may also be obligated for humanitarian and civic assistance costs incidental to authorized operations and pursuant to authority granted in section 401 of chapter 20 of title 10, United States Code, and these obligations shall be reported to the Congress as of September 30 of each year: Provided, That funds available for operation and maintenance shall be available for providing humanitarian and similar assistance by using Civic Action Teams in the Trust Territories of the Pacific Islands and freely associated states of Micronesia, pursuant to the Compact of Free Association as authorized by Public Law 99–239: Provided further, That upon a determination by the Secretary of the Army that such action is beneficial for graduate medical education programs conducted at Army medical facilities located in Hawaii, the Secretary of the Army may authorize the provision of medical services at such facilities and transportation to such facilities, on a nonreimbursable basis, for civilian patients from American Samoa, the Commonwealth of the Northern Mariana Islands, the Marshall Islands, the Federated States of Micronesia, Palau, and Guam.

SEC. 8010. (a) During fiscal year 2003, the civilian personnel of the Department of Defense may not be managed on the basis of any end-strength, and the management of such personnel during that fiscal year shall not be subject to any constraint or limitation (known as an end-strength) on the number of such personnel who may be employed on the last day of such fiscal year.

(b) The fiscal year 2004 budget request for the Department of Defense as well as all justification material and other documentation supporting the fiscal year 2004 Department of Defense budget request shall be prepared and submitted to the Congress as if subsections (a) and (b) of this provision were effective with regard to fiscal year 2004.

(c) Nothing in this section shall be construed to apply to military (civilian) technicians.

SEC. 8011. Notwithstanding any other provision of law, none of the funds made available by this Act shall be used by the Department of Defense to exceed, outside the 50 United States, its territories, and the District of Columbia, 125,000 civilian workyears: Provided, That workyears shall be applied as defined in the Federal Personnel Manual: Provided further, That workyears expended in dependent student hiring programs for disadvantaged youths shall not be included in this workyear limitation.

SEC. 8012. None of the funds made available by this Act shall be used in any way, directly or indirectly, to influence congressional action on any legislation or appropriation matters pending before the Congress.

SEC. 8013. None of the funds appropriated by this Act shall be available for the basic pay and allowances of any member of the Army participating as a full-time student and receiving benefits paid by the Secretary of Veterans Affairs from the Department of Defense Education Benefits Fund when time spent as a full-time student is credited toward completion of a service commitment: Provided, That this subsection shall not apply to those members who have reenlisted with this option prior to October 1, 1987: Provided further, That this subsection applies only to active components of the Army.

SEC. 8014. None of the funds appropriated by this Act shall be available to convert to contractor performance an activity or function of the Department of Defense that, on or after the date of the enactment of this Act, is performed by more than 10 Department of Defense civilian employees until a most efficient and cost-effective organization analysis is completed on such activity or function and certification of the analysis is made to the Committees on Appropriations of the House of Representatives and the Senate: Provided, That this section and subsections (a), (b), and (c) of 10 U.S.C. 2461 shall not apply to a commercial or industrial type function of the Department of Defense that: (1) is included on the procurement list established pursuant to section 2 of the Act of June 25, 1938 (41 U.S.C. 47), popularly referred to as the Javits-Wagner-O'Day Act; (2) is planned to be converted to performance by a qualified nonprofit agency for the blind or by a qualified nonprofit agency for other severely handicapped individuals in accordance with that Act; or (3) is planned to be converted to performance by a qualified firm under 51 percent ownership by an Indian tribe, as defined in section 450b(e) of title 25, United States Code, or a Native Hawaiian organization, as defined in section 637(a)(15) of title 15, United States Code.

(TRANSFER OF FUNDS)

SEC. 8015. Funds appropriated in title III of this Act for the Department of Defense Pilot Mentor-Protege Program may be transferred to any other appropriation contained in this Act solely for the purpose of implementing a Mentor-Protege Program developmental assistance agreement pursuant to section 831 of the National Defense Authorization Act for Fiscal Year 1991 (Public Law 101–510; 10 U.S.C. 2301 note), as amended, under the authority of this provision or any other transfer authority contained in this Act.

SEC. 8016. None of the funds in this Act may be available for the purchase by the Department of Defense (and its departments and agencies) of welded shipboard anchor and mooring chain 4 inches in diameter and under unless the anchor and mooring chain are manufactured in the United States from components which are substantially manufactured in the United States: Provided, That for the purpose of this section manufactured will include cutting, heat treating, quality control, testing of chain and welding (including the forging and shot blasting process): Provided further, That for the purpose of this section substantially all of the components of anchor and mooring chain shall be considered to be produced or manufactured in the United States if the aggregate cost of the components produced or manufactured in the United States exceeds the aggregate cost of the components produced or manufactured outside the United States: Provided further, That when adequate domestic supplies are not available to meet Department of Defense requirements on a timely basis, the Secretary of the service responsible for the procurement may waive this restriction on a case-by-case basis by certifying in writing to the Committees on Appropriations that such an acquisition must be made in order to acquire capability for national security purposes.

SEC. 8017. None of the funds appropriated by this Act available for the Civilian Health and Medical Program of the Uniformed Services (CHAMPUS) or TRICARE shall be available for the reimbursement of any health care provider for inpatient mental health service for care received when a patient is referred to a provider of inpatient mental health care or residential treatment care by a medical or health care professional having an economic interest in the facility to which the patient is referred: Provided, That this limitation does not apply in the case of inpatient mental health services provided under the program for persons with disabilities under subsection (d) of section 1079 of title 10, United States Code, provided as partial hospital care, or provided pursuant to a waiver authorized by the Secretary of Defense because of medical or psychological circumstances of the patient that are confirmed by a health professional who is not a Federal employee after a review, pursuant to rules prescribed by the Secretary, which takes into account the appropriate level of care for the patient, the intensity of services required by the patient, and the availability of that care.

SEC. 8018. Notwithstanding any other provision of law, during the current fiscal year, the Secretary of Defense may, by executive agreement, establish with host nation governments in NATO member states a separate account into which such residual value amounts negotiated in the return of United States military installations in NATO member states may be deposited, in the currency of the host nation, in lieu of direct monetary transfers to the United States Treasury: Provided, That such credits may be utilized only for the construction of facilities to support United States military forces in that host nation, or such real property maintenance and base operating costs that are currently executed through monetary transfers to such host nations: Provided further, That the Department of Defense's budget submission for fiscal year 2004 shall identify such sums anticipated in residual value settlements, and identify such construction, real property maintenance or base operating costs that shall be funded by the host nation through such credits: Provided further, That all military construction projects to be executed from such accounts must be previously approved in a prior Act of Congress: Provided further, That each such executive agreement with a NATO member host nation shall be reported to the congressional defense committees, the Committee on International Relations of the House of Representatives and the Committee on Foreign Relations of the Senate 30 days prior to the conclusion and endorsement of any such agreement established under this provision.

SEC. 8019. None of the funds available to the Department of Defense may be used to demilitarize or dispose of M–1 Carbines, M–1 Garand rifles, M–14 rifles, .22 caliber rifles, .30 caliber rifles, or M–1911 pistols.

SEC. 8020. No more than $500,000 of the funds appropriated or made available in this Act shall be used during a single fiscal year for any single relocation of an organization, unit, activity or function of the Department of Defense into or within the National Capital Region: Provided, That the Secretary of Defense may waive this restriction on a case-by-case basis by certifying in writing to the congressional defense committees that such a relocation is required in the best interest of the Government.

SEC. 8021. (a) In addition to the funds provided elsewhere in this Act, $8,000,000 is appropriated only for incentive payments authorized by section 504 of the Indian Finance Act of 1974 (25 U.S.C. 1544) to defense contractors at any tier which make subcontract awards to subcontractors or suppliers owned by entities defined pursuant to 25 U.S.C. 1544 and 4221(9); and

(b) Section 8022 of the Department of Defense Appropriation Act (Public Law 106–259) is amended by striking out the period and adding '': Provided further, That notwithstanding 41 U.S.C. §430, this section shall be applicable to any acquisition for goods and services, including a contract and subcontracts for procurement of commercial items whenever the prime contract

amount is over $500,000 and involves the expenditure of funds appropriated by this or any other Act.''.

SEC. 8022. None of the funds appropriated by this Act shall be available to perform any cost study pursuant to the provisions of OMB Circular A–76 if the study being performed exceeds a period of 24 months after initiation of such study with respect to a single function activity or 48 months after initiation of such study for a multi-function activity.

SEC. 8023. Funds appropriated by this Act for the American Forces Information Service shall not be used for any national or international political or psychological activities.

SEC. 8024. Notwithstanding any other provision of law or regulation, the Secretary of Defense may adjust wage rates for civilian employees hired for certain health care occupations as authorized for the Secretary of Veterans Affairs by section 7455 of title 38, United States Code.

SEC. 8025. (a) Of the funds for the procurement of supplies or services appropriated by this Act, qualified nonprofit agencies for the blind or other severely handicapped shall be afforded the maximum practicable opportunity to participate as subcontractors and suppliers in the performance of contracts let by the Department of Defense.

(b) During the current fiscal year, a business concern which has negotiated with a military service or defense agency a subcontracting plan for the participation by small business concerns pursuant to section 8(d) of the Small Business Act (15 U.S.C. 637(d)) shall be given credit toward meeting that subcontracting goal for any purchases made from qualified nonprofit agencies for the blind or other severely handicapped.

(c) For the purpose of this section, the phrase ''qualified nonprofit agency for the blind or other severely handicapped'' means a nonprofit agency for the blind or other severely handicapped that has been approved by the Committee for the Purchase from the Blind and Other Severely Handicapped under the Javits-Wagner-O'Day Act (41 U.S.C. 46–48).

SEC. 8026. During the current fiscal year, net receipts pursuant to collections from third party payers pursuant to section 1095 of title 10, United States Code, shall be made available to the local facility of the uniformed services responsible for the collections and shall be over and above the facility's direct budget amount.

SEC. 8027. During the current fiscal year, the Department of Defense is authorized to incur obligations of not to exceed $350,000,000 for purposes specified in section 2350j(c) of title 10, United States Code, in anticipation of receipt of contributions, only from the Government of Kuwait, under that section: Provided, That upon receipt, such contributions from the Government of Kuwait shall be credited to the appropriations or fund which incurred such obligations.

SEC. 8028. Of the funds made available in this Act, not less than $21,188,000 shall be available for the Civil Air Patrol Corporation, of which $19,688,000 shall be available for Civil Air Patrol Corporation operation and maintenance to support readiness activities which includes $1,500,000 for the Civil Air Patrol counterdrug program: Provided, That funds identified for ''Civil Air Patrol'' under this section are intended for and shall be for the exclusive use of the Civil Air Patrol Corporation and not for the Air Force or any unit thereof.

SEC. 8029. (a) None of the funds appropriated in this Act are available to establish a new Department of Defense (department) federally funded research and development center (FFRDC), either as a new entity, or as a separate entity administrated by an organization managing another FFRDC, or as a nonprofit membership corporation consisting of a consortium of other FFRDCs and other non-profit entities.

(b) No member of a Board of Directors, Trustees, Overseers, Advisory Group, Special Issues Panel, Visiting Committee, or any similar entity of a defense FFRDC, and no paid consultant to any defense FFRDC, except when acting in a technical advisory capacity, may be compensated for his or her services as a member of such entity, or as a paid consultant by more than one FFRDC in a fiscal year: Provided, That a member of any such entity referred to previously in this subsection shall be allowed travel expenses and per diem as authorized under the Federal Joint Travel Regulations, when engaged in the performance of membership duties.

(c) Notwithstanding any other provision of law, none of the funds available to the department from any source during fiscal year 2003 may be used by a defense FFRDC, through a fee or other payment mechanism, for construction of new buildings, for payment of cost sharing for projects funded by Government grants, for absorption of contract overruns, or for certain charitable contributions, not to include employee participation in community service and/or development.

(d) Notwithstanding any other provision of law, of the funds available to the department during fiscal year 2003, not more than 6,300 staff years of technical effort (staff years) may be funded for defense FFRDCs: Provided, That of the specific amount referred to previously in this subsection, not more than 1,029 staff years may be funded for the defense studies and analysis FFRDCs.

(e) The Secretary of Defense shall, with the submission of the department's fiscal year 2004 budget request, submit a report presenting the specific amounts of staff years of technical effort to be allocated for each defense FFRDC during that fiscal year.

(f) Notwithstanding any other provision of this Act, the total amount appropriated in this Act for FFRDCs is hereby reduced by $91,600,000.

SEC. 8030. None of the funds appropriated or made available in this Act shall be used to procure carbon, alloy or armor steel plate for use in any Government-owned facility or property under the control of the Department of Defense which were not melted and rolled in the United States or Canada: Provided, That these procurement restrictions shall apply to any and all Federal Supply Class 9515, American Society of Testing and Materials (ASTM) or American Iron and Steel Institute (AISI) specifications of carbon, alloy or armor steel plate: Provided further, That the Secretary of the military department responsible for the procurement may waive this restriction on a case-by-case basis by certifying in writing to the Committees on Appropriations of the House of Representatives and the Senate that adequate domestic supplies are not available to meet Department of Defense requirements on a timely basis and that such an acquisition must be made in order to acquire capability for national security purposes: Provided further, That these restrictions shall not apply to contracts which are in being as of the date of the enactment of this Act.

SEC. 8031. For the purposes of this Act, the term ''congressional defense committees'' means the Armed Services Committee of the House of Representatives, the Armed Services Committee of the Senate, the Subcommittee on Defense of the Committee on Appropriations of the Senate, and the Subcommittee on Defense of the Committee on Appropriations of the House of Representatives.

SEC. 8032. During the current fiscal year, the Department of Defense may acquire the modification, depot maintenance and repair of aircraft, vehicles and vessels as well as the production of components and other Defense-related articles, through competition between Department of Defense depot maintenance activities and private firms: Provided, That the Senior Acquisition Executive of the military department or defense agency concerned, with power of delegation, shall certify that successful bids include comparable estimates of all direct and indirect costs for both public and private bids: Provided further, That Office of Management and Budget Circular A–76 shall not apply to competitions conducted under this section.

SEC. 8033. (a)(1) If the Secretary of Defense, after consultation with the United States Trade Representative, determines that a foreign country which is party to an agreement described in paragraph (2) has violated the terms of the agreement by discriminating against certain types of products produced in the United States that are covered by the agreement, the Secretary of Defense shall rescind the Secretary's blanket waiver of the Buy American Act with respect to such types of products produced in that foreign country.

(2) An agreement referred to in paragraph (1) is any reciprocal defense procurement memorandum of understanding, between the United States and a foreign country pursuant to which the Secretary of Defense has prospectively waived the Buy American Act for certain products in that country.

(b) The Secretary of Defense shall submit to the Congress a report on the amount of Department of Defense purchases from foreign entities in fiscal year 2003. Such report shall separately indicate the dollar value of items for which the Buy American Act was waived pursuant to any agreement described in subsection (a)(2), the Trade Agreement Act of 1979 (19 U.S.C. 2501 et seq.), or any international agreement to which the United States is a party.

(c) For purposes of this section, the term ''Buy American Act'' means title III of the Act entitled ''An Act making appropriations for the Treasury and Post Office Departments for the fiscal year ending June 30, 1934, and for other purposes'', approved March 3, 1933 (41 U.S.C. 10a et seq.).

SEC. 8034. Appropriations contained in this Act that remain available at the end of the current fiscal year as a result of energy cost savings realized by the Department of Defense shall remain available for obligation for the next fiscal year to the extent, and for the purposes, provided in section 2865 of title 10, United States Code.

(INCLUDING TRANSFER OF FUNDS)

SEC. 8035. Amounts deposited during the current fiscal year to the special account established under 40 U.S.C. 485(h)(2) and to the special account established under 10 U.S.C. 2667(d)(1) are appropriated and shall be available until transferred by the Secretary of Defense to current applicable appropriations or funds of the Department of Defense under the terms and conditions specified by 40 U.S.C. 485(h)(2)(A) and (B) and 10 U.S.C. 2667(d)(1)(B), to be merged with and to be available for the same time period and the same purposes as the appropriation to which transferred.

SEC. 8036. The President shall include with each budget for a fiscal year submitted to the Congress under section 1105 of title 31, United States Code, materials that shall identify clearly and separately the amounts requested in the budget for appropriation for that fiscal year for salaries and expenses related to administrative activities of the Department of Defense, the military departments, and the defense agencies.

SEC. 8037. Notwithstanding any other provision of law, funds available for ''Drug Interdiction and Counter-Drug Activities, Defense'' may be obligated for the Young Marines program.

(INCLUDING TRANSFER OF FUNDS)

SEC. 8038. During the current fiscal year, amounts contained in the Department of Defense Overseas Military Facility Investment Recovery Account established by section 2921(c)(1) of the National Defense Authorization Act of 1991 (Public Law 101–510; 10 U.S.C. 2687 note) shall be available until expended for the payments specified by section 2921(c)(2) of that Act.

SEC. 8039. (a) IN GENERAL.—Notwithstanding any other provision of law, the Secretary of the Air Force may convey at no cost to the Air

Force, without consideration, to Indian tribes located in the States of North Dakota, South Dakota, Montana, and Minnesota relocatable military housing units located at Grand Forks Air Force Base and Minot Air Force Base that are excess to the needs of the Air Force.

(b) PROCESSING OF REQUESTS.—The Secretary of the Air Force shall convey, at no cost to the Air Force, military housing units under subsection (a) in accordance with the request for such units that are submitted to the Secretary by the Operation Walking Shield Program on behalf of Indian tribes located in the States of North Dakota, South Dakota, Montana, and Minnesota.

(c) RESOLUTION OF HOUSING UNIT CONFLICTS.—The Operation Walking Shield program shall resolve any conflicts among requests of Indian tribes for housing units under subsection (a) before submitting requests to the Secretary of the Air Force under subsection (b).

(d) INDIAN TRIBE DEFINED.—In this section, the term ''Indian tribe'' means any recognized Indian tribe included on the current list published by the Secretary of the Interior under section 104 of the Federally Recognized Indian Tribe Act of 1994 (Public Law 103–454; 108 Stat. 4792; 25 U.S.C. 479a–1).

SEC. 8040. During the current fiscal year, appropriations which are available to the Department of Defense for operation and maintenance may be used to purchase items having an investment item unit cost of not more than $100,000: Provided, That the $100,000 limitation shall not apply to amounts appropriated in this Act under the heading ''Operation and Maintenance, Defense-Wide'' for expenses related to certain classified activities.

SEC. 8041. (a) During the current fiscal year, none of the appropriations or funds available to the Department of Defense Working Capital Funds shall be used for the purchase of an investment item for the purpose of acquiring a new inventory item for sale or anticipated sale during the current fiscal year or a subsequent fiscal year to customers of the Department of Defense Working Capital Funds if such an item would not have been chargeable to the Department of Defense Business Operations Fund during fiscal year 1994 and if the purchase of such an investment item would be chargeable during the current fiscal year to appropriations made to the Department of Defense for procurement.

(b) The fiscal year 2004 budget request for the Department of Defense as well as all justification material and other documentation supporting the fiscal year 2004 Department of Defense budget shall be prepared and submitted to the Congress on the basis that any equipment which was classified as an end item and funded in a procurement appropriation contained in this Act shall be budgeted for in a proposed fiscal year 2004 procurement appropriation and not in the supply management business area or any other area or category of the Department of Defense Working Capital Funds.

SEC. 8042. None of the funds appropriated by this Act for programs of the Central Intelligence Agency shall remain available for obligation beyond the current fiscal year, except for funds appropriated for the Reserve for Contingencies, which shall remain available until September 30, 2004: Provided, That funds appropriated, transferred, or otherwise credited to the Central Intelligence Agency Central Services Working Capital Fund during this or any prior or subsequent fiscal year shall remain available until expended: Provided further, That any funds appropriated or transferred to the Central Intelligence Agency for agent operations and for covert action programs authorized by the President under section 503 of the National Security Act of 1947, as amended, shall remain available until September 30, 2004.

SEC. 8043. Notwithstanding any other provision of law, funds made available in this Act for the Defense Intelligence Agency may be used for the design, development, and deployment of General Defense Intelligence Program intelligence communications and intelligence information systems for the Services, the Unified and Specified Commands, and the component commands.

SEC. 8044. Of the funds appropriated to the Department of Defense under the heading ''Operation and Maintenance, Defense-Wide'', not less than $10,000,000 shall be made available only for the mitigation of environmental impacts, including training and technical assistance to tribes, related administrative support, the gathering of information, documenting of environmental damage, and developing a system for prioritization of mitigation and cost to complete estimates for mitigation, on Indian lands resulting from Department of Defense activities.

SEC. 8045. Of the funds made available in this Act, not less than $68,900,000 shall be available to maintain an attrition reserve force of 18 B–52 aircraft, of which $3,700,000 shall be available from ''Military Personnel, Air Force'', $40,000,000 shall be available from ''Operation and Maintenance, Air Force'', and $25,200,000 shall be available from ''Aircraft Procurement, Air Force'': Provided, That the Secretary of the Air Force shall maintain a total force of 94 B–52 aircraft, including 18 attrition reserve aircraft, during fiscal year 2003: Provided further, That the Secretary of Defense shall include in the Air Force budget request for fiscal year 2004 amounts sufficient to maintain a B–52 force totaling 94 aircraft.

SEC. 8046. (a) None of the funds appropriated in this Act may be expended by an entity of the Department of Defense unless the entity, in expending the funds, complies with the Buy American Act. For purposes of this subsection, the term ''Buy American Act'' means title III of the Act entitled ''An Act making appropriations for the Treasury and Post Office Departments for the fiscal year ending June 30, 1934, and for other purposes'', approved March 3, 1933 (41 U.S.C. 10a et seq.).

(b) If the Secretary of Defense determines that a person has been convicted of intentionally affixing a label bearing a ''Made in America'' inscription to any product sold in or shipped to the United States that is not made in America, the Secretary shall determine, in accordance with section 2410f of title 10, United States Code, whether the person should be debarred from contracting with the Department of Defense.

(c) In the case of any equipment or products purchased with appropriations provided under this Act, it is the sense of the Congress that any entity of the Department of Defense, in expending the appropriation, purchase only American-made equipment and products, provided that American-made equipment and products are cost-competitive, quality-competitive, and available in a timely fashion.

SEC. 8047. None of the funds appropriated by this Act shall be available for a contract for studies, analysis, or consulting services entered into without competition on the basis of an unsolicited proposal unless the head of the activity responsible for the procurement determines—

(1) as a result of thorough technical evaluation, only one source is found fully qualified to perform the proposed work;

(2) the purpose of the contract is to explore an unsolicited proposal which offers significant scientific or technological promise, represents the product of original thinking, and was submitted in confidence by one source; or

(3) the purpose of the contract is to take advantage of unique and significant industrial accomplishment by a specific concern, or to insure that a new product or idea of a specific concern is given financial support:

Provided, That this limitation shall not apply to contracts in an amount of less than $25,000, contracts related to improvements of equipment that is in development or production, or contracts as to which a civilian official of the Department of Defense, who has been confirmed by the Senate, determines that the award of such contract is in the interest of the national defense.

SEC. 8048. (a) Except as provided in subsections (b) and (c), none of the funds made available by this Act may be used—

(1) to establish a field operating agency; or

(2) to pay the basic pay of a member of the Armed Forces or civilian employee of the department who is transferred or reassigned from a headquarters activity if the member or employee's place of duty remains at the location of that headquarters.

(b) The Secretary of Defense or Secretary of a military department may waive the limitations in subsection (a), on a case-by-case basis, if the Secretary determines, and certifies to the Committees on Appropriations of the House of Representatives and Senate that the granting of the waiver will reduce the personnel requirements or the financial requirements of the department.

(c) This section does not apply to field operating agencies funded within the National Foreign Intelligence Program.

SEC. 8049. Notwithstanding section 303 of Public Law 96–487 or any other provision of law, the Secretary of the Navy is authorized to lease real and personal property at Naval Air Facility, Adak, Alaska, pursuant to 10 U.S.C. 2667(f), for commercial, industrial or other purposes: Provided, That notwithstanding any other provision of law, the Secretary of the Navy may remove hazardous materials from facilities, buildings, and structures at Adak, Alaska, and may demolish or otherwise dispose of such facilities, buildings, and structures.

(RESCISSIONS)

SEC. 8050. Of the funds appropriated in Department of Defense Appropriations Acts, the following funds are hereby rescinded from the following accounts and programs in the specified amounts:

''Procurement of Ammunition, Army, 2001/2003'', $4,000,000;

''Other Procurement, Army, 2001/2003'', $8,000,000;

''Other Procurement, Navy, 2001/2003'', $21,200,000;

''Missile Procurement, Army, 2002/2004'', $9,300,000;

''Procurement of Ammunition, Army, 2002/2004'', $23,000,000;

''Other Procurement, Army, 2002/2004'', $26,200,000;

''Aircraft Procurement, Air Force, 2002/2004'', $23,500,000;

''Missile Procurement, Air Force, 2002/2004'', $18,000,000;

''Research, Development, Test and Evaluation, Air Force, 2002/2003'', $32,000,000; and

''Research and Development, Defense-Wide, 2002/2003'', $25,500,000.

SEC. 8051. None of the funds available in this Act may be used to reduce the authorized positions for military (civilian) technicians of the Army National Guard, the Air National Guard, Army Reserve and Air Force Reserve for the purpose of applying any administratively imposed civilian personnel ceiling, freeze, or reduction on military (civilian) technicians, unless such reductions are a direct result of a reduction in military force structure.

SEC. 8052. None of the funds appropriated or otherwise made available in this Act may be obligated or expended for assistance to the Democratic People's Republic of North Korea unless specifically appropriated for that purpose.

SEC. 8053. During the current fiscal year, funds appropriated in this Act are available to compensate members of the National Guard for duty performed pursuant to a plan submitted by a Governor of a State and approved by the Secretary of Defense under section 112 of title 32, United States Code: Provided, That during the performance of such duty, the members of the National Guard shall be under State command and control: Provided further, That such duty shall be treated as full-time National Guard duty for purposes of sections 12602(a)(2) and (b)(2) of title 10, United States Code.

SEC. 8054. Funds appropriated in this Act for operation and maintenance of the Military Departments, Combatant Commands and Defense Agencies shall be available for reimbursement of pay, allowances and other expenses which would otherwise be incurred against appropriations for the National Guard and Reserve when members of the National Guard and Reserve provide intelligence or counterintelligence support to Combatant Commands, Defense Agencies and Joint Intelligence Activities, including the activities and programs included within the National Foreign Intelligence Program (NFIP), the Joint Military Intelligence Program (JMIP), and the Tactical Intelligence and Related Activities (TIARA) aggregate: Provided, That nothing in this section authorizes deviation from established Reserve and National Guard personnel and training procedures.

SEC. 8055. During the current fiscal year, none of the funds appropriated in this Act may be used to reduce the civilian medical and medical support personnel assigned to military treatment facilities below the September 30, 2002 level: Provided, That the Service Surgeons General may waive this section by certifying to the congressional defense committees that the beneficiary population is declining in some catchment areas and civilian strength reductions may be consistent with responsible resource stewardship and capitation-based budgeting.

SEC. 8056. (a) LIMITATION ON PENTAGON RENOVATION COSTS.—Not later than the date each year on which the President submits to Congress the budget under section 1105 of title 31, United States Code, the Secretary of Defense shall submit to Congress a certification that the total cost for the planning, design, construction, and installation of equipment for the renovation of wedges 2 through 5 of the Pentagon Reservation, cumulatively, will not exceed four times the total cost for the planning, design, construction, and installation of equipment for the renovation of wedge 1.

(b) ANNUAL ADJUSTMENT.—For purposes of applying the limitation in subsection (a), the Secretary shall adjust the cost for the renovation of wedge 1 by any increase or decrease in costs attributable to economic inflation, based on the most recent economic assumptions issued by the Office of Management and Budget for use in preparation of the budget of the United States under section 1104 of title 31, United States Code.

(c) EXCLUSION OF CERTAIN COSTS.—For purposes of calculating the limitation in subsection (a), the total cost for wedges 2 through 5 shall not include—

(1) any repair or reconstruction cost incurred as a result of the terrorist attack on the Pentagon that occurred on September 11, 2001;

(2) any increase in costs for wedges 2 through 5 attributable to compliance with new requirements of Federal, State, or local laws; and

(3) any increase in costs attributable to additional security requirements that the Secretary of Defense considers essential to provide a safe and secure working environment.

(d) CERTIFICATION COST REPORTS.—As part of the annual certification under subsection (a), the Secretary shall report the projected cost (as of the time of the certification) for—

(1) the renovation of each wedge, including the amount adjusted or otherwise excluded for such wedge under the authority of paragraphs (2) and (3) of subsection (c) for the period covered by the certification; and

(2) the repair and reconstruction of wedges 1 and 2 in response to the terrorist attack on the Pentagon that occurred on September 11, 2001.

(e) DURATION OF CERTIFICATION REQUIREMENT.—The requirement to make an annual certification under subsection (a) shall apply until the Secretary certifies to Congress that the renovation of the Pentagon Reservation is completed.

SEC. 8057. Notwithstanding any other provision of law, that not more than 35 percent of funds provided in this Act for environmental remediation may be obligated under indefinite delivery/indefinite quantity contracts with a total contract value of $130,000,000 or higher.

SEC. 8058. (a) None of the funds available to the Department of Defense for any fiscal year for drug interdiction or counter-drug activities may be transferred to any other department or agency of the United States except as specifically provided in an appropriations law.

(b) None of the funds available to the Central Intelligence Agency for any fiscal year for drug interdiction and counter-drug activities may be transferred to any other department or agency of the United States except as specifically provided in an appropriations law.

(TRANSFER OF FUNDS)

SEC. 8059. Appropriations available in this Act under the heading ''Operation and Maintenance, Defense-Wide'' for increasing energy and water efficiency in Federal buildings may, during their period of availability, be transferred to other appropriations or funds of the Department of Defense for projects related to increasing energy and water efficiency, to be merged with and to be available for the same general purposes, and for the same time period, as the appropriation or fund to which transferred.

SEC. 8060. None of the funds appropriated by this Act may be used for the procurement of ball and roller bearings other than those produced by a domestic source and of domestic origin: Provided, That the Secretary of the military department responsible for such procurement may waive this restriction on a case-by-case basis by certifying in writing to the Committees on Appropriations of the House of Representatives and the Senate, that adequate domestic supplies are not available to meet Department of Defense requirements on a timely basis and that such an acquisition must be made in order to acquire capability for national security purposes: Provided further, That this restriction shall not apply to the purchase of ''commercial items'', as defined by section 4(12) of the Office of Federal Procurement Policy Act, except that the restriction shall apply to ball or roller bearings purchased as end items.

SEC. 8061. Notwithstanding any other provision of law, funds available to the Department of Defense shall be made available to provide transportation of medical supplies and equipment, on a nonreimbursable basis, to American Samoa, and funds available to the Department of Defense shall be made available to provide transportation of medical supplies and equipment, on a nonreimbursable basis, to the Indian Health Service when it is in conjunction with a civil-military project.

SEC. 8062. None of the funds in this Act may be used to purchase any supercomputer which is not manufactured in the United States, unless the Secretary of Defense certifies to the congressional defense committees that such an acquisition must be made in order to acquire capability for national security purposes that is not available from United States manufacturers.

SEC. 8063. Notwithstanding any other provision of law, the Naval shipyards of the United States shall be eligible to participate in any manufacturing extension program financed by funds appropriated in this or any other Act.

SEC. 8064. Notwithstanding any other provision of law, each contract awarded by the Department of Defense during the current fiscal year for construction or service performed in whole or in part in a State (as defined in section 381(d) of title 10, United States Code) which is not contiguous with another State and has an unemployment rate in excess of the national average rate of unemployment as determined by the Secretary of Labor, shall include a provision requiring the contractor to employ, for the purpose of performing that portion of the contract in such State that is not contiguous with another State, individuals who are residents of such State and who, in the case of any craft or trade, possess or would be able to acquire promptly the necessary skills: Provided, That the Secretary of Defense may waive the requirements of this section, on a case-by-case basis, in the interest of national security.

SEC. 8065. None of the funds made available in this or any other Act may be used to pay the salary of any officer or employee of the Department of Defense who approves or implements the transfer of administrative responsibilities or budgetary resources of any program, project, or activity financed by this Act to the jurisdiction of another Federal agency not financed by this Act without the express authorization of Congress: Provided, That this limitation shall not apply to transfers of funds expressly provided for in Defense Appropriations Acts, or provisions of Acts providing supplemental appropriations for the Department of Defense.

SEC. 8066. (a) LIMITATION ON TRANSFER OF DEFENSE ARTICLES AND SERVICES.—Notwithstanding any other provision of law, none of the funds available to the Department of Defense for the current fiscal year may be obligated or expended to transfer to another nation or an international organization any defense articles or services (other than intelligence services) for use in the activities described in subsection (b) unless the congressional defense committees, the Committee on International Relations of the House of Representatives, and the Committee on Foreign Relations of the Senate are notified 15 days in advance of such transfer.

(b) COVERED ACTIVITIES.—This section applies to—

(1) any international peacekeeping or peace-enforcement operation under the authority of chapter VI or chapter VII of the United Nations Charter under the authority of a United Nations Security Council resolution; and

(2) any other international peacekeeping, peace-enforcement, or humanitarian assistance operation.

(c) REQUIRED NOTICE.—A notice under subsection (a) shall include the following:

(1) A description of the equipment, supplies, or services to be transferred.

(2) A statement of the value of the equipment, supplies, or services to be transferred.

(3) In the case of a proposed transfer of equipment or supplies—

(A) a statement of whether the inventory requirements of all elements of the Armed Forces (including the reserve components) for the type of equipment or supplies to be transferred have been met; and

(B) a statement of whether the items proposed to be transferred will have to be replaced and, if so, how the President proposes to provide funds for such replacement.

SEC. 8067. To the extent authorized by subchapter VI of chapter 148 of title 10, United States Code, the Secretary of Defense may issue loan guarantees in support of United States defense exports not otherwise provided for: Provided, That the total contingent liability of the United States for guarantees issued under the authority of this section may not exceed $15,000,000,000: Provided further, That the exposure fees charged and collected by the Secretary for each guarantee shall be paid by the country involved and shall not be financed as part of a loan guaranteed by the United States: Provided further, That the Secretary shall provide quarterly reports to the Committees on Appropriations, Armed Services, and Foreign Relations of the Senate and the Committees on Appropriations, Armed Services, and International Relations in the House of Representatives on the implementation of this program: Provided further, That amounts charged for administrative fees and deposited to the special account provided for under section 2540c(d) of title 10, shall be available for paying the costs of administrative expenses of the Department of Defense that are attributable to the loan guarantee program under subchapter VI of chapter 148 of title 10, United States Code.

SEC. 8068. None of the funds available to the Department of Defense under this Act shall be obligated or expended to pay a contractor under a contract with the Department of Defense for costs of any amount paid by the contractor to an employee when—

(1) such costs are for a bonus or otherwise in excess of the normal salary paid by the contractor to the employee; and

(2) such bonus is part of restructuring costs associated with a business combination.

SEC. 8069. (a) None of the funds appropriated or otherwise made available in this Act may be used to transport or provide for the transportation of chemical munitions or agents to the Johnston Atoll for the purpose of storing or demilitarizing such munitions or agents.

(b) The prohibition in subsection (a) shall not apply to any obsolete World War II chemical munition or agent of the United States found in the World War II Pacific Theater of Operations.

(c) The President may suspend the application of subsection (a) during a period of war in which the United States is a party.

(INCLUDING TRANSFER OF FUNDS)

SEC. 8070. During the current fiscal year, no more than $30,000,000 of appropriations made in this Act under the heading ''Operation and Maintenance, Defense-Wide'' may be transferred to appropriations available for the pay of military personnel, to be merged with, and to be available for the same time period as the appropriations to which transferred, to be used in support of such personnel in connection with support and services for eligible organizations and activities outside the Department of Defense pursuant to section 2012 of title 10, United States Code.

SEC. 8071. During the current fiscal year, in the case of an appropriation account of the Department of Defense for which the period of availability for obligation has expired or which has closed under the provisions of section 1552 of title 31, United States Code, and which has a negative unliquidated or unexpended balance, an obligation or an adjustment of an obligation may be charged to any current appropriation account for the same purpose as the expired or closed account if—

(1) the obligation would have been properly chargeable (except as to amount) to the expired or closed account before the end of the period of availability or closing of that account;

(2) the obligation is not otherwise properly chargeable to any current appropriation account of the Department of Defense; and

(3) in the case of an expired account, the obligation is not chargeable to a current appropriation of the Department of Defense under the provisions of section 1405(b)(8) of the National Defense Authorization Act for Fiscal Year 1991, Public Law 101–510, as amended (31 U.S.C. 1551 note): Provided, That in the case of an expired account, if subsequent review or investigation discloses that there was not in fact a negative unliquidated or unexpended balance in the account, any charge to a current account under the authority of this section shall be reversed and recorded against the expired account: Provided further, That the total amount charged to a current appropriation under this section may not exceed an amount equal to 1 percent of the total appropriation for that account.

SEC. 8072. Funds appropriated in title II of this Act and for the Defense Health Program in title VI of this Act for supervision and administration costs for facilities maintenance and repair, minor construction, or design projects may be obligated at the time the reimbursable order is accepted by the performing activity: Provided, That for the purpose of this section, supervision and administration costs includes all in-house Government cost.

SEC. 8073. During the current fiscal year and hereafter, the Secretary of Defense may waive reimbursement of the cost of conferences, seminars, courses of instruction, or similar educational activities of the Asia-Pacific Center for Security Studies for military officers and civilian officials of foreign nations if the Secretary determines that attendance by such personnel, without reimbursement, is in the national security interest of the United States: Provided, That costs for which reimbursement is waived pursuant to this section shall be paid from appropriations available for the Asia-Pacific Center.

SEC. 8074. (a) Notwithstanding any other provision of law, the Chief of the National Guard Bureau may permit the use of equipment of the National Guard Distance Learning Project by any person or entity on a space-available, reimbursable basis. The Chief of the National Guard Bureau shall establish the amount of reimbursement for such use on a case-by-case basis.

(b) Amounts collected under subsection (a) shall be credited to funds available for the National Guard Distance Learning Project and be available to defray the costs associated with the use of equipment of the project under that subsection. Such funds shall be available for such purposes without fiscal year limitation.

SEC. 8075. Using funds available by this Act or any other Act, the Secretary of the Air Force, pursuant to a determination under section 2690 of title 10, United States Code, may implement cost-effective agreements for required heating facility modernization in the Kaiserslautern Military Community in the Federal Republic of Germany: Provided, That in the City of Kaiserslautern such agreements will include the use of United States anthracite as the base load energy for municipal district heat to the United States Defense installations: Provided further, That at Landstuhl Army Regional Medical Center and Ramstein Air Base, furnished heat may be obtained from private, regional or municipal services, if provisions are included for the consideration of United States coal as an energy source.

SEC. 8076. None of the funds appropriated in title IV of this Act may be used to procure end-items for delivery to military forces for operational training, operational use or inventory requirements: Provided, That this restriction does not apply to end-items used in development, prototyping, and test activities preceding and leading to acceptance for operational use: Provided further, That this restriction does not apply to programs funded within the National Foreign Intelligence Program: Provided further, That the Secretary of Defense may waive this restriction on a case-by-case basis by certifying in writing to the Committees on Appropriations of the House of Representatives and the Senate that it is in the national security interest to do so.

SEC. 8077. None of the funds made available in this Act may be used to approve or license the sale of the F–22 advanced tactical fighter to any foreign government.

SEC. 8078. (a) The Secretary of Defense may, on a case-by-case basis, waive with respect to a foreign country each limitation on the procurement of defense items from foreign sources provided in law if the Secretary determines that the application of the limitation with respect to that country would invalidate cooperative programs entered into between the Department of Defense and the foreign country, or would invalidate reciprocal trade agreements for the procurement of defense items entered into under section 2531 of title 10, United States Code, and the country does not discriminate against the same or similar defense items produced in the United States for that country.

(b) Subsection (a) applies with respect to—

(1) contracts and subcontracts entered into on or after the date of the enactment of this Act; and

(2) options for the procurement of items that are exercised after such date under contracts that are entered into before such date if the option prices are adjusted for any reason other than the application of a waiver granted under subsection (a).

(c) Subsection (a) does not apply to a limitation regarding construction of public vessels, ball and roller bearings, food, and clothing or textile materials as defined by section 11 (chapters 50–65) of the Harmonized Tariff Schedule and products classified under headings 4010, 4202, 4203, 6401 through 6406, 6505, 7019, 7218 through 7229, 7304.41 through 7304.49, 7306.40, 7502 through 7508, 8105, 8108, 8109, 8211, 8215, and 9404.

SEC. 8079. Funds made available to the Civil Air Patrol in this Act under the heading ''Drug Interdiction and Counter-Drug Activities, Defense'' may be used for the Civil Air Patrol Corporation's counterdrug program, including its demand reduction program involving youth programs, as well as operational and training drug reconnaissance missions for Federal, State, and local government agencies; and for equipment needed for mission support or performance: Provided, That the Department of the Air Force should waive reimbursement from the Federal, State, and local government agencies for the use of these funds.

SEC. 8080. (a) PROHIBITION.—None of the funds made available by this Act may be used to support any training program involving a unit of the security forces of a foreign country if the Secretary of Defense has received credible information from the Department of State that the unit has committed a gross violation of human rights, unless all necessary corrective steps have been taken.

(b) MONITORING.—The Secretary of Defense, in consultation with the Secretary of State, shall ensure that prior to a decision to conduct any training program referred to in subsection (a), full consideration is given to all credible information available to the Department of State relating to human rights violations by foreign security forces.

(c) WAIVER.—The Secretary of Defense, after consultation with the Secretary of State, may waive the prohibition in subsection (a) if he determines that such waiver is required by extraordinary circumstances.

(d) REPORT.—Not more than 15 days after the exercise of any waiver under subsection (c), the Secretary of Defense shall submit a report to the congressional defense committees describing the extraordinary circumstances, the purpose and duration of the training program, the United States forces and the foreign security forces involved in the training program, and the information relating to human rights violations that necessitates the waiver.

SEC. 8081. The Secretary of Defense, in coordination with the Secretary of Health and Human Services, may carry out a program to distribute surplus dental equipment of the Department of Defense, at no cost to the Department of Defense, to Indian Health Service facilities and to federally-qualified health centers (within the meaning of section 1905(l)(2)(B) of the Social Security Act (42 U.S.C. 1396d(l)(2)(B))).

SEC. 8082. The total amount appropriated in this Act is hereby reduced by $338,000,000 to reflect savings from favorable foreign currency fluctuations, to be derived as follows:

''Military Personnel, Army'', $80,000,000;

''Military Personnel, Navy'', $6,500,000;

''Military Personnel, Marine Corps'', $11,000,000;

''Military Personnel, Air Force'', $29,000,000;

''Operation and Maintenance, Army'', $102,000,000;

''Operation and Maintenance, Navy'', $21,500,000;

''Operation and Maintenance, Marine Corps'', $2,000,000;

''Operation and Maintenance, Air Force'', $46,000,000; and

''Operation and Maintenance, Defense-Wide'', $40,000,000.

SEC. 8083. None of the funds appropriated or made available in this Act to the Department of the Navy shall be used to develop, lease or procure the T–AKE class of ships unless the main

propulsion diesel engines and propulsors are manufactured in the United States by a domestically operated entity: Provided, That the Secretary of Defense may waive this restriction on a case-by-case basis by certifying in writing to the Committees on Appropriations of the House of Representatives and the Senate that adequate domestic supplies are not available to meet Department of Defense requirements on a timely basis and that such an acquisition must be made in order to acquire capability for national security purposes or there exists a significant cost or quality difference.

SEC. 8084. None of the funds appropriated or otherwise made available by this or other Department of Defense Appropriations Acts may be obligated or expended for the purpose of performing repairs or maintenance to military family housing units of the Department of Defense, including areas in such military family housing units that may be used for the purpose of conducting official Department of Defense business.

SEC. 8085. Notwithstanding any other provision of law, funds appropriated in this Act under the heading ''Research, Development, Test and Evaluation, Defense-Wide'' for any advanced concept technology demonstration project may only be obligated 30 days after a report, including a description of the project and its estimated annual and total cost, has been provided in writing to the congressional defense committees: Provided, That the Secretary of Defense may waive this restriction on a case-by-case basis by certifying to the congressional defense committees that it is in the national interest to do so.

SEC. 8086. Notwithstanding any other provision of law, for the purpose of establishing all Department of Defense policies governing the provision of care provided by and financed under the military health care system's case management program under 10 U.S.C. 1079(a)(17), the term ''custodial care'' shall be defined as care designed essentially to assist an individual in meeting the activities of daily living and which does not require the supervision of trained medical, nursing, paramedical or other specially trained individuals: Provided, That the case management program shall provide that members and retired members of the military services, and their dependents and survivors, have access to all medically necessary health care through the health care delivery system of the military services regardless of the health care status of the person seeking the health care: Provided further, That the case management program shall be the primary obligor for payment of medically necessary services and shall not be considered as secondarily liable to title XIX of the Social Security Act, other welfare programs or charity based care.

SEC. 8087. During the current fiscal year, refunds attributable to the use of the Government travel card, refunds attributable to the use of the Government Purchase Card and refunds attributable to official Government travel arranged by Government Contracted Travel Management Centers may be credited to operation and maintenance accounts of the Department of Defense which are current when the refunds are received.

SEC. 8088. (a) REGISTERING FINANCIAL MANAGEMENT INFORMATION TECHNOLOGY SYSTEMS WITH DOD CHIEF INFORMATION OFFICER.—None of the funds appropriated in this Act may be used for a mission critical or mission essential financial management information technology system (including a system funded by the defense working capital fund) that is not registered with the Chief Information Officer of the Department of Defense. A system shall be considered to be registered with that officer upon the furnishing to that officer of notice of the system, together with such information concerning the system as the Secretary of Defense may prescribe. A financial management information technology system shall be considered a mission critical or mission essential information technology system as defined by the Under Secretary of Defense (Comptroller).

(b) CERTIFICATIONS AS TO COMPLIANCE WITH FINANCIAL MANAGEMENT MODERNIZATION PLAN.—

(1) During the current fiscal year, a financial management major automated information system may not receive Milestone A approval, Milestone B approval, or full rate production, or their equivalent, within the Department of Defense until the Under Secretary of Defense (Comptroller) certifies, with respect to that milestone, that the system is being developed and managed in accordance with the Department's Financial Management Modernization Plan. The Under Secretary of Defense (Comptroller) may require additional certifications, as appropriate, with respect to any such system.

(2) The Chief Information Officer shall provide the congressional defense committees timely notification of certifications under paragraph (1).

(c) CERTIFICATIONS AS TO COMPLIANCE WITH CLINGER-COHEN ACT.—(1) During the current fiscal year, a major automated information system may not receive Milestone A approval, Milestone B approval, or full rate production approval, or their equivalent, within the Department of Defense until the Chief Information Officer certifies, with respect to that milestone, that the system is being developed in accordance with the Clinger-Cohen Act of 1996 (40 U.S.C. 1401 et seq.). The Chief Information Officer may require additional certifications, as appropriate, with respect to any such system.

(2) The Chief Information Officer shall provide the congressional defense committees timely notification of certifications under paragraph (1). Each such notification shall include, at a minimum, the funding baseline and milestone schedule for each system covered by such a certification and confirmation that the following steps have been taken with respect to the system:

(A) Business process reengineering.

(B) An analysis of alternatives.

(C) An economic analysis that includes a calculation of the return on investment.

(D) Performance measures.

(E) An information assurance strategy consistent with the Department's Global Information Grid.

(d) DEFINITIONS.—For purposes of this section:

(1) The term ''Chief Information Officer'' means the senior official of the Department of Defense designated by the Secretary of Defense pursuant to section 3506 of title 44, United States Code.

(2) The term ''information technology system'' has the meaning given the term ''information technology'' in section 5002 of the Clinger-Cohen Act of 1996 (40 U.S.C. 1401).

(3) The term ''major automated information system'' has the meaning given that term in Department of Defense Directive 5000.1.

SEC. 8089. During the current fiscal year, none of the funds available to the Department of Defense may be used to provide support to another department or agency of the United States if such department or agency is more than 90 days in arrears in making payment to the Department of Defense for goods or services previously provided to such department or agency on a reimbursable basis: Provided, That this restriction shall not apply if the department is authorized by law to provide support to such department or agency on a nonreimbursable basis, and is providing the requested support pursuant to such authority: Provided further, That the Secretary of Defense may waive this restriction on a case-by-case basis by certifying in writing to the Committees on Appropriations of the House of Representatives and the Senate that it is in the national security interest to do so.

SEC. 8090. None of the funds provided in this Act may be used to transfer to any nongovernmental entity ammunition held by the Department of Defense that has a center-fire cartridge and a United States military nomenclature designation of ''armor penetrator'', ''armor piercing (AP)'', ''armor piercing incendiary (API)'', or ''armor-piercing incendiary-tracer (API–T)'', except to an entity performing demilitarization services for the Department of Defense under a contract that requires the entity to demonstrate to the satisfaction of the Department of Defense that armor piercing projectiles are either: (1) rendered incapable of reuse by the demilitarization process; or (2) used to manufacture ammunition pursuant to a contract with the Department of Defense or the manufacture of ammunition for export pursuant to a License for Permanent Export of Unclassified Military Articles issued by the Department of State.

SEC. 8091. Notwithstanding any other provision of law, the Chief of the National Guard Bureau, or his designee, may waive payment of all or part of the consideration that otherwise would be required under 10 U.S.C. 2667, in the case of a lease of personal property for a period not in excess of 1 year to any organization specified in 32 U.S.C. 508(d), or any other youth, social, or fraternal non-profit organization as may be approved by the Chief of the National Guard Bureau, or his designee, on a case-by-case basis.

SEC. 8092. None of the funds appropriated by this Act shall be used for the support of any nonappropriated funds activity of the Department of Defense that procures malt beverages and wine with nonappropriated funds for resale (including such alcoholic beverages sold by the drink) on a military installation located in the United States unless such malt beverages and wine are procured within that State, or in the case of the District of Columbia, within the District of Columbia, in which the military installation is located: Provided, That in a case in which the military installation is located in more than one State, purchases may be made in any State in which the installation is located: Provided further, That such local procurement requirements for malt beverages and wine shall apply to all alcoholic beverages only for military installations in States which are not contiguous with another State: Provided further, That alcoholic beverages other than wine and malt beverages, in contiguous States and the District of Columbia shall be procured from the most competitive source, price and other factors considered.

SEC. 8093. During the current fiscal year and hereafter, under regulations prescribed by the Secretary of Defense, the Center of Excellence for Disaster Management and Humanitarian Assistance may also pay, or authorize payment for, the expenses of providing or facilitating education and training for appropriate military and civilian personnel of foreign countries in disaster management, peace operations, and humanitarian assistance.

SEC. 8094. (a) The Department of Defense is authorized to enter into agreements with the Department of Veterans Affairs and federally-funded health agencies providing services to Native Hawaiians for the purpose of establishing a partnership similar to the Alaska Federal Health Care Partnership, in order to maximize Federal resources in the provision of health care services by federally-funded health agencies, applying telemedicine technologies. For the purpose of this partnership, Native Hawaiians shall have the same status as other Native Americans who are eligible for the health care services provided by the Indian Health Service.

(b) The Department of Defense is authorized to develop a consultation policy, consistent with Executive Order No. 13084 (issued May 14, 1998), with Native Hawaiians for the purpose of assuring maximum Native Hawaiian participation in the direction and administration of governmental services so as to render those services more responsive to the needs of the Native Hawaiian community.

(c) For purposes of this section, the term ''Native Hawaiian'' means any individual who is a

descendant of the aboriginal people who, prior to 1778, occupied and exercised sovereignty in the area that now comprises the State of Hawaii.

SEC. 8095. Of the amounts appropriated in this Act under the heading ''Research, Development, Test and Evaluation, Defense-Wide'', $146,000,000 shall be made available for the Arrow missile defense program: Provided, That of this amount, $66,000,000 shall be available for the purpose of continuing the Arrow System Improvement Program (ASIP), $10,000,000 shall be available for continuing the Enhanced Arrow Deployability Program, and $70,000,000 shall be available for the purpose of producing Arrow missile components in the United States and Arrow missile components and missiles in Israel to meet Israel's defense requirements, consistent with each nation's laws, regulations and procedures: Provided further, That funds made available under this provision for production of missiles and missile components may be transferred to appropriations available for the procurement of weapons and equipment, to be merged with and to be available for the same time period and the same purposes as the appropriation to which transferred: Provided further, That the transfer authority provided under this provision is in addition to any other transfer authority contained in this Act.

SEC. 8096. Funds available to the Department of Defense for the Global Positioning System during the current fiscal year may be used to fund civil requirements associated with the satellite and ground control segments of such system's modernization program.

(INCLUDING TRANSFER OF FUNDS)

SEC. 8097. Of the amounts appropriated in this Act under the heading, ''Operation and Maintenance, Defense-Wide'', $63,000,000 shall remain available until expended: Provided, That notwithstanding any other provision of law, the Secretary of Defense is authorized to transfer such funds to other activities of the Federal Government.

SEC. 8098. Section 8106 of the Department of Defense Appropriations Act, 1997 (titles I through VIII of the matter under subsection 101(b) of Public Law 104–208; 110 Stat. 3009–111; 10 U.S.C. 113 note) shall continue in effect to apply to disbursements that are made by the Department of Defense in fiscal year 2003.

SEC. 8099. Of the funds made available under the heading ''Operation and Maintenance, Air Force'', $8,000,000 shall be available to realign railroad track on Elmendorf Air Force Base and Fort Richardson.

SEC. 8100. Notwithstanding any other provision of this Act, the total amount appropriated in this Act is hereby reduced by $850,000,000, to reflect savings to be achieved from business process reforms, management efficiencies, and procurement of administrative and management support: Provided, That none of the funds provided in this Act may be used for consulting and advisory services for legislative affairs and legislative liaison functions.

(INCLUDING TRANSFER OF FUNDS)

SEC. 8101. Of the amounts appropriated in this Act under the heading ''Shipbuilding and Conversion, Navy'', $1,481,955,000 shall be available until September 30, 2003, to fund prior year shipbuilding cost increases: Provided, That upon enactment of this Act, the Secretary of the Navy shall transfer such funds to the following appropriations in the amounts specified: Provided further, That the amounts transferred shall be merged with and be available for the same purposes as the appropriations to which transferred:

To:

Under the heading, ''Shipbuilding and Conversion, Navy, 1996/03'':

LPD–17 Amphibious Transport Dock Ship Program, $300,681,000;

Under the heading, ''Shipbuilding and Conversion, Navy, 1998/03'':

DDG–51 Destroyer Program, $76,100,000;

New SSN, $190,882,000;

Under the heading, ''Shipbuilding and Conversion, Navy, 1999/03'':

DDG–51 Destroyer Program, $93,736,000;

LPD–17 Amphibious Transport Dock Ship Program, $82,000,000;

New SSN, $292,000,000;

Under the heading, ''Shipbuilding and Conversion, Navy, 2000/03'':

DDG–51 Destroyer Program, $72,924,000;

LPD–17 Amphibious Transport Dock Ship Program, $187,000,000;

Under the heading, ''Shipbuilding and Conversion, Navy, 2001/03'':

DDG–51 Destroyer Program, $81,700,000;

New SSN, $6,932,000; and

Under the heading, ''Shipbuilding and Conversion, Navy, 2002/03'':

DDG–51 Destroyer Program, $98,000,000.

SEC. 8102. The Secretary of the Navy may settle, or compromise, and pay any and all admiralty claims under 10 U.S.C. 7622 arising out of the collision involving the U.S.S. GREENEVILLE and the EHIME MARU, in any amount and without regard to the monetary limitations in subsections (a) and (b) of that section: Provided, That such payments shall be made from funds available to the Department of the Navy for operation and maintenance.

(TRANSFER OF FUNDS)

SEC. 8103. Upon enactment of this Act, the Secretary of the Navy shall make the following transfers of funds: Provided, That the amounts transferred shall be available for the same purpose as the appropriations to which transferred, and for the same time period as the appropriation from which transferred: Provided further, That the amounts shall be transferred between the following appropriations in the amount specified:

From:

Under the heading, ''Shipbuilding and Conversion, Navy, 1994/2003'':

DDG–51 Destroyer program, $7,900,000;

LHD–1 Amphibious Assault Ship program, $6,500,000;

Oceanographic Ship program, $3,416,000;

Craft, outfitting, post delivery, first destination transportation, $1,800,000;

Mine warfare command and control ship, $604,000;

To:

Under the heading, ''Shipbuilding and Conversion, Navy, 1999/2003'':

LPD–17 Amphibious Transport Dock Ship program, $20,220,000.

SEC. 8104. Notwithstanding section 229(a) of the Social Security Act, no wages shall be deemed to have been paid to any individual pursuant to that section in any calendar year after 2001.

SEC. 8105. Up to $3,000,000 of the funds appropriated under the heading ''Operation and Maintenance, Navy'' in this Act for the Pacific Missile Range Facility may be made available to contract for the repair, maintenance, and operation of adjacent off-base water, drainage, and flood control systems critical to base operations.

SEC. 8106. Notwithstanding any other provision of law or regulation, the Secretary of Defense may exercise the provisions of 38 U.S.C. 7403(g) for occupations listed in 38 U.S.C. 7403(a)(2) as well as the following:

Pharmacists, Audiologists, and Dental Hygienists.

(A) The requirements of 38 U.S.C. 7403(g)(1)(A) shall apply.

(B) The limitations of 38 U.S.C. 7403(g)(1)(B) shall not apply.

SEC. 8107. Of the total amount appropriated by this Act under the heading ''Operation and Maintenance, Defense-Wide'', $5,000,000 may be available for payments under section 363 of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001 (as enacted into law by Public Law 106–398; 114 Stat. 1654A–77).

SEC. 8108. In addition to funds made available elsewhere in this Act $5,000,000 is hereby appropriated and shall remain available until expended to provide assistance, by grant or otherwise (such as, but not limited to, the provision of funds for repairs, maintenance, and/or for the purchase of information technology, text books, teaching resources), to public schools that have unusually high concentrations of special needs military dependents enrolled: Provided, That in selecting school systems to receive such assistance, special consideration shall be given to school systems in States that are considered overseas assignments, and all schools within these school systems shall be eligible for assistance: Provided further, That up to $2,000,000 shall be available for the Department of Defense to establish a non-profit trust fund to assist in the public-private funding of public school repair and maintenance projects, or provide directly to non-profit organizations who in return will use these monies to provide assistance in the form of repair, maintenance, or renovation to public school systems that have high concentrations of special needs military dependents and are located in States that are considered overseas assignments, and of which 2 percent shall be available to support the administration and execution of the funds: Provided further, That to the extent a federal agency provides this assistance, by contract, grant, or otherwise, it may accept and expend non-federal funds in combination with these federal funds to provide assistance for the authorized purpose, if the non-federal entity requests such assistance and the non-federal funds are provided on a reimbursable basis.

SEC. 8109. Notwithstanding any other provision in this Act, the total amount appropriated in this Act is hereby reduced by $400,000,000, to reduce cost growth in information technology development, to be distributed as follows:

''Operation and Maintenance, Defense-Wide'', $19,500,000;

''Other Procurement, Army'', $53,200,000;

''Other Procurement, Navy'', $20,600,000;

''Procurement, Marine Corps'', $3,400,000;

''Other Procurement, Air Force'', $12,000,000;

''Procurement, Defense-Wide'', $3,500,000;

''Research, Development, Test and Evaluation, Army'', $17,700,000;

''Research, Development, Test and Evaluation, Navy'', $25,600,000;

''Research, Development, Test and Evaluation, Air Force'', $27,200,000;

''Research, Development, Test and Evaluation, Defense-Wide'', $36,600,000;

''Defense Working Capital Funds'', $148,600,000; and

''Defense Health Program'', $32,100,000.

SEC. 8110. In addition to the amounts appropriated or otherwise made available in this Act, $4,000,000, to remain available until September 30, 2003, is hereby appropriated to the Department of Defense: Provided, That the Secretary of Defense shall make a grant in the amount of $4,000,000 to the American Red Cross for Armed Forces Emergency Services.

SEC. 8111. None of the funds appropriated in this Act under the heading ''Overseas Contingency Operations Transfer Fund'' may be transferred or obligated for Department of Defense expenses not directly related to the conduct of overseas contingencies: Provided, That the Secretary of Defense shall submit a report no later than 30 days after the end of each fiscal quarter to the Committees on Appropriations of the Senate and House of Representatives that details any transfer of funds from the ''Overseas Contingency Operations Transfer Fund'': Provided further, That the report shall explain any transfer for the maintenance of real property, pay of civilian personnel, base operations support, and weapon, vehicle or equipment maintenance.

SEC. 8112. For purposes of section 1553(b) of title 31, United States Code, any subdivision of appropriations made in this Act under the heading ''Shipbuilding and Conversion, Navy'' shall

*be considered to be for the same purpose as any subdivision under the heading ''Shipbuilding and Conversion, Navy'' appropriations in any prior year, and the 1 percent limitation shall apply to the total amount of the appropriation.*

*SEC. 8113. The budget of the President for fiscal year 2004 submitted to the Congress pursuant to section 1105 of title 31, United States Code, and each annual budget request thereafter, shall include separate budget justification documents for costs of United States Armed Forces' participation in contingency operations for the Military Personnel accounts, the Overseas Contingency Operations Transfer Fund, the Operation and Maintenance accounts, and the Procurement accounts: Provided, That these budget justification documents shall include a description of the funding requested for each anticipated contingency operation, for each military service, to include active duty and Guard and Reserve components, and for each appropriation account: Provided further, That these documents shall include estimated costs for each element of expense or object class, a reconciliation of increases and decreases for ongoing contingency operations, and programmatic data including, but not limited to troop strength for each active duty and Guard and Reserve component, and estimates of the major weapons systems deployed in support of each contingency: Provided further, That these documents shall include budget exhibits OP–5 and OP–32, as defined in the Department of Defense Financial Management Regulation, for the Overseas Contingency Operations Transfer Fund for fiscal years 2002 and 2003.*

*SEC. 8114. Notwithstanding any other provision in this Act, the total amount appropriated in this Act is hereby reduced by $59,260,000, to reduce cost growth in travel, to be distributed as follows:*

*''Operation and Maintenance, Army'', $14,000,000;*

*''Operation and Maintenance, Navy'', $9,000,000;*

*''Operation and Maintenance, Marine Corps'', $10,000,000;*

*''Operation and Maintenance, Air Force'', $15,000,000; and*

*''Operation and Maintenance, Defense-wide'', $11,260,000.*

*SEC. 8115. None of the funds in this Act may be used for research, development, test, evaluation, procurement or deployment of nuclear armed interceptors of a missile defense system.*

*SEC. 8116. (a) In addition to the amounts appropriated or otherwise made available in this Act, $814,300,000 is hereby appropriated to the Department of Defense for whichever of the following purposes the President determines to be in the national security interests of the United States:*

*(1) research, development, test and evaluation for ballistic missile defense; and,*

*(2) activities for combating terrorism.*

*(b) The total amount appropriated or otherwise made available by this Act is hereby reduced by $814,300,000 to reflect revised economic assumptions: Provided, That the Secretary of Defense shall allocate this reduction proportionately by program, project, and activity: Provided further, That appropriations made available in this Act for the pay and benefits of military personnel are exempt from reductions under this provision.*

*SEC. 8117. Section 8159 of the Department of Defense Appropriations Act, 2002 (division A of Public Law 107–117; 115 Stat. 2284), is revised by adding the following paragraph (g):*

*''(g) Notwithstanding any other provision of law, any payments made pursuant to Subsection (c)(3) above may be made from appropriations available for operation and maintenance or for lease or procurement of aircraft at the time that the lease is signed.''.*

*TRANSFER OF FUNDS)*

*SEC. 8118. In addition to the amounts appropriated or otherwise made available by this Act, $300,000,000 is hereby appropriated to the Department of Defense and shall be available only for transfer to the United States Coast Guard.*

*SEC. 8119. During the current fiscal year, section 2533a(f) of Title 10, United States Code, shall not apply to any fish, shellfish, or seafood product. This section is applicable to contracts and subcontracts for the procurement of commercial items notwithstanding section 34 of the Office of Federal Procurement Policy Act (41 U.S.C. 430).*

*SEC. 8120. None of the funds appropriated by this Act may be used to convert the 939th Combat Search and Rescue Wing of the Air Force Reserve until 60 days after the Secretary of the Air Force certifies to the Congress the following: (a) that a functionally comparable search and rescue capability is available in the 939th Search and Rescue Wing's area of responsibility; (b) that any new aircraft assigned to the unit will comply with local environmental and noise standards; and (c) that the Air Force has developed a plan for the transition of personnel and manpower billets currently assigned to this unit.*

*SEC. 8121. NAVY DRY-DOCK AFDL–47 (a) REQUIREMENT FOR SALE.—Notwithstanding any other provision of law, the Secretary of the Navy shall sell the Navy Dry-dock AFDL–47, located in Charleston, South Carolina, to Detyens Shipyards, Inc., the current lessee of the dry-dock from the Navy.*

*(b) CONSIDERATION.—As consideration for the sale of the dry-dock under subsection (a), the Secretary shall receive an amount equal to the fair market value of the dry-dock at the time of the sale, as determined by the Secretary, taking into account amounts paid by, or due and owing from, the lessee.*

*SEC. 8122. (a) MANAGEMENT OF CHEMICAL DEMILITARIZATION ACTIVITIES AT BLUEGRASS ARMY DEPOT, KENTUCKY.—If a technology other than the baseline incineration program is selected for the destruction of lethal chemical munitions pursuant to section 142 of the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999 (Public Law 105–261; 50 U.S.C. 1521 note), the program manager for the Assembled Chemical Weapons Assessment shall be responsible for management of the construction, operation, and closure, and any contracting relating thereto, of chemical demilitarization activities at Bluegrass Army Depot, Kentucky, including management of the pilot-scale facility phase of the alternative technology.*

*(b) MANAGEMENT OF CHEMICAL DEMILITARIZATION ACTIVITIES AT PUEBLO DEPOT, COLORADO.—The program manager for the Assembled Chemical Weapons Assessment shall be responsible for management of the construction, operation, and closure, and any contracting relating thereto, of chemical demilitarization activities at Pueblo Army Depot, Colorado, including management of the pilot-scale facility phase of the alternative technology selected for the destruction of lethal chemical munitions.*

*SEC. 8123. From funds made available in this Act for the Office of Economic Adjustment under the heading ''Operation and Maintenance, Defense-Wide'', $100,000 shall be available for the elimination of asbestos at former Battery 204, Odiorne Point, New Hampshire.*

## *TITLE IX—COMMERCIAL REUSABLE IN-SPACE TRANSPORTATION*

***SEC. 901. SHORT TITLE.***

*This title may be cited as the ''Commercial Reusable In-Space Transportation Act of 2002''.*

***SEC. 902. FINDINGS.***

*Congress makes the following findings:*

*(1) It is in the national interest to encourage the production of cost-effective, in-space transportation systems, which would be built and operated by the private sector on a commercial basis.*

*(2) The use of reusable in-space transportation systems will enhance performance levels of in-space operations, enhance efficient and safe disposal of satellites at the end of their useful lives, and increase the capability and reliability of existing ground-to-space launch vehicles.*

*(3) Commercial reusable in-space transportation systems will enhance the economic well-being and national security of the United States by reducing space operations costs for commercial and national space programs and by adding new space capabilities to space operations.*

*(4) Commercial reusable in-space transportation systems will provide new cost-effective space capabilities (including orbital transfers from low altitude orbits to high altitude orbits and return, the correction of erroneous satellite orbits, and the recovery, refurbishment, and refueling of satellites) and the provision of upper stage functions to increase ground-to-orbit launch vehicle payloads to geostationary and other high energy orbits.*

*(5) Commercial reusable in-space transportation systems can enhance and enable the space exploration of the United States by providing lower cost trajectory injection from earth orbit, transit trajectory control, and planet arrival deceleration to support potential National Aeronautics and Space Administration missions to Mars, Pluto, and other planets.*

*(6) Satellites stranded in erroneous earth orbit due to deficiencies in their launch represent substantial economic loss to the United States and present substantial concerns for the current backlog of national space assets.*

*(7) Commercial reusable in-space transportation systems can provide new options for alternative planning approaches and risk management to enhance the mission assurance of national space assets.*

*(8) Commercial reusable in-space transportation systems developed by the private sector can provide in-space transportation services to the National Aeronautics and Space Administration, the Department of Defense, the National Reconnaissance Office, and other agencies without the need for the United States to bear the cost of production of such systems.*

*(9) The availability of loan guarantees, with the cost of credit risk to the United States paid by the private-sector, is an effective means by which the United States can help qualifying private-sector companies secure otherwise unattainable private financing for the production of commercial reusable in-space transportation systems, while at the same time minimizing Government commitment and involvement in the development of such systems.*

***SEC. 903. LOAN GUARANTEES FOR PRODUCTION OF COMMERCIAL REUSABLE IN-SPACE TRANSPORTATION.***

*(a) AUTHORITY TO MAKE LOAN GUARANTEES.—The Secretary may guarantee loans made to eligible United States commercial providers for purposes of producing commercial reusable in-space transportation services or systems.*

*(b) ELIGIBLE UNITED STATES COMMERCIAL PROVIDERS.—The Secretary shall prescribe requirements for the eligibility of United States commercial providers for loan guarantees under this section. Such requirements shall ensure that eligible providers are financially capable of undertaking a loan guaranteed under this section.*

*(c) LIMITATION ON LOANS GUARANTEED.—The Secretary may not guarantee a loan for a United States commercial provider under this section unless the Secretary determines that credit would not otherwise be reasonably available at the time of the guarantee for the commercial reusable in-space transportation service or system to be produced utilizing the proceeds of the loan.*

*(d) CREDIT SUBSIDY.—*

*(1) COLLECTION REQUIRED.—The Secretary shall collect from each United States commercial provider receiving a loan guarantee under this section an amount equal to the amount, as determined by the Secretary, to cover the cost, as defined in section 502(5) of the Federal Credit Reform Act of 1990, of the loan guarantee.*

*(2) PERIODIC DISBURSEMENTS.—In the case of a loan guarantee in which proceeds of the loan*

*are disbursed over time, the Secretary shall collect the amount required under this subsection on a pro rata basis, as determined by the Secretary, at the time of each disbursement.*

*(e) OTHER TERMS AND CONDITIONS.—*

*(1) PROHIBITION ON SUBORDINATION.—A loan guaranteed under this section may not be subordinated to another debt contracted by the United States commercial provider concerned, or to any other claims against such provider.*

*(2) RESTRICTION ON INCOME.—A loan guaranteed under this section may not—*

*(A) provide income which is excluded from gross income for purposes of chapter 1 of the Internal Revenue Code of 1986; or*

*(B) provide significant collateral or security, as determined by the Secretary, for other obligations the income from which is so excluded.*

*(3) TREATMENT OF GUARANTEE.—The guarantee of a loan under this section shall be conclusive evidence of the following:*

*(A) That the guarantee has been properly obtained.*

*(B) That the loan qualifies for the guarantee.*

*(C) That, but for fraud or material misrepresentation by the holder of the loan, the guarantee is valid, legal, and enforceable.*

*(4) OTHER TERMS AND CONDITIONS.—The Secretary may establish any other terms and conditions for a guarantee of a loan under this section, as the Secretary considers appropriate to protect the financial interests of the United States.*

*(f) ENFORCEMENT OF RIGHTS.—*

*(1) IN GENERAL.—The Attorney General may take any action the Attorney General considers appropriate to enforce any right accruing to the United States under a loan guarantee under this section.*

*(2) FORBEARANCE.—The Attorney General may, with the approval of the parties concerned, forebear from enforcing any right of the United States under a loan guaranteed under this section for the benefit of a United States commercial provider if such forbearance will not result in any cost, as defined in section 502(5) of the Federal Credit Reform Act of 1990, to the United States.*

*(3) UTILIZATION OF PROPERTY.—Notwithstanding any other provision of law and subject to the terms of a loan guaranteed under this section, upon the default of a United States commercial provider under the loan, the Secretary may, at the election of the Secretary—*

*(A) assume control of the physical asset financed by the loan; and*

*(B) complete, recondition, reconstruct, renovate, repair, maintain, operate, or sell the physical asset.*

*(g) CREDIT INSTRUMENTS.—*

*(1) AUTHORITY TO ISSUE INSTRUMENTS.—Notwithstanding any other provision of law, the Secretary may, subject to such terms and conditions as the Secretary considers appropriate, issue credit instruments to United States commercial providers of in-space transportation services or system, with the aggregate cost (as determined under the provisions of the Federal Credit Reform Act of 1990 (2 U.S.C. 661 et seq.)) of such instruments not to exceed $1,500,000,000, but only to the extent that new budget authority to cover such costs is provided in subsequent appropriations Acts or authority is otherwise provided in subsequent appropriations Acts.*

*(2) CREDIT SUBSIDY.—The Secretary shall provide a credit subsidy for any credit instrument issued under this subsection in accordance with the provisions of the Federal Credit Reform Act of 1990.*

*(3) CONSTRUCTION.—The eligibility of a United States commercial provider of in-space transportation services or systems for a credit instrument under this subsection is in addition to any eligibility of such provider for a loan guarantee under other provisions of this section.*

***SEC. 904. DEFINITIONS.***

*In this title:*

*(1) SECRETARY.—The term ''Secretary'' means the Secretary of Defense.*

*(2) COMMERCIAL PROVIDER.—The term ''commercial provider'' means any person or entity providing commercial reusable in-orbit space transportation services or systems, primary control of which is held by persons other than the Federal Government, a State or local government, or a foreign government.*

*(3) IN-SPACE TRANSPORTATION SERVICES.—The term ''in-space transportation services'' means operations and activities involved in the direct transportation or attempted transportation of a payload or object from one orbit to another by means of an in-space transportation vehicle.*

*(4) IN-SPACE TRANSPORTATION SYSTEM.—The term ''in-space transportation system'' means the space and ground elements, including in-space transportation vehicles and support space systems, and ground administration and control facilities and associated equipment, necessary for the provision of in-space transportation services.*

*(5) IN-SPACE TRANSPORTATION VEHICLE.—The term ''in-space transportation vehicle'' means a vehicle designed—*

*(A) to be based and operated in space;*

*(B) to transport various payloads or objects from one orbit to another orbit; and*

*(C) to be reusable and refueled in space.*

*(6) UNITED STATES COMMERCIAL PROVIDER.—The term ''United States commercial provider'' means any commercial provider organized under the laws of the United States that is more than 50 percent owned by United States nationals.*

*This Act may be cited as the ''Department of Defense Appropriations Act, 2003''.*

The PRESIDING OFFICER. The Senator from Nevada.

Mr. REID. Madam President, we are now on the Defense appropriations bill. Senator INOUYE worked hard to get to this point, as did Senator STEVENS—not only the ranking member of the subcommittee but the chairman of the full committee.

We would like to move this bill and finish it today. This is a very big bill. It is the largest Defense bill in the history of the country. But it has been worked and worked and worked. I think we are at a point where we should be able to do that.

Senator MCCAIN has indicated he has some amendments. And we are waiting for those, as is Senator INOUYE. If there are other amendments, they should be offered.

We are going to try to wrap this bill up today. There are different ways of doing that. I hope there is cooperation.

Senators INOUYE and STEVENS have agreed to a period of morning business for 12 minutes, and then the bill will be taken up and we will proceed in haste to complete it.

Mr. REID. Madam President, I therefore ask unanimous consent that Senator KERRY and Senator COLLINS each be recognized to speak for up to 6 minutes as if in morning business.

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

The Senator from Massachusetts.

Mr. KERRY. Madam President, I thank the distinguished majority leader.

(The remarks of Mr. KERRY are printed in today's RECORD under ''Morning Business.'')

The PRESIDING OFFICER (Mr. CLELAND). The Senator from Maine.

(The remarks of Ms. COLLINS are printed in today's RECORD during consideration of S. 812.)

Ms. COLLINS. I yield the floor.

The PRESIDING OFFICER. The Senator from Hawaii.

Mr. INOUYE. 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. INOUYE. 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. REID. Will the Senator yield?

The PRESIDING OFFICER. The Senator from Nevada.

Mr. REID. Mr. President, I was looking for an opportunity when the Senator was on the floor to say some things I think are appropriate. I have said this before, but there is no one in the Senate I have more respect and admiration for than the senior Senator from Hawaii.

The reason I wanted to say something today is I have had the opportunity the last many years to serve as ranking member and chairman of the Ethics Committee, which is a difficult job but one that I accept and understand the responsibilities. The situation arose where the Senator from Hawaii was asked by the majority leader to take over the chairmanship of that committee. As has been done on so many different occasions when there was something difficult that had to be done in the Senate, we looked to the Senator from Hawaii to do that. He has never shirked responsibility.

Frankly, there were others who maybe could have or should have done this, but of course we looked to who we thought was the best, someone whose ethical standards are what I think the Senate is all about. I want, on behalf of the Senate, Democrats and Republicans, to express appreciation for stepping into a difficult situation, handling it with grace and handling it in a manner that I think is about as well as anyone could handle things.

Let me complete this by saying we are now taking up the Defense appropriations bill, the largest Defense bill in the history of the country. There is no one who is more capable of handling a bill of this magnitude, dealing with the security and the defense of this country, than a person who is a Congressional Medal of Honor winner for the valor he showed in World War II. The valor he has shown is exemplified by the military awards he has received. He has shown the same valor in the Halls of the U.S. Senate. The people of Hawaii are so, so fortunate to have someone of his caliber, but I say that the people of Nevada are fortunate to have someone such as him serving in the Senate, and that applies to all the other States.

Mr. INOUYE. I am humbled by those very generous remarks. I thank the Senator very much.

The PRESIDING OFFICER. The Senator from South Dakota.

Mr. DASCHLE. Mr. President, I was in my office and I heard that the distinguished assistant Democratic leader was speaking about the contribution of our distinguished senior Senator from Hawaii. I wanted to come to the floor to add my voice.

Someday, when the history of this period in the Senate is written, one of those Senators who will tower as one of the giants is the Senator from Hawaii. On so many occasions over the course of his career, the Senate has called upon him to provide leadership in inquiries of all kinds, extraordinary challenges involving the need to work with both sides, somebody whose fairness, whose appreciation of this institution could never be challenged.

I come to the floor to publicly thank him for taking on the extraordinarily difficult role that he had earlier this year when he agreed to my request to serve in the capacity of senior member of the Democratic representation on the Ethics Committee. He didn't want that job. He certainly didn't ask for that job. He knew the difficulty it would pose, and he knew how much time it would consume. But in keeping with his practice, he said yes.

Last night we witnessed the product of his work, along with the others of the committee. I think it is fair to say, without question, he lived up to and exceeded the expectations of all of us in the Senate in conducting the hearings with fairness and dealing with the issue adroitly, and recognizing the important matters and issues that had to be addressed in this inquiry.

I come to the floor simply to add my voice of gratitude to the distinguished Senator from Hawaii. I might also say, as the Senator from Nevada has noted, it is a little ironic, perhaps, that the two men who have given the most in the Senate today to their country at times of war are either sitting in the chair or standing at the manager's desk as we begin the DOD appropriations bill. I know of no two finer men.

I have no greater admiration for any two people in the Senate than I do these two Senators. I thank them for what they have already done for their country and for what they continue to do in the roles they play as truly outstanding U.S. Senators.

I look forward to the debate on Defense appropriations and, as always, we turn to our dear Senator from Hawaii with our admiration and our gratitude and our expressions of hope that we conclude this successfully within the course of the next period of time.

I thank the Senator for accommodating me. I know he wants to get started on his bill, but I needed to come to the floor to express myself, as the Senator from Nevada has as well.

I yield the floor.

The PRESIDING OFFICER. The Senator from Hawaii is recognized.

Mr. INOUYE. Very seldom am I at a loss for words, but I must say I am extremely grateful to my leaders for their generous remarks. I am humbled.

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

Mr. BYRD. Mr. President, let me ask, briefly, and express my viewpoint concerning DANNY INOUYE and MAX CLELAND. Others have just preceded me in speaking of these two valiant patriots. DANNY INOUYE has always been my hero in the Senate. There was never anyone, in my judgment, greater than DANNY. In our time, or in past times, I think that says about all I need to say about DANNY. He is the ranking Democrat on the Appropriations Committee in the Senate. He has always been a valued supporter of mine when I was majority leader, when I was minority leader, and as chairman of the Senate Appropriations Committee, which I presently am. So he doesn't take second place to anybody in the Senate, as far as I am concerned. As heroes go, he is No. 1.

In recent years, there has come to the Senate the junior Senator from Georgia, MAX CLELAND, who is also my hero. So I have two heroes in the Senate. DANNY is one who has been my hero from the beginning, and MAX CLELAND is my second hero. So I just add that little bit to what has already been appropriately said by Senators REID of Nevada and the majority leader. I don't think I can add anything to that.

Mr. INOUYE. Will the Senator yield?

Mr. BYRD. Yes.

Mr. INOUYE. On behalf of the Presiding Officer and myself, we are humbled by the Senator's generous remarks.

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

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

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

Mr. WELLSTONE. Mr. President, I know we are going to have opening statements by Senator INOUYE and others. I ask unanimous consent, when we get to amendments, I be allowed to do the first amendment on the DOD appropriations bill.

The PRESIDING OFFICER. Is there objection?

Mr. BYRD. What is the request?

The PRESIDING OFFICER. The request is that the Senator be allowed to offer a first-degree amendment at the conclusion of opening statements on the Defense Appropriations Committee bill.

Mr. BYRD. Mr. President, I personally have no objection, but I would like for both managers to be here. I would like for both managers to be here when the request is made.

Mr. WELLSTONE. Yes.

The PRESIDING OFFICER. Is there objection?

Mr. BYRD. Objection to what?

The PRESIDING OFFICER. Objection to the unanimous consent request of the Senator from Minnesota to offer first an amendment upon the completion of the opening statements.

Mr. BYRD. Mr. President, I don't know what the Senator's amendment is. I object, for the moment, just for the moment, until both managers are on the floor.

The PRESIDING OFFICER. Objection is heard.

The Senator from Minnesota.

Mr. WELLSTONE. Mr. President, let me take a little bit of time then. I am sorry, I won't proceed if the Senator from Hawaii is ready to make his opening statement. I do not want to take much time. Let me just give my colleagues a sense of what the amendment is. I will try to do that because we come down to the floor and we try to get in order so we can also do some other things.

What the amendment says is that none of the funds made available in this act may be obligated for payment on any new contract to a subsidiary of a publicly traded corporation if the corporation incorporated after December 31, 2001, in a tax haven country.

Basically what I am talking about is the whole question of contracts that go out to companies that have incorporated overseas to avoid U.S. taxes. By the way, knowing this is not in the House bill, I tried to have a very moderate version which is really to not even reach back retroactively but to look at this prospectively.

That is the amendment. My guess is there will be a lot of support for the amendment. Without the unanimous consent agreement, I will wait until after opening statements and then try to seek recognition. 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. WELLSTONE. Mr. President, I ask unanimous consent the order for the quorum call be rescinded.

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

Mr. WELLSTONE. Mr. President, I will at least, even though I do not have assurance of being able to do the first amendment—I will just send the amendment to the desk. Usually what Senators want is for those of us who have amendments to come out here. I am just trying to get going here.

The PRESIDING OFFICER. The number of the amendment is No. 4364, which the clerk has.

Mr. WELLSTONE. 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. STEVENS. 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. INOUYE. Mr. President, Today I am pleased to report H.R. 5010 to the Senate with the Appropriations Committee's recommendations for funding the Department of Defense for Fiscal Year 2003.

The Bill before the Senate totals $355.4 billion in new appropriations for the Defense Department.

This is the largest spending Bill the Senate has ever considered. It is $35 billion more than was approved for FY 2002 and nearly $700 million more than recommended by the House last month. In light of the threat to this Nation, I believe the increase is well warranted.

I want to point out to my colleagues that while the Bill is the highest in history, the total recommended is still $11.4 billion below the President's request.

A request for $10 billion was originally presented by the President for contingency costs for the global war on terrorism.

This amount is being withheld by the Appropriations Committee to be allocated at a later date.

On July 3, the President submitted a sketch of how he would like these funds appropriated. Unfortunately, no details on the use of the funds were provided. Therefore, the Committee has not allocated the funding to the Subcommittee yet.

I should point out that the measure that passed the House also did not address the $10 billion contingency amount.

Over the next several months we will work with the Administration to identify the specific needs for this funding.

We expect that a supplemental Bill will be forthcoming to allocate the full $10 billion to DoD.

The remaining $1.4 billion decrease reflects transfers made to other defense related activities to cover pressing requirements for military construction and nuclear weapons related programs in the Department of Energy. These are not under the jurisdiction of the Defense Subcommittee.

The priorities for this Bill remain the same as last year. First and foremost, we must ensure that we provide what the men and women in uniform need. To that end, we have fully funded the request for a 4.1% across-the-board pay raise; funded the newly authorized benefits for our military; provided funding to cover the authorized end strength for our Active, Guard, and Reserves; funded the Tricare for Life program for our military retirees; and, fully funded the Defense Health Program.

Second, we have included funding for all the Defense Department's transformation programs.

We recommend full funding for the Army's Interim Armored Vehicle. We have increased funding for unmanned aerial vehicles. We recommend an increase of $278 million in the Army's future combat system.

And we provide an additional $70 million to support the planning and deployment of the New Interim Army Brigade Combat Teams and strongly encourage the Defense Department to deploy all six Brigades.

Third, we recommend funding all the investment priorities of the Defense Department. This includes full funding for the F–22, full funding for the Navy's DDX, increased funding for four more F/A–18 aircraft, full funding for 15 C–17 aircraft, full funding for V–22 aircraft purchases, and increasing funding for Navy shipbuilding.

Fourth, a major initiative in funding for the bill is to improve fiscal discipline in the Department of Defense. This Committee and our colleagues in the House have been concerned for several years with the increased cost growth in Navy ships. This year alone the total unfunded liability for the Navy in this area has increased by $1 billion to $4 billion.

The Committee has carefully reviewed the request and reallocated resources that are not required at this time, in order to increase funding to pay off these existing bills. In total, the Committee recommends $1.4 billion to cover these must pay bills. We have discussed this matter with Navy officials and they concur that this is the best approach to get their financial house in order.

Fifth, the bill recommends adding $585 million to purchase 15 C–17 aircraft. The Air Force recommended a risky scheme, already rejected by the House, to finance the C–17 Program incrementally. This proposal could have required us to cut C–17 production to 12. The recommendation will ensure that we continue to produce 15 C–17's under the approved multi-year contract.

Sixth, the Committee has mirrored the recommendations approved by the Senate regarding ballistic missile defense. The bill provides $6.9 billion for ballistic missile defense programs. In addition, as authorized, the Committee recommends $814 million to be allocated at the discretion of the President for either counterterrorism or missile defense.

In total, the $7.7 billion recommendation is the same as requested by the Administration.

Finally, I want to thank my Co-Chairman, Senator STEVENS and all of his hard work on this bill. The Committee held 12 hearings to review the Defense Department's budget.

The recommendations that we have put forward here reflect what we learned in those hearings, and in our meetings with senior DoD officials and members of the public.

I believe this is a very good bill and urge your support.

Mr. STEVENS. Mr. President, I endorse the statement made by the Distinguished Chairman of our Subcommittee, Senator INOUYE, and fully support the Bill now pending before the Senate. In a time of war and conflict, including unprecedented threats here at home, the Senate engages in no more important task than funding our national defense. The Bill reported by the Committee, under Senator INOUYE's leadership and guidance, fully meets the needs of our men and women who serve in the Armed Forces, today and for the future.

The Bill exceeds the level provided in the House version of the Bill by nearly $700 million.

The Bill is consistent with the President's total request for the defense budget function 050, with the exception of the $10 billion reserve, which I will speak to shortly.

The Chairman has accurately and comprehensively addressed the contents of the Bill, I will take just a few moments to highlight several priorities. While providing unprecedented levels of funding for current training and operations, this Bill serves to decisively move our military towards a future of more mobile, more lethal, and more efficient systems and capabilities. In all four services, and in the Missile Defense Program, this Bill shifts from the sustainment of legacy systems, designed to fight the Cold War, to the technologies of the 21st Century.

For the Army, the increase in this Bill for the future combat system, and the Non-Line-of-Sight Cannon to succeed the Crusader, keeps faith with General Shinseki's vision of the Army's future.

For the Navy, full funding for the DD–X Program, and start up funds for the Littoral Combat Ship, prepare the Navy to maintain our dominance at sea.

For the Air Force, funding for the F–22, the JSF, C–17, and JASSAM all contribute to a refurbishment of the Air Force unmatched since the introduction of the jet fighter in the 1950's.

For the Marine Corps, the Bill fully supports the V–22, and puts the LPD–17 Class Amphibious Assault Ship Program back on track, along with JSF.

Of special importance to me, and my State, is the funding provided in the Bill for missile defense. Intelligence analyses over the past decade consistently demonstrate the increased threat, and our continued vulnerability to long-rang missile attack, potentially with weapons of mass destruction. President Bush, in a new relationship with Russia, has established a framework whereby our Nation will go forward with a limited missile defense capability, without putting at risk our relations with Russia.

Many claimed that deployment of U.S. national missile defense systems would precipitate a new arms race. That speculation has proven to be without basis or merit.

Last week, several Members met with our Supreme Allied Commander in Europe, Gen. Joe Ralston, who spoke positively about the new ties between NATO and Russia.

Greater security for our Nation fosters greater security and stability for our allies and emerging partners.

This Bill accommodates the priorities presented by the President and the Secretary of Defense to the Congress.

The Bill lives within the fiscal limits set by our Committee in the absence of a budget resolution.

The Bill addresses the key priorities raised in the Senate's consideration of the Defense Authorization Bill for Fiscal Year 2003.

I urge all Members to work with the Chairman today to accomplish the expeditious consideration and passage of this Bill.

Consistent with the allocation adopted by the Appropriations Committee, by unanimous vote, I will oppose any amendment that would increase the spending level in this Bill.

We have been working with Members since the Bill was filed to address additional concerns, and will proceed to a number of cleared amendments shortly.

I will close by expressing by appreciation to the Chairman for his partnership, colleagiltiy and courtesy at every state in the preparation of this Bill.

I support the Bill with reservation or qualification, and urge all my Colleagues to join advancing this Bill to Conference today.

Mr. INOUYE. Mr. President, I believe the Senator from Minnesota wishes to be recognized.

The PRESIDING OFFICER. The Senator from Minnesota.

Mr. WELLSTONE. Thank you, Mr. President.

AMENDMENT NO. 4364

Mr. WELLSTONE. Mr. President, I send an amendment to the desk.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Minnesota [Mr. WELLSTONE] proposes an amendment numbered 4364.

Mr. WELLSTONE. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

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

The amendment is as follows:

(Purpose: To prohibit the use of funds made available in this Act for payment on any new contract to any corporate expatriate)

On page 223, between lines 20 and 21, insert the following:

SEC. 8124. CORPORATE EXPATRIATES. (a) LIMITATION.—None of the funds made available in this Act may be obligated for payment on any new contract to a subsidiary of a publicly traded corporation if the corporation incorporated after December 31, 2001 in a tax haven country but the United States is the principal market for the public trading of the corporation's stock.

(b) DEFINITION.—For purposes of subsection (a), the term ''tax haven country'' means each of the following: Barbados, Bermuda, British Virgin Islands, Cayman Islands, Commonwealth of the Bahamas, Cyprus, Gibraltar, Isle of Man, the Principality of Liechtenstein, the Principality of Monaco, the Republic of the Seychelles, and any other country that the Secretary of the Treasury determines is used as a site of incorporation primarily for the purpose of avoiding United States taxation.

(c) WAIVER.—The President may waive subsection (a) with respect to any specific contract if the President certifies to the Appropriations Committees of the House of Representatives and the Senate that the waiver is required in the interest of national security.

Mr. WELLSTONE. Mr. President and colleagues, I offer a very simple amendment that would bar any funds in this bill from being used to enter contracts with U.S. companies that incorporate overseas to avoid U.S. taxes. Let me repeat that. I rise to offer a very simple amendment that I believe will command a majority vote—I hope more than a majority vote—in the Senate that would bar any funds in this bill from being used to enter contracts with U.S. companies that incorporate overseas to avoid U.S. taxes.

Former U.S. companies that have renounced their citizenship currently hold at least $2 billion worth of contracts with the Federal Government. I do not think companies that are not willing to pay their fair share of taxes should be able to hold these contracts.

U.S. companies that play by the rules of the game, that pay their fair share of taxes, should not be forced to compete with bad actors that can undercut their bids because of a tax loophole.

In the last couple of years, a number of prominent U.S. corporations, using creative paperwork, have transformed themselves into Bermuda corporations, purely to avoid paying their fair share of U.S. taxes.

These new Bermuda companies are essentially or basically shell corporations. They have no staff. They have no offices. They have no business activity in Bermuda. They exist for the sole purpose of shielding income from the Internal Revenue Service.

U.S. tax law contains many provisions designed to expose such creative accounting and to require U.S. companies that are foreign in name only to pay the same taxes as other domestic corporations. But these bad corporate former citizens exploit a specific loophole in current law so that the company is treated as foreign for tax purposes and, therefore, pays no U.S. taxes on its foreign income.

The loophole gives tens of millions of dollars in tax breaks to major multinational companies with significant non-U.S. business. It also puts other U.S. companies unwilling or unable to use this loophole at a competitive disadvantage. No American company should be penalized staying put while others renounce U.S. citizenship for a tax break.

The problem with all this is that when these companies do not pay their fair share, the rest of the American taxpayers and businesses are stuck with the bill.

I think I can safely say that very few of the small businesses that I visit in Detroit Lakes, MN, or Mankato or Minneapolis or Duluth can avail themselves of the ''Bermuda Triangle.'' They cannot afford the big-name tax lawyers and accountants to show them how to do their books Enron-style, but they probably would not want to anyway if it meant renouncing their citizenship. So the price they pay for their good citizenship is a higher tax bill.

I believe the Congress will close this tax loophole this year. There is growing support for doing so in the House. And I have introduced legislation to close this loophole, and the Senate Finance Committee has reported a version of this legislation, that I strongly support, that would do so as well.

I say to the distinguished chair of the Appropriations Subcommittee on Defense, it is not appropriate for the Senate to close the tax loophole on this bill. This is not a tax bill, and I understand that. Frankly, I think the tax legislation that is going to pass is going to make it clear that any company that is located in Bermuda forthwith, no matter when they incorporated, they are not going to be able to do it any longer. They are not going to be able to do it. We are going to close that tax loophole.

But what is appropriate for us to say today—and this is my moderate version; this is the Senator WELLSTONE moderate version—what is appropriate for us to say today is, if a U.S. company wants to bid for a contract for U.S. defense work, it should not renounce its U.S. citizenship for a tax break.

I am simply applying this to any corporation that incorporated after December 31, 2001. I am not even reaching back. I am saying, look, everyone has had the time now to understand, first, the unfairness and the outrageousness of this from the point of view of who pays taxes, who pays their fair share of taxes; and, second, everybody has had the time to now understand what 9/11 meant to us, and any company, with that background, that now continues to engage in this egregious practice—after December 31, 2001, and in the future—that is going to basically say, ''We are renouncing our U.S. citizenship so we don't have to pay taxes,'' no longer will be eligible for any procurement. That really is what this amendment says.

We all make sacrifices in a time of war. The only sacrifice this amendment asks of Federal contractors is that they pay their fair share of taxes like everybody else.

I say to my colleagues—and I say to the distinguished chair of the committee—that, look, I want to go after this tax loophole. Believe me, we will eliminate it. We will do it through the tax committee.

In the homeland defense bill on the House side, there is a tougher version that reaches back. But I know in the House Defense appropriations bill there is no such provision such as the provision I am offering today.

So what I am saying to my colleagues—I guess I have a little bit

more; maybe it is because I am a Senator; maybe it is because of party control, I don't know—I have a little bit more faith in what we will do here. What I am saying to my colleagues is, I am giving you the moderate version. I am giving you the most reasonable proposition.

We are only saying to Federal contractors: Pay your fair share of taxes as does everybody else, and for now on—December 31, 2001, and forward—any of you companies, if you want to go to Bermuda and play this shell game and renounce your citizenship, then you are not going to get our defense contracts. You are not going to get any of the procurement.

This is really simple. This is really basic. This is really straightforward. I think it would be a great shot across the bow and a really powerful message, a really powerful and positive message, by the Senate to go on record with a strong vote for this amendment.

The PRESIDING OFFICER. The Senator from Hawaii.

Mr. INOUYE. Mr. President, I hope the Senator agrees that this amendment can be set aside temporarily to accommodate the request of the chairman of the Finance Committee who wishes to study the measure.

I can assure you, sir, this matter will be considered.

The PRESIDING OFFICER. The Senator from Minnesota.

Mr. WELLSTONE. Mr. President, I say to my colleague from Hawaii, I would be pleased to honor his request. I also know that our colleague, Senator STEVENS, from Alaska has an important engagement at the White House and will not be here for a while anyway and requested that he be here before there be any vote. So we can set this amendment aside.

The only thing I want to say to my colleague from Hawaii is, I am certainly pleased for the Finance Committee people to look at this amendment. We will continue the debate, and we will have a vote. We will have a recorded vote. I worked hard on what could be the most central, simple, compelling message that also is fair—maybe almost too fair, frankly—to some of these companies. This is the proposition. This is the proposal.

So it is fine with me to put it aside, understanding full well that we will continue the debate and have an up-or-down vote.

Mr. INOUYE. With that understanding, I ask unanimous consent that this measure be temporarily set aside.

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

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

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

AMENDMENTS NOS. 4373 THROUGH 4386, EN BLOC

Mr. INOUYE. Mr. President, I have a list of amendments. These amendments have been cleared by both managers and their staffs. No objections have been voiced. Furthermore, these amendments do not add a single dollar to the bill. These are earmarks.

With that, the first amendment on behalf of Senator ALLEN; variable floor rocket propulsion, earmarking $5 million; next amendment for Senator BREAUX, naval warfare tech center, earmarking $7 million; The next amendment for Senator BENNETT, Army Tooele Depot, earmarking $4.5 million; Next amendment for Senator CLELAND, microelectronics, earmarking $3 million; Next amendment for Senator COLLINS, TRP composites, earmarking $2 million; Next amendment for Senator CONRAD, Internet-based diabetes management, earmarking $5 million; Next amendment for Senator DAYTON, live fire ranges, earmarking $3.7 million; Amendment for Senator DEWINE, Army weapon materials, earmarking $5 million; Next amendment for Senator ENSIGN, PRC–117 radios, earmarking $500,000; Next amendment for Senators Frist and Thompson, expandable light shelters, earmarking $5 million; Next amendment for Senator KYL, extended range warfare, earmarking $10 million; Next amendment for Senator SANTORUM and Senator SPECTER, land forces readiness, earmarking $3 million; Next amendment for Senators SANTORUM and SPECTER, civil reserve space, earmarking $1 million; Next amendment for Senators VOINOVICH and DEWINE, viable combat avionics, earmarking $2 million.

Mr. President, I send the amendments to the desk en bloc and ask that they be considered and agreed to en bloc.

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

The amendments (Nos. 4373 through 4386) were agreed to en bloc, as follows:

AMENDMENT NO. 4373

(Purpose: To make available from amounts available for the Air Force for research, development, test, and evaluation $5,000,000 for the Variable Flow Ducted Rocket propulsion system (PE063216F)

On page 223, between lines 20 and 21, insert the following:

SEC. 8124. Of the amount appropriated by title IV under the heading ''RESEARCH, DEVELOPMENT, TEST, AND EVALUATION, AIR FORCE'', up to $5,000,000 may be available for the Variable Flow Ducted Rocket propulsion system (PE063216F).

AMENDMENT NO. 4374

(Purpose: To set aside funding under RDT&E, Navy, for the Human Resource Enterprise Strategy at the Space and Naval Warfare Information Technology Center)

On page 223, between lines 20 and 21, insert the following:

SEC. 8124. Of the total amount appropriated by title IV under the heading ''RESEARCH, DEVELOPMENT, TEST, AND EVALUATION, NAVY'', $7,000,000 may be used for the Human Resource Enterprise Strategy at the Space and Naval Warfare Information Technology Center.

AMENDMENT NO. 4375

(Purpose: To set aside from amounts available from H.R. 4775 to settle the taking of property adjacent to the Army Tooele Depot)

At the appropriate place in the bill, add the following:

SEC. . Of the amounts appropriated in H.R. 4775, Chapter 3, under the heading ''DEFENSE EMERGENCY RESPONSE'', up to $4,500,000 may be made available to settle the disputed takings of property adjacent to the Tooele Army Depot, Utah.

AMENDMENT NO. 4376

(Purpose: To make available from amounts available for Defense-Wide research, development, test, and evaluation, $3,000,000 for execution of the ferrite diminishing manufacturing program by the Defense Micro-Electronics Activity)

On page 223, between lines 20 and 21, insert the following:

SEC. 8124. Of the amount appropriated by title IV under the heading ''RESEARCH, DEVELOPMENT, TEST, AND EVALUATION, DEFENSE-WIDE'', up to $3,000,000 may be available for execution of the ferrite diminishing manufacturing program by the Defense Micro-Electronics Activity.

AMENDMENT NO. 4377

(Purpose: To set aside from amounts available for the Navy for research, development, test, and evaluation, $2,000,000 for Structural Reliability of FRP Composites (PE0602123N))

In title IV under the heading ''RESEARCH DEVELOPMENT, TEST, AND EVALUATION, NAVY,'' insert before the period the following: ''Provided further, That of the funds appropriated by this paragraph, up to $2,000,000 may be available for Structural Reliability of FRP Composites.

AMENDMENT NO. 4378

(Purpose: To set aside from amounts available for the Army for research, development, test, and evaluation, $5,000,000 for the Medical Vanguard Project to expand the clinical trial of the Internet-based diabetes managements system under that project)

On page 223, between lines 20 and 21, insert the following:

SEC. 8124. Of the amount appropriated by title IV under the heading RESEARCH, DEVELOPMENT, TEST, AND EVALUATION, ARMY'', up to $5,000,000 may be available for the Medical Vanguard Project to expand the clinical trial of the Internet-based diabetes managements system under that project.

AMENDMENT NO. 4379

(Purpose: To make available from amounts available for the Army for operation and maintenance, $3,700,000 for Live Fire Range Upgrades)

On page 223, between lines 20 and 21, insert the following:

SEC. 8124. (a) AMOUNT AVAILABLE FOR LIVE FIRE RANGE UPGRADES.—Of the amount appropriated by title II under the heading OPERATION AND MAINTENANCE, ARMY'', up to $3,700,000 may be available for Live Fire Range Upgrades.

(b) SUPPLEMENT NOT SUPPLANT.—The amount available under subsection (a) for the purpose specified in that subsection is in addition to any other amounts available under this Act for that purpose.

AMENDMENT NO. 4380

(Purpose: To set aside funding under RDT&E, Army, for materials joining for Army weapon systems)

On page 223, between lines 20 and 21, insert the following:

SEC. 8124. Of the amount appropriated by title IV under the heading ''RESEARCH, DEVELOPMENT, TEST AND EVALUATION, ARMY'', up to $5,000,000 may be used for materials joining for Army weapon systems.

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AMENDMENT NO. 4381

(Purpose: To make available from amounts available to the Army for other procurement $500,000 for PRC–117F SATCOM backpack radios)

On page 223, between lines 20 and 21, insert the following:

SEC. 8124. Of the amount appropriated by III under the heading ''OTHER PROCUREMENT, ARMY'', up to $500,000 may be available for PRC–117F SATCOM backpack radios.

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AMENDMENT NO. 4382

On page 223, between lines 20 and 21, insert the following:

SEC. 8124. Of the total amount appropriated by this division for Operation and Maintenance, Army, up to $5,000,000 may be used for Expandable Light Air Mobility Shelters (ELAMS).

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AMENDMENT NO. 4383

(Purpose: To set aside from amounts available for the Navy for research, development, test, and evaluation for Extended Range Anti-Air Warfare)

At the appropriate place in the bill, add the following:

SEC. . Of the amounts appropriated by Title IV under the heading ''Research, Development, Test, and Evaluation, Navy'', up to $10,000,000 may be made available for extended range anti-air warfare.

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AMENDMENT NO. 4384

(Purpose: To set aside from amounts available for the Army Reserve for operation and maintenance $3,000,000 for Land Forces Readiness for Information Operations Sustainment)

On page 223, between lines 20 and 21, insert the following:

SEC. 8124. Of the amount appropriated by title II under the heading ''Operation and Maintenance, Army Reserve'', up to $3,000,000 may be available for Land Forces Readiness for Information Operations Sustainment.

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AMENDMENT NO. 4385

(Purpose: To set aside from amounts available for the Air Force for research, development, test, and evaluation $1,000,000 for Space and Missile Operations for the Civil Reserve Space Service (CRSS) initiative)

On page 223, between lines 20 and 21, insert the following:

SEC. 8124. Of the amount appropriated by title IV under the heading ''Research, Development, Test, and Evaluation, Air Force'', up to $1,000,000 may be available for Space and Missile Operations for the Civil Reserve Space Service (CRSS) initiative.

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AMENDMENT NO. 4386

(Purpose: To set aside funding under RDT&E, Air Force, for the Viable Combat Avionics Initiative of the Air Force)

On page 223, between lines 20 and 21, insert the following:

SEC. 8124. Of the amount appropriated by title IV under the heading ''Research, Development, Test and Evaluation, Air Force'', $2,000,000 may be used for the Viable Combat Avionics Initiative of the Air Force.

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Mr. INOUYE. 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.

Mr. INOUYE. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The senior assistant bill clerk proceeded to call the roll.

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

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

## RECESS

Mr. REID. Mr. President, the staff of Senator INOUYE and Senator STEVENS are working on amendments that have been submitted to them. We have nothing that is imminent on which the committee can work.

I ask unanimous consent that the Senate stand in recess until 3:30 p.m.

There being no objection, the Senate, at 2:52 p.m., recessed until 3:30 p.m. and reassembled when called to order by the Presiding Officer (Mrs. MURRAY).

Mr. INOUYE. Madam President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. DODD. 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. DODD. Madam President, I ask unanimous consent that I be permitted to speak as in morning business.

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

(The remarks of Mr. DODD are printed in today's RECORD under ''Morning Business.'')

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

AMENDMENT NOS. 4400 THROUGH 4411, EN BLOC

Mr. INOUYE. Madam President, I will be sending to the desk shortly a set of amendments. None of these amendments would add any money to the bill. They are either earmarks or technical amendments. All of these amendments have been cleared by both managers.

I will explain these amendments before I send the amendments to the desk. First, the Bingaman amendment is earmarking $2.5 million for the Maglev upgrade program. An amendment for Senator DORGAN is earmarking $10 million for the Chameleon miniaturized wireless systems; An amendment for Senator MURRAY is earmarking $7 million for short pulse laser development; An amendment for Senator REID is earmarking $4 million for clean-bio consequence management; An amendment for Senator WARNER is earmarking $5 million for study of a roadway at Fort Belvoir; An amendment for Senator DODD is earmarking $5 million for microfuel cell research; An amendment for Senator NICKLES is earmarking $3 million for supercritical water systems explosive demilitarization technology; An amendment for Senator ROBERTS is earmarking $1 million for agroterrorism research; An amendment for myself is for making a technical correction to the emergency supplemental to correct an editorial mistake; An amendment for Senator COLLINS makes a technical correction to the emergency supplemental; An amendment for Senator CARPER is earmarking $8 million for biological warfare training; An amendment for Senator BIDEN is earmarking $5 million for multifuel auxiliary power units.

I send to the desk these amendments and ask unanimous consent they be agreed to, en bloc.

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

The amendments (Nos. 4400 through 4411) were agreed to en bloc as follows:

AMENDMENT NO. 4400

(Purpose: To set aside from amounts available for the Air Force for research, development, test, and evaluation for Major T&E Investment (PE0604759F), $2,500,000 for the Maglev upgrade program)

On page 223, between lines 20 and 21, insert the following:

SEC. 8124. Of the amount appropriated by title IV under the heading ''RESEARCH, DEVELOPMENT, TEST, AND EVALUATION, AIR FORCE'' and available for Major T&E Investment up to $2,500,000 may be available for the Maglev upgrade program.

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AMENDMENT NO. 4401

(Purpose: To provide funds for the Chameleon Miniaturized Wireless System)

At the appropriate place in the bill, insert the following:

''Of the funds appropriated under the heading 'RDT&E, Defense Wide', $10,000,000 may be made available for the Chameleon Miniaturized Wireless System.''

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AMENDMENT NO. 4402

(Purpose: To make available from amounts available for the Army for research, development, test, and evaluation, $9,000,000 for continuing design and fabrication of the industrial short pulse laser development-femtosecond laser)

On page 223, between lines 20 and 21, insert the following:

SEC. 8124. (a) AVAILABILITY OF AMOUNT FOR INDUSTRIAL SHORT PULSE LASER DEVELOPMENT.—Of the amount appropriated by title IV under the heading ''RESEARCH, DEVELOPMENT, TEST, AND EVALUATION, ARMY'', up to $7,000,000 may be available for continuing design and fabrication of the industrial short pulse laser development–femtosecond laser.

(b) SUPPLEMENT NOT SUPPLANT.—The amount available under subsection (a) for the purpose specified in that subsection is in addition to any other amounts available under this Act for that purpose.

AMENDMENT NO. 4403

(Purpose: To make available from amounts available to the Navy for research, development, test, and evaluation $4,000,000 for Marine Corps program wide support (PE0605873M) for chemical and biological consequence management for continuing biological and chemical decontamination technology research for the United States Marine Corps Systems Command on a biological decontamination technology that uses electro-chemically activated solution (ECASOL))

On page 223, between lines 20 and 21, insert the following:

SEC. 8124. (a) Of the amount appropriated by title IV under the heading ''RESEARCH, DEVELOPMENT, TEST, AND EVALUATION, NAVY'', up to $4,000,000 may be available for Marine Corps program wide support for chemical and biological consequence management for continuing biological and chemical decontamination technology research for the United States Marine Corps Systems Command on a biological decontamination technology that uses electro-chemically activated solution (ECASOL).

(b) The amount available under subsection (a) for the program element and purpose set forth in that subsection is in addition to any other amounts available under this Act for that program element and purpose.

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AMENDMENT NO. 4404

(Purpose: To require a preliminary engineering study and environmental analysis of establishing a connector road between United States Route 1 and Telegraph Road in the vicinity of Fort Belvoir, Virginia, and to earmark $5,000,000 for the Army for operation and maintenance for that preliminary study and analysis)

At the end of title VIII, add the following:

SEC. 8124. (a) PRELIMINARY STUDY AND ANALYSIS REQUIRED.—The Secretary of the Army shall carry out a preliminary engineering study and environmental analysis regarding the establishment of a connector road between United States Route 1 and Telegraph Road in the vicinity of Fort Belvoir, Virginia.

(b) FUNDING.—Of the amount appropriated by title II under the heading ''OPERATION AND MAINTENANCE, ARMY'', up to $5,000,000 may be available for the preliminary study and analysis required by subsection (a).

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AMENDMENT NO. 4405

(Purpose: To make available from amounts available for the Army for research, development, test, and evaluation $5,000,000 for research on miniature and micro fuel cell systems)

On page 223, between lines 20 and 21, insert the following:

SEC. 8124. Of the amount appropriated by title IV under the heading ''RESEARCH, DEVELOPMENT, TEST, AND EVALUATION, ARMY'', up to $5,000,000 may be available for research on miniature and micro fuel cell systems.

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AMENDMENT NO. 4406

At the appropriate place in the bill, insert the following:

Of the funds appropriated in the Act under the heading ''Research, Development, Test and Evaluation, Defense-Wide'' up to $3,000,000 may be made available for the Supercritical Water Systems Explosives Demilitarization Technology.

AMENDMENT NO. 4407

(Purpose: To appropriate, with an offset, $1,000,000 for research, analysis, and assessment of federal, state, and local efforts to counter potential agroterrorist attacks)

At the end of Title IV, Research, Development, Test & Evaluation, Defense Wide, add the following:

**SEC. AGROTERRORIST ATTACK RESPONSE.**

(a) AVAILABILITY.—(1) Of the amount appropriated under Title IV for research, development, test, and evaluation, defense-wide, the amount available for basic research, line 8, the Chemical and Biological Defense Program (PE 0601384BP) is hereby increased by $1,000,000, with the amount of such increase to be available for research, analysis, and assessment of federal, state, and local efforts to counter potential agroterrorist attacks.

(2) The amount available under paragraph (1) for research, analysis, and assessment described in that paragraph is in addition to any other amounts available in this Act for such research, analysis, and assessment.

(b) OFFSET.—Of the amount appropriated under Title IV for research, development, test, and evaluation, Defense-wide, the amount available for Agroterror prediction and risk assessment, line 37, Chemical and Biological Defense Program (PE 0603384BO), is hereby reduced by $1,000,000.

AMENDMENT NO. 4408

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(Purpose: To make a technical correction to the supplemental appropriation for fiscal year 2002)

On page 223, between lines 20 and 21, insert the following:

Effective upon the enactment of the Act entitled ''An Act making supplemental appropriations for further recovery from and response to terrorist attacks on the United States for the fiscal year ending September 30, 2002, and for other purposes'', section 309 of such Act is amended by striking ''of'' after the word ''instead''.

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AMENDMENT NO. 4409

(Purpose: To provide for the transition of the naval base on Schoodic Peninsula, Maine, to utilization as a research and education center for Acadia National Park)

On page 223, between lines 20 and 21, insert the following:

SEC. 8124. The Secretary of Defense may modify the grant made to the State of Maine pursuant to section 310 of the 2002 Supplemental Appropriations Act for Further Recovery From and Response To Terrorist Attacks on the United States (Public Law 107–____) such that the modified grant is for purposes of supporting community adjustment activities relating to the closure of the Naval Security Group Activity, Winter Harbor, Maine (the naval base on Schoodic Point, within Acadia National Park), and the reuse of such Activity, including reuse as a research and education center the activities of which may be consistent with the purposes of Acadia National Park, as determined by the Secretary of the Interior. The grant may be so modified not later than 60 days after the date of the enactment of this Act.

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AMENDMENT NO. 4410

(Purpose: To make available from amounts available for the Navy for research, development, test, and evaluation $8,00,000 for the Integrated Biological Warfare Technology Platform)

On page 223, between lines 20 and 21, insert the following:

SEC. 8124. Of the amount appropriated by title IV under the heading ''RESEARCH, DEVELOPMENT, TEST, AND EVALUATION, NAVY'', up to $8,000,000 may be available for the Integrated Biological Warfare Technology Platform.

AMENDMENT NO. 4411

(Purpose: To make available from amounts available for the Army for research, development, test, and evaluation $5,000,000 for the Rotary, Multi-Fuel, Auxiliary Power Unit)

On page 223, between lines 20 and 21, insert the following:

SEC. 8124. Of the amount appropriated by title IV under the heading ''RESEARCH, DEVELOPMENT, TEST, AND EVALUATION, ARMY'', up to $5,000,000 may be available for the Rotary, Multi-Fuel, Auxiliary Power Unit.

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Mr. INOUYE. Madam President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk called the roll.

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

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

AMENDMENT NO. 4364

Mr. WELLSTONE. Madam President, I am not going to call up the amendment yet, unless the managers are ready to do so. If they are, I will. I call up amendment No. 4364.

Madam President, I have spoken on this amendment and I wait for other Senators to come to the floor. It is a very simple amendment. What it would do is bar the funds in this bill from being used to enter into contracts with U.S. companies who incorporate overseas to avoid U.S. taxes. Madam President, I went over this amendment before.

Let me add a couple of points so my colleagues know what my thinking is.

As I said, I wanted to keep it very simple. I want to keep it very basic and very straightforward, and I think very fair.

I think there are two issues here. One of them has to do with tax fairness or tax unfairness. I think it is absolutely maddening when people in our country see U.S. corporations using creative paperwork and then transforming themselves into Bermuda corporations so they do not have to pay their fair share of U.S. taxes.

What I am saying is if these companies, post-December 31, 2001, have engaged in such a practice, and they no longer call themselves U.S. citizens, then they are not beneficiaries of U.S. defense contracts. My thinking about this is as follows: I am thinking to myself, we are all aware of 9/11 and what it meant to our country. I have given companies time to respond in the positive to 9/11 and be the best of good corporate citizens, be the best of good, patriotic corporate citizens. I even allowed some lag time after 9/11. But what I am saying is starting the beginning of this year, if any of these companies have engaged in the same sham practices so they do not have to pay U.S. taxes, they are not going to be the

beneficiary of the public contracts. It really is that simple.

We all make sacrifices. God knows, many Americans are making sacrifices today. The only sacrifice this amendment asks of Federal contractors is they pay their fair share of taxes like everybody else, and at the very minimum, given 9/11 and how strongly our country feels, no corporation from the beginning of the year on, engage in this kind of deceitful practice.

This is a narrowly tailored amendment; this is not a tax bill. Not in the spirit of bragging but I will just say it, I know at least the first piece of legislation that eliminated this tax loophole I wrote, and we sent it to the Finance Committee. They did good work. The have done great work. They reported out a bill that basically eliminates this egregious loophole.

But what I am saying is until that loophole is eliminated, and no company is able to engage in this practice, what a great message for the Senate to send.

When the homeland defense bill comes to the floor, I will join forces with other colleagues—I am sure Senator LIEBERMAN and others—and we will do something parallel to what was done, to my understanding, in the House of Representatives. But right now on this appropriations bill, knowing full well the House did not take any action, I am trying to be a legislator here. I thought to myself: I will narrowly tailor it. I will have it speak specifically to this 1-year appropriations bill. It will send a very unmistakable message. And I believe this amendment will command widespread support.

I do not know whether we will have unanimous consent. The distinguished chair of the Defense Appropriations Committee tells me there is some opposition, in which case I am pleased to have the debate. Then we will have a vote after the debate.

Again, this is the second time I have come to the floor. I want to be clear what this amendment is about and what it is not about. I hope there will be very strong support on both sides of the aisle for this amendment.

I yield the floor.

The PRESIDING OFFICER. The Senator from Hawaii.

Mr. INOUYE. Madam President, in order to expedite the consideration of this amendment, a call has been placed for Senators interested in this matter to report to the floor to carry out the debate.

May I ask a question of the sponsor of this measure? By ''tax haven country,'' does the Senator mean countries such as Barbados, Bermuda, British Virgin Islands, Cayman Islands, Commonwealth of the Bahamas, Cyprus, Gibralter, Isle of Man, the Principality of Liechtenstein, the Principality of Monaco, the Republic of Seychelles, and any other country that the Secretary of the Treasury determines is used as a site of incorporation, primarily for the purpose of avoiding U.S. taxation?

Mr. WELLSTONE. I say to the chairman, that is correct. I make it clear the Secretary of the Treasury, in addition to listing those countries, if there is another country that he determines is using this site of incorporation primarily to avoid U.S. taxation, that is included.

Mr. INOUYE. The Senator's amendment also provides if the President of the United States should consider that the interests of national security would require it, notwithstanding this designation, they may do business?

Mr. WELLSTONE. That is correct. I thank the chairman.

Mr. INOUYE. How many companies are involved?

Mr. WELLSTONE. I say to the distinguished chair, I do not really know. Since I am talking about from the beginning of this year on, I do not know how many companies are actually going to be affected by this. I do not reach back. I just simply say, post beginning of this year, it is completely inappropriate, given 9/11, given how everybody feels in the country. I don't know how many companies are affected. I want to put every company on notice if they continue in this practice they are not going to get the contracts.

Mr. INOUYE. May I ask another question.

Mr. WELLSTONE. Please.

Mr. INOUYE. Am I correct, in the last fiscal year, approximately $2 billion worth of contracts were awarded to companies incorporated in these countries?

Mr. WELLSTONE. The Senator is correct.

Mr. INOUYE. I thank the Senator.

Mr. WELLSTONE. Madam President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? At the moment there is not.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. REID. 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. REID. Madam President, it is my understanding that the Senate is considering the Wellstone amendment. Is that true?

The PRESIDING OFFICER. The Senator is correct.

AMENDMENT NO. 4412 TO AMENDMENT NO. 4364

Mr. WELLSTONE. Mr. President, I send an amendment to the desk.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Minnesota [Mr. WELLSTONE] proposes an amendment numbered 4412 to amendment No. 4364.

Mr. REID. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

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

The amendment is as follows:

AMENDMENT NO. 4412

(Purpose: To prohibit the use of funds made available in this Act for payment on any new contract to any corporate expatriate)

Strike all after the first word:

SEC. 8124. CORPORATE EXPATRIATES. (a) LIMITATION.—None of the funds made available in this Act may be obligated for payment on any new contract to a subsidiary of a publicly traded corporation if the corporation is incorporated after December 31, 2002 in a tax haven country but the United States is the principal market for the public trading of the corporation's stock.

(b) DEFINITION.—For purposes of subsection (a), the term ''tax haven country'' means each of the following: Barbados, Bermuda, British Virgin Islands, Cayman Islands, Commonwealth of the Bahamas, Cyprus, Gibraltar, Isle of Man, the Principality of Liechtenstein, the Principality of Monaco, the Republic of the Seychelles, and any other country that the Secretary of the Treasury determines is used as a site of incorporation primarily for the purpose of avoiding United States taxation.

(c) WAIVER.—The President may waive subsection (a) with respect to any specific contract if the President certifies to the Appropriations Committees of the House of Representatives and the Senate that the waiver is required in the interest of national security.

(d) Effective one day after enactment.

Mr. REID. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. WELLSTONE. 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. WELLSTONE. Mr. President, there are colleagues who may very well have some technical suggestions that don't change the import of this amendment one bit. I certainly invite their consultation and their support which would help strengthen the amendment.

My understanding is that there may eventually be a vote to table the amendment. I do not know. If so, I want to make sure one more time that I am crystal clear about what this amendment does and what it doesn't do.

It is a simple amendment. It bars any funds in this bill from being used to enter into contracts with U.S. companies that incorporate overseas to avoid U.S. taxes. It is really simple.

Former U.S. companies that have renounced their citizenship—and Senator INOUYE asked me about this—currently hold at least $2 billion worth of contracts with the Federal Government.

It seems to me the companies that play by the rules and that pay their fair share of taxes should not be forced to compete with the bad actors that undercut the bids through a tax loophole. I am saying, put on notice all U.S. companies post-January 1: If you engage in this egregious practice post-9/11 and you set up some sham business

in Bermuda, et al, and therefore you don't pay any U.S. taxes, you don't get any defense contracts.

I do not know. Maybe Senators want to vote against this proposition. But I will tell you that this is pretty simple and it is pretty straightforward.

These companies—and we know all about it—transform themselves into Bermuda companies, which are basically shell corporations. They don't have any staff. They don't have any offices. They don't have any business activity. They exist for the sole purpose of shielding income from the IRS.

What these bad corporate former citizens do is exploit a specific loophole in current law so that the company is treated as a foreign company for tax purposes, and therefore they do not pay any U.S. taxes on the foreign income. This loophole gives tens of millions of dollars in tax breaks to major multinational companies with significant non-U.S. business.

It also puts other companies that play by the rules at a complete disadvantage. No American company, colleagues, should be penalized by staying put. For now on—reaching back to the beginning of this year—no American company should be penalized for staying put in our country while others decide they are going to renounce U.S. citizenship for a tax break. It is just simply unacceptable.

I said it before, and I will say it again, there are a heck of a lot of businesses in Minnesota—small businesses and otherwise—that, No. 1, wouldn't do it even if they could; and, No. 2, surely they do not have all of the lawyers and accountants to show them how to do their books Enron-style and get away with not paying their fair share of taxes. So the only price all the good corporate citizens pay—of which there are many—is a higher tax bill.

I think we should close this loophole this year. I think we should close the tax loophole this year. As I said before, I wrote a piece of legislation to do that. I have worked with the Finance Committee. The Finance Committee, through the bipartisan work of Senator BAUCUS and Senator GRASSLEY, has reported out a good piece of legislation. And assuming it passes, this tax loophole will be gone.

But it seems to me, while this piece of legislation is on the floor, for this 1 year, what a powerful and positive message for us to send which is, again, post-December 31, 2001—I don't even reach back—I give companies enough time to respond to 9/11, and say: Wait a minute, this is not the right thing to do or patriotic thing to do. But I will tell you something, post-December 31st of last year, if a U.S. company has set up a sham corporation, so it does not have to pay part of its fair share of taxes, it is not going to be eligible for defense contracts. It is really that simple.

So, again, I don't see colleagues out here to debate this. I understand there is opposition. I say to both of my colleagues, Senator INOUYE and Senator STEVENS, I am certainly not trying to delay the passage of this overall Defense appropriations bill.

I think I have a good amendment on the floor, and I look forward to debate or I would look forward to constructive suggestions from other Senators if they think there is a way to strengthen this amendment.

I am not backing off on the basic proposition here. I am not backing off on the basic proposition. And the basic proposition, again—and I think we are going to do the same thing on the homeland defense bill. It was done in the House. In fact, it was broader, more sweeping on the House side on homeland defense.

This is 1 year. This is Department of Defense appropriations. This is not a tax amendment that I have offered to this piece of legislation. That would not be appropriate. But I do think it is appropriate to put every single U.S. corporation on notice, forthwith, reaching back to the beginning of this year, given the unfairness of this, given the obviousness of the ways in which companies are not paying their fair share of taxes, and, more importantly, given all that has happened to our country post 9/11: You are not going to be able to do this any longer. And if you do, you are not going to then be able to come to the U.S. Department of Defense and get defense contracts.

That is what this amendment says. It is simple. It is straightforward. I am, frankly, at a loss to understand the opposition.

Senator INOUYE asked me an important question. He wanted to go over some of the countries, some of the tax-haven countries that were listed here. And we went through them.

But there is also additional language that says there could be other countries that the Secretary of Treasury determines have been used as a site of a corporation primarily for the purpose of avoiding U.S. taxation. So we really write it the right way.

Then, of course, there is the waiver where the President may waive this with respect to any specific contract if the President certifies to the Appropriations Committees of the House and the Senate that the waiver is required in the interest of national security.

I will tell you something: This is very straightforward. I thank my colleague from Hawaii for asking me these questions. I would love to adopt this on a 100-to-0 vote or to have a debate if colleagues want to come out here and speak against this amendment.

I yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. REID. 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. REID. Mr. President, I would like to ask some questions to my friend, the distinguished Senator from Minnesota.

Are you aware of some of the Federal contracts that corporate runaways now hold? Let me give an example. Are you aware that Foster Wheeler, who was reincorporated in Bermuda about a year ago, has Federal contracts amounting to $286,253,000?

Mr. WELLSTONE. Mr. President, I would say to the whip that I have here a list of corporate runaways, and I am aware of this one of many egregious examples.

Mr. REID. To run through some of these to kind of get a picture of the substance of the Senator's amendment, is the Senator aware that Tyco Company reincorporated in Bermuda and has Federal contracts of $224 million-plus in Fiscal Year 2001 alone?

Mr. WELLSTONE. I am aware of that.

Mr. REID. Is the Senator aware that PricewaterhouseCoopers Monday, who spun off of PricewaterhouseCoopers of New York and incorporated in Bermuda a couple of months ago, has Fiscal Year 2001 Federal contracts of almost $221 million? Is the Senator aware of that?

Mr. WELLSTONE. I say to my colleague, unfortunately, I have the same list with many egregious examples.

Mr. REID. I would like the Senator to acknowledge if we have the same list; for example, Ingersoll-Rand, which reincorporated 6, 7 months ago in Bermuda, has Fiscal Year 2001 Federal contracts of over $40 million?

Mr. WELLSTONE. I am aware of this. Could I just add, I am aware of this, but more importantly, the American citizens are aware of this, and people don't like it one bit. People feel as if, first of all, it is just outrageous in terms of tax evasion. And, second of all, it is a loophole that should not be about. People say, look, boy, this is the opposite of the right and patriotic thing to do.

Mr. REID. I will not go through the entire list because the Senator and I both have the same list. It was compiled by the Federal Procurement and Data Center off their Web site. The amounts are over $1 billion, just on this short list we have, of companies that go to Bermuda and avoid paying taxes like other companies that are incorporated in the United States and work hard and pay their fair share of taxes. I certainly applaud the Senator's amendment. I hope we can dispose of this quickly. I think the debate has been good and directly to the point. I would really think it would be hard to oppose this amendment.

Mr. WELLSTONE. I say to my colleague and whip that I appreciate his questions. If there is going to be agreement, we are going to pass this amendment on the floor of the Senate. I say great. The summary of this amendment is that it is appropriate for the Senate, Democrats and Republicans, to say today that if a U.S. company wants

to bid for a contract for U.S. defense work, then it should not renounce its U.S. citizenship for a tax break. It is that simple. We are just putting everybody on notice: You are no longer going to be able to do that. You will not be able to make a bid for a contract for U.S. defense work if you are going to go out and renounce your citizenship for the purposes of getting a tax break. It couldn't be simpler.

I am going to stay on the floor of the Senate or stand on the floor of the Senate and keep talking about this until we get a vote or until we get acceptance of this amendment.

I ask unanimous consent to print in the RECORD a list of corporate runaways and fiscal year 2001 Federal contracts.

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

CORPORATE RUNAWAYS AND FY2001 FEDERAL CONTRACTS

Foster Wheeler: Clinton, N.J. engineering, environmental and construction company reincorporated in Bermuda on May 25, 2001.

Total FY2001 Federal Contracts: $286,253,000.

Defense and Homeland Security related: $248,835,000.

accenture: Consulting firm spun off of Arthur Anderson of Chicago and incorporated in Bermuda in July, 2001.

Total FY2001 Federal Contracts: $281,904,000.

Defense and Homeland Security related: $144,834,000.

tyco: Exeter, N.H. electronics, security, healthcare and engineering conglomerate reincorporated in Bermuda in March, 1997.

Total FY2001 Federal Contracts: $224,171,000.

Defense and Homeland Security related: $182,453,000.

PricewaterhouseCoopers Monday: Consulting firm spun off of PricewaterhouseCoopers of New York and incorporated in Bermuda on March 27, 2002.

Total FY2001 Federal Contracts: $220,801,000.

Defense and Homeland Security related: $129,073,000.

Ingersoll-Rand: Woodcliff Lake, N.J. industrial equipment, construction and security company reincorporated in Bermuda on December 31, 2001.

Total FY2001 Federal Contracts: $40,289,000.

Defense and Homeland Security related: $39,328,000.

apw: Waukesha, Wisconsin electronics and technology products reincorporated in Bermuda in July 2000.

Total FY2001 Federal Contracts: $7,077,000

Defense and Homeland Security related: $4,912,000.

Cooper Industries: Houston electrical equipment tool and hardware company reincorporated in Bermuda on May 21, 2002.

Total FY2001 Federal Contracts: $6,357,000.

Defense and Homeland Security related: $5,954,000.

Stanley: New Britain, Connecticut tool maker voted to reincorporate in Bermuda on May 9, 2002. The vote was disputed and the Stanley Board of Directors has authorized a re-vote.

Total FY 2001 Federal Contracts: $5,660,000.

Defense and Homeland Security related: $5,298,000.

Fruit of the Loom: Bowling Green, Kentucky apparel company reincorporated in Bermuda on March 4, 1999.

Total FY 2001 Federal Contracts: $2,389,000.

Defense and Homeland Security related: $2,389,000.

Weatherford: Houston drilling, oil and gas technology and services company reincorporated in Bermuda on June 26, 2002.

Total FY 2001 Federal Contracts: $234,000.

Defense and Homeland Security related: $234,000.

Noble: Sugar Land, Texas drilling contractor reincorporated in the Cayman Islands on May 1, 2002.

Total FY 2001 Federal Contracts: $50,000.

Defense and Homeland Security related: $0.

Total Value—known FY2001 Federal contracts to corporate runaways: $1,075,185,000.

Defense and Homeland Security related: $763,310,000.

Mr. WELLSTONE. I thank the Senator.

Mr. NICKLES. Will my colleague and friend yield for a question?

Mr. WELLSTONE. I am pleased to.

Mr. NICKLES. Mr. President, I haven't seen a list. I am trying to figure out what companies would be impacted by that. Do you have a copy that maybe you might share with other Senators?

Mr. WELLSTONE. Let me say to my colleague that there are two parts to this equation. The first part is the definition of ''tax haven countries.'' There is Barbados, Bermuda, British Virgin Islands, Cayman Islands, British Commonwealth of the Bahamas, Cyprus, Gibraltar, and so on. Then the additional language where, because we want to have flexibility, we also say: or any other country that the Secretary of Treasury—these countries listed in the amendment—are the main tax haven countries.

In addition, the Secretary of the Treasury could determine that there is another country that has been used at the site of incorporation for the purpose of avoiding U.S. taxation. That is No. 1.

The second part of this—to give the operational definition—is that this would be any U.S. company that set up this phony citizenship post—actually, December 31.

Mr. NICKLES. If the Senator will yield, I am asking for a list of companies—not countries—that have done this egregious deed of reincorporating in some other country.

Mr. WELLSTONE. I sent the list over to you. I think you have a list that lists some of the companies that would be affected by this.

Mr. NICKLES. Let me get that in question——

Mr. WELLSTONE. These are the countries that reincorporated.

Mr. NICKLES. Accenture reincorporated in July of 2001. Your deadline is January 1, so it would not apply.

Mr. WELLSTONE. It would apply to only those companies—what I am trying to do——

Mr. NICKLES. I found one. PricewaterhouseCoopers evidently reincorporated in Bermuda on March 27, 2002; is that correct, according to your sheet?

Mr. WELLSTONE. That is correct.

Mr. NICKLES. They do defense contracts of $220 million and total Federal contracts in defense and homeland security-related, $129 million; is that correct?

Mr. WELLSTONE. I am trying to follow the list and where the Senator is.

Mr. NICKLES. I got this from you.

Mr. WELLSTONE. That is right. You mentioned it, but I have to go down and find it in the column.

Mr. NICKLES. I am trying to figure out who we are trying to punish here.

Mr. WELLSTONE. I say to my colleague, if I could, since he asked the question—let me say this and be real clear about it. I wrote probably the first legislation here eliminating this action and that is moving through the Finance Committee and it will come to the floor. I hope in the future all these companies will be covered, period.

Second, if you want to reach back, you can do so and that would be just fine with me. My thinking is that I took a look at—I am thinking of two issues. No. 1, just sort of this loophole and, No. 2, I think of 9/11 and I say, look, given 9/11, you can give companies some flexibility to understand that it doesn't seem very patriotic to continue to do this.

For God's sake, from the beginning of this year on, all companies—anybody that does this in the future is in trouble.

Mr. NICKLES. If the Senator will yield further, I found a guilty party—PricewaterhouseCoopers. I will say I had no idea—I have read in the paper, and I heard about Stanley and Ingersoll-Rand. I didn't find somebody—

Mr. WELLSTONE. You will find a number of them.

Mr. NICKLES.—guilty as under your provision. PricewaterhouseCoopers is a $220 million contractor. That is pretty significant.

Let me ask you a question. PricewaterhouseCoopers does a lot of business, evidently, with the Department of Defense, homeland security, and other Federal contractors. They would be banned from all Federal contracts—or only Federal contracts dealing with Department of Defense?

Mr. WELLSTONE. Department of Defense.

Mr. NICKLES. So now we are down to $129 million worth of contracts. If they do those contracts with U.S. employees, do they pay taxes on their U.S. contracts if they make income—I mean, if they make income, don't they pay corporate income tax on the contracts they have in the United States?

Mr. WELLSTONE. That is correct.

Mr. NICKLES. So they do pay income tax?

Mr. WELLSTONE. That is right. But there is a portion of the tax that they should be paying that they are deliberately evading. That is unacceptable. If that is their practice—and that is what this amendment does—don't expect to be getting these contracts any longer.

Mr. NICKLES. Let me make sure I understand. So this company, which does a lot of work—they do software,

management, and a lot of different things—is doing $129 million worth of defense-related contracts, they would be banned from any of those contracts; is that correct?

Mr. WELLSTONE. That is correct.

Mr. NICKLES. Under the Senator's amendment.

Mr. WELLSTONE. That is correct if, but only if, after all we have been through as a country, they basically renounce their citizenship and set up some sham/dummy corporation in Bermuda to avoid taxes—only if they do that.

Mr. NICKLES. Whoa, whoa.

Mr. WELLSTONE. They are welcome to come back home, in which case they are eligible for all of this.

Mr. NICKLES. Correct me if I am wrong, but don't they pay U.S. income taxes on every penny of the contract they have with the Department of Defense?

Mr. WELLSTONE. That is correct.

Mr. NICKLES. They do. So if they incorporate in Bermuda, or Barbados, or someplace else, they might try to not pay U.S. taxes on foreign income, but they are already required, under present law, to pay U.S. taxes on U.S. income; isn't that correct?

Mr. WELLSTONE. I am told—I say to my colleague, I am not a tax expert—they may not actually pay all their taxes on U.S. contracts. But, in addition, what is egregious about this—and I say to my colleague from Oklahoma, if he wants to vote no, he can vote no. This is a pretty simple proposition, which is, if you are going to renounce your U.S. citizenship so you can locate in some other country where you don't do business so you can avoid paying part of the taxes you should be paying so that other businesses and other companies and other Americans have to pay those taxes, you renounce your citizenship and you will not be eligible for these defense contracts. It is that simple.

Mr. NICKLES. There are 200-some-odd-million-dollars' worth of contracts. There is no prohibition right now that I know of that would keep a foreign company from doing the same work that PricewaterhouseCoopers is doing, or some other company, so a French company or a German company could pick up this contract that we are going to foreclose from PricewaterhouseCoopers, or somebody else and, correct me if I am wrong, under the Senator's amendment a German company could do it, and 100 percent of those employees could be in Germany and do 100 percent of this work and there would be no U.S. income tax—I take that back. I will rephrase this. This is a $129 million PricewaterhouseCoopers contract and they would be barred, so now those contracts would be open. There is nothing to prohibit a Swiss company, a German company, a French company, Israeli company, or any other company worldwide from doing that work, and those jobs might be domiciled someplace else in the U.S.; isn't that correct?

Mr. WELLSTONE. That is correct.

But I say to my colleague, this is about American companies. I am going to be clear about that. This is about an egregious practice. This is about good corporate citizenship. This is about being patriotic and about saying to these companies, in all due respect, you can come back home. You don't need to renounce your citizenship, in which case you are eligible. But if you continue to exploit this egregious tax loophole, then you are not going to be eligible. It is that simple.

Mr. NICKLES. Mr. President, I want to make a couple of comments on the legislation. My colleague mentioned that he is not on the Finance Committee. This is an item that has jurisdiction in the Finance Committee. Of late, I think maybe we don't use the committees anymore. I am kind of shocked that the chairman and ranking member of the Finance Committee are not here saying, wait a minute, we are dealing with this issue. Actually, I believe an amendment has been reported out on this issue, but it is a different amendment.

We are dealing with taxation issues. My colleague from Minnesota already admitted—and it happens to be factual—if you do business in the United States and you are a U.S. company, at 100 percent you pay taxes on that contract, period. And if you are domiciled in Bermuda and you do a U.S. contract, you pay 100-percent corporate taxes. What we are talking about is a differential of taxes of international taxation of foreign source income, not U.S. contracts.

We are using U.S. contracts and threatening thousands of U.S. jobs that, if this amendment is adopted—and I hope it is not—these jobs may be done elsewhere because there is nothing in this amendment that says other companies in other countries need not apply. They are not going to be prohibited.

We may well have a situation, as absurd as it sounds, of: Oh, we are sorry, you do not pay enough in foreign taxes on foreign source income; therefore, we are going to deny you U.S. contracts. And now we are going to export U.S. jobs.

I am not sure that makes sense. Let me be very clear. My colleague from Minnesota agreed with me, U.S. companies, whether domiciled in Bermuda or not, if they do U.S. contracts with the Department of Defense or any U.S. contracts, they pay U.S. corporate income taxes, period. They pay U.S. taxes, period. There would be U.S. taxes paid on every dime of this contract.

We are really dealing with foreign international taxes, a very complicated issue, one that should be dealt with appropriately in the taxation committee, not on the Department of Defense appropriations bill, not where people do not know what we are talking about when we talk about foreign source income.

On occasion, this Senate should rise and say this is not the way to legislate. I understand the beautiful demagoguery that somebody is able to say—and I have read in the papers—look at those companies, they are leaving the country, turning their backs. I do not know I agree with that statement.

I will give an example. I do not know that much about Stanley. It is a Connecticut-based toolmaker. They took a lot of flack. Stanley decided they got enough pressure, and they rescinded their corporate move, or they were contemplating going to Bermuda, and they rescinded it. PR-wise, this is bad news if a company tries to reincorporate in Bermuda or anyplace else—I do not know why my colleague included Cyprus. I never considered Cyprus a tax haven.

Stanley decided not to reincorporate in Bermuda. I do know that if they did incorporate in Bermuda, for every contract they had with the Department of Defense, they would pay 100 percent U.S. corporate income taxes—100 percent. They would pay as much as Nickles Machine Corporation would.

This is an easy issue to demagog, but it is a complicated issue in tax policy. The Finance Committee, of which I happen to be a member, and Senator GRASSLEY and Senator BAUCUS have worked on a bill. It is not perfect, but it is a much better approach than what we have before the Senate today.

To say you cannot get the jobs—I do not know, I am sure PricewaterhouseCoopers has thousands of employees. I am sure they have some employees my State. I am not sure they have employees in every State, but they have a lot of employees, and those are employees in the United States. They pay U.S. taxes.

Should we say they should be denied any Federal contract or any Department of Defense contract? I am not ready to say that. They may well be providing goods and services—$129 million to DOD or $220 million—that are very much needed. As a matter of fact, they are probably doing jobs that Arthur Andersen used to do. So we need more accounting consulting companies.

Should they be totally debarred? That is a pretty serious penalty. Debarment is usually a penalty for pretty egregious conduct such as fraud or criminal liability, not necessarily moving a headquarters.

I know a lot of companies incorporate in the State of Delaware. All across the country companies incorporate in the State of Delaware. There must be some advantage in incorporating in the State of Delaware. I am amazed at the number of corporate headquarters in Delaware. Is that for income tax evasion? I do not know. I do not think so. But should we deny them contracts? I am not sure. I darn sure question the wisdom of saying all Government contracts will be banned.

Maybe there should be a penalty if people reincorporate in Bermuda to

avoid foreign taxes. Should that penalty be taxation? Right now this penalty is total debarment from Federal contracts. I question that penalty. I am not sure that is the right penalty. Maybe there should be a better way. Maybe we should reconsider foreign taxation and make sure we are competitive.

I know in some countries they are growing, and growing dramatically because their international taxation picture is much better than ours. Take, for example, Ireland. They have reduced their international taxation, and they happen to be growing. There are other countries that have done quite well because they have a low tax structure. God bless them. I am proud of them.

Should we say that anybody who happens to have a headquarters in those facilities, but also has a branch in the United States, should be denied any business in the United States and automatically export those jobs to other countries? I do not think so. I just question the wisdom of the amendment.

I know the amendment is well intended. I know it is populist. I know it is very comfortable to beat these companies up, and maybe some rightfully so. But I am not sure that total debarment from any Federal contract of those employees who work for those companies and are going to find themselves unemployed because we just said they cannot do Government work, when they pay taxes on that Government work, I am not so sure that is the right penalty.

I have serious reservations about my colleague's amendment. I am not so sure that we should adopt it. I am sure it does not belong on this bill. If we are going to deal with taxation issues, I think it should come out of the Finance Committee and be dealt with on a tax bill, not on a Federal procurement bill.

The amendment reaches pretty far. I hope people will start taking a look at it. I am trying to see who is covered by this. Let me find another company. I do not want to mention just one company.

Ingersoll-Rand, I noticed, incorporated in Bermuda on December 31. That happens to fall on the Senator's date. I read his language.

Mr. WELLSTONE. I say to my colleague, maybe they should be, but they are not. It is after December 31.

Mr. NICKLES. They made it by 1 day.

Mr. WELLSTONE. If the Senator wants to make it tougher, we will make it tougher.

Mr. NICKLES. I am trying to figure out what we are doing. Let's take Ingersoll-Rand. Ingersoll-Rand will not be covered. They would not be debarred. This is very interesting. Ingersoll-Rand makes heavy industrial equipment. I know that because I used to be in the heavy industrial equipment business. Actually, I was a competitor with Ingersoll-Rand at one time.

Ingersoll-Rand does about $40 million worth of contracts. They have a lot of employees in the United States. They have employees in my State of Oklahoma. Ingersoll-Rand has a plant in Tulsa, OK. They would be debarred from doing any work with the Federal Government. No, they would not because they incorporated on December 31. Cooper Industries competes with Ingersoll-Rand. They reincorporated in Bermuda on May 21. They probably did it because Ingersoll-Rand did it. They compete. They are competitors. So one company got in and will not be affected by debarment; they would not lose $40 million worth of contracts.

Cooper Industries, on the other hand, is doing about $6 million worth of contracts. They would be debarred because they reincorporated on May 21. So here we have two competing industries, one of which made it in under the wire, and so they are not denied $40 million worth of contracts, but their competitor—I believe their principal competitor—would be debarred for $6 million.

That is a little troublesome. Both have a lot of employees in the United States. I notice Cooper Industries—I know my colleague from Texas is here—is headquartered in Texas. I know they have thousands of employees in the United States. I know they pay Federal income taxes on every single dime of these contracts.

I guess that is what bothers me. I believe there is a misunderstanding that if somebody reincorporates in Bermuda they will not pay U.S. taxes on U.S. contracts, and that is false. They will pay U.S. taxes on U.S. contracts. To have a penalty that says if they reincorporate in Bermuda because they want to avoid taxation on foreign source income and we are going to debar them from U.S. contracts and maybe cost thousands of jobs domestically, that is very shortsighted and probably not the right solution.

Maybe the right solution would be we would work through the appropriate committees and try to discourage people from relocating in Bermuda. Maybe we can make our tax structure more competitive internationally.

I have been on the Finance Committee for a long time. Those of us who have looked at it for years have said we need to relook at international taxation.

We are not competitive internationally. We encourage jobs to go overseas because of our international posture. If we do not fix it, we are going to continue encouraging people to relocate. The amendment of my colleague from Minnesota is going to exacerbate that problem. He will, in effect, be denying contracts to a lot of U.S. firms that have jobs in the United States that pay taxes on these contracts.

I am afraid the net result is competitors from other countries, with employees in other countries, are going to be competitive and win these contracts, and the net loss is we are not only not going to get U.S. taxes on these contracts, we are going to have employees go overseas.

The amendment may be very well intended politically, and my compliments to my colleague from Minnesota. It is a very popular amendment. It looks good, it is populist, but I think it is bad tax policy. I think tax policy should be done in the Finance Committee, not on the floor of the Senate on a Department of Defense bill.

I urge my colleagues to oppose this amendment.

The PRESIDING OFFICER. The deputy majority leader.

Mr. REID. Mr. President, I say to the Senator from Minnesota that this amendment is a good amendment. U.S. corporations have to pay corporate taxes on what they earn here in the United States and on what they earn in other countries. But foreign corporations only have to pay taxes on what they earn in the U.S. So a lot of U.S. companies figured out that if they move their corporate papers overseas but leave their operations and employees and everything else here in the United States, they can get off the hook for most of their taxes.

Tyco did that. It incorporated in Bermuda in 1997 and saved $400 million a year in taxes. Just by going across the water to file reincorporation papers. Stanley Works did the same thing and saved $30 million annually; Cooper Industries, $55 million, Ingersoll Rand, $440 million annually.

These companies get all the benefits of being U.S. corporations, and their stocks are mostly traded on the New York Stock Exchange, but they are escaping U.S. taxes. That means that you and I have to make up the difference. I think the Senator from Minnesota is on the right track.

To show this is not some bizarre, ridiculous amendment, look at what the State of California did. The State of California is usually on the cutting edge of what is going on in this country because they are almost a country unto themselves. Thirty-five million people live in California. The State of California announced last week that corporate expatriates are no longer eligible to hold State government contracts. That is California, where over 10 percent of the people in this country live. It is one State, and that State recognizes what is being done is wrong.

Also, in the House of Representatives, which is evenly divided basically between the Republicans and Democrats, 318 Members voted for an amendment that is substantially similar to Senator WELLSTONE's amendment.

Another thing. This amendment does not absolutely bar these companies from holding government contracts, as my very good friend from Oklahoma said. These companies can change this in a matter of a couple of hours. All they have to do is come back to the U.S., where they came from, and reincorporate again in America. That is

the patriotic thing to do. That is the right thing to do. They cannot have it both ways.

Why do they do this?

Mr. NICKLES. Will the Senator yield?

Mr. REID. I will yield in a little bit.

They do it because turning their back on their country in their country's hour of need makes their profit margins look better. The process they use is complicated. As I said before, the foreign corporations, the expatriates, only owe taxes on their U.S. income. But companies that never left the U.S. owe taxes on both their U.S. income and their foreign income. Although the U.S. government does give them a tax credit in the amount of any foreign tax on the profits, which prevents double taxation. So incorporating outside the United States eases—and I have gone through the list of how it eases—a corporation's tax liability.

Expatriates also often engage in earnings stripping, it is called. Earnings stripping occurs when a foreign corporation legally funnels its U.S. earnings outside the United States without paying taxes in the United States. The two main avenues they do this with are: First, a U.S. subsidiary can borrow a substantial amount of money from the foreign parent corporation and make large interest payments to the foreign parent. The interest is considered a business expense and is then not taxable under the United States Code.

What else can they do? The U.S. subsidiary may make other payments to the foreign corporation for royalties or intellectual property payments or for other purposes. These payments many times seem grossly out of proportion to the service that foreign corporation actually renders.

For instance, the U.S. branch of one expatriate company paid its parent company royalties in an amount of about 4 percent of its total revenue just for the right to use the company's name. That is a little out of line, I would think. The payment got routed through the Swiss branch of the company's Luxembourg holding corporation, which is a wholly-owned subsidiary of the Bermuda parent company. All to ensure that the company takes advantage of every conceivable tax break possible. Under the current Tax Code, that is a business expense and is nontaxable under the United States Code. And because of an existing tax treaty between the United States and Switzerland, the payments are not subject to Swiss taxes either. So they got to move that 4 percent of their total revenues out of the U.S. without incurring any U.S. corporate taxes on it. That's a relatively tame example of how earnings stripping works.

So I say to my friend from Minnesota, these companies that run offshore to tax havens get all the benefits of doing business in the United States, and they do not have to pay like other corporations.

I also say that every time a bill comes up, they say it should be under the jurisdiction of the Finance Committee. We should have a committee of the whole, and we should all become members of the Finance Committee. It seems, they say, everything should be taken through that.

I do not believe that is proper. The jurisdiction of the Finance Committee is fairly well restricted. I say to anyone within the sound of my voice, we have a committee system and we do our very best to follow it, but there are certain things that come up as we do legislation that demand not a lot of committee hearings. This is one of those instances.

The Senator from Minnesota is on the cutting edge of what we should be doing legislatively. It is important we are doing this. And the talk about how it's too bad that we're barring this poor company from holding government contracts. If it is so bad for them, let them come back to the United States and reincorporate, and they will have all the benefits they did before. But they cannot have it both ways. They cannot have all of these—I refer to them as shady deals. I have gone over a couple that I pinpointed, and I think they are significant.

I also say to those who were listening to the prior debate, they are really feeling bad about the consulting branch of PricewaterhouseCoopers. They shouldn't worry. PwC announced today that it was being sold to IBM, which is a U.S. corporation. IBM, the new parent company, is a U.S. corporation. That takes care of the problem, as far as I understand it. I think that solves the big problem there.

So we have, as far as I am concerned, a very valid amendment. I understand my friend from Oklahoma. He is someone for whom I have the deepest respect, and he is always in tune with the business community's needs and wants. And I do not say that in any negative way. He was a businessman before he came to the Senate, and he has not lost that. I understand how he believes they should always be given a fair shot, and I believe they are in this instance. The business community is being given a fair shot. In fact, I think this is a gunshot across their bow that they should come back to this country again. This is what they should do, and I think they should plug these tax loopholes and end these tax havens. If the Finance Committee wants to do more, let them do more.

The PRESIDING OFFICER. The Senator from Minnesota.

Mr. WELLSTONE. Mr. President, I will take 10 seconds because I know the Senator from Texas wants to speak, and then I will respond later before the vote. I first want to thank the whip and make a technical point.

Actually, contracts are not——

Mr. REID. Will the Senator yield for a brief question without his losing the floor?

Mr. WELLSTONE. I would be pleased to.

Mr. REID. Would the Senator agree that these monies that they are not paying, avoiding taxes in this country, are going in many instances to line the pockets of its fat cat corporate executives?

Mr. WELLSTONE. I would say to the whip, I am trying to be a moderate today. I do not know whether I want to respond to that question, but it sounds to me as if the question is going in the right direction.

I point out that I do not really think this is a big issue, but technically—I have already thanked about four or five times both Senator BAUCUS and Senator GRASSLEY for moving this bill. I introduced the bill that says we ought to eliminate this egregious tax loophole. Technically, the Finance Committee does not have jurisdiction over contracts. Let me make that clear.

Second, let me also make one other thing clear: That to the people in the coffee shops in Minnesota and the coffee shops in all of our States, American citizens, this whole jurisdictional battle is not really all that important to them. They believe if these companies are going to renounce their citizenship, go abroad, set up these dummy corporations—and by the way, quite often they use those new structures to shift earnings from the U.S. branch to the foreign branch so they do not have to pay their fair share of taxes—and that could include earnings from Government contracts—that they do not pay their fair share of taxes. Frankly, most people in the country say: Come home, declare your American citizenship, then you are eligible. If not, you are not. It is that simple.

I hope this amendment will have a strong vote. I can talk a lot more about it, but I know my colleague from Texas is in the Chamber, and I always look forward to what he has to say.

The PRESIDING OFFICER (Mr. MILLER). The Senator from Texas.

Mr. GRAMM. Mr. President, if you are trying to get cheers in coffee shops, this is an excellent amendment. If you are trying to make law in the greatest capitalistic country in the history of the world, a country that more than any other country on Earth has had companies operating in other countries, come to America and gradually move the bulk of their business to our country over the years in order to benefit from the fact we have better laws and lower tax rates, then this is a very bad amendment.

Let me make it clear. I don't have any sympathy for people who are transferring where their company is domiciled to try to get a tax advantage. But I would make the following points. Whether a company is domiciled in Barbados, Germany, Ireland, or Saudi Arabia, the IRS Code is very clear on one thing. Section 881 of the IRS Code says any income effectively connected with the United States is taxed in the United States of America.

When companies are relocating—and I noticed Ireland is not listed here even

though Ireland is a major relocation center for companies all over America because they have very low tax rates on business, and I congratulate them for being smart enough to do that—we double tax dividend income, we double tax the income on corporate America. It is not an enlightened policy, and in my opinion, we should not do it.

This is the point. Under section 881 of the IRS Code, if you earn income in America, you are taxed here. Companies are seeking jurisdictions where they get more favorable overall tax treatment, including tax treatment on their foreign earnings. I don't have sympathy for companies that do this, but the plain truth is they are doing it. The plain truth is by affecting Government procurement, this amendment is GATT illegal and violates GATT.

Also, it is astounding to me that we would want to give one individual, the Secretary of the Treasury, the power to unilaterally disbar any company that is domiciled in a foreign country. Under this amendment, we outline all these countries that we are saying are tax havens, and then we add any other country that the Secretary of the Treasury determines is used as a site of a corporation primarily for the purpose of avoiding U.S. taxation.

As I pointed out, you do not avoid U.S. tax by changing where your company is domiciled because the IRS Code requires income earned in the United States is taxed here.

What companies do, however, is they get a more favorable environment. What we should be doing is looking at our corporate tax structure and trying to become more competitive.

The amendment gives the Secretary of the Treasury unilateral power to disbar any company that is domiciled in a foreign country from selling goods to the Defense Department.

I understand politics. I once was engaged in it. I have now given it up. But I understand it is very good politics to basically attack people who are operating in foreign countries that have low tax rates, that we choose to call tax havens. I long for America to be a tax haven. I long for us to get back to the situation we once had where companies were moving out of Germany, Italy, and Britain to domicile in the United States of America because we had favorable tax treatment. I don't remember us thinking it was a bad deal then. We thought it was a good deal.

I had not heard the business about giving up your citizenship. This thing has nothing to do with citizenship. If Stanley Works changes their domicile, the people who own Stanley Works do not change their citizenship. The people that run Stanley Works do not change their citizenship. I don't know from where that comes from. That has nothing to do with this debate.

Now, we had a debate once where people were giving up their American citizenship to avoid death taxes. Fortunately, we have passed a tax cut that eliminates death taxes and some of us want to make that elimination permanent. You can be guaranteed that will never happen again if our elimination of the death tax becomes permanent.

Now, I conclude by saying I don't have any doubt about the fact that if this is brought to a vote it will pass. We are in an environment where slapping businesses around is good politics. Talking about denying procurement opportunities to companies domiciled in other countries is always popular until you remember that we sell more military equipment to foreign countries than any other country in the world—and more than every other country in the world combined.

Under the IRS Code, you have to pay American income taxes on income earned in America. If you are domiciled somewhere else, you do not have to pay American taxes on income earned in another country.

This amendment is not good public policy. I hope we can find a way of dealing with this. I am very reluctant to see this amendment pass. On the other hand, if this amendment had to be clotured, we would be talking about 2 days before we would have an opportunity to do it. I hope people who are managing the bill can find some way out of this. I don't think anyone really believes this issue belongs on this Defense bill. I think this is something we ought to be discussing at the authorization level. This is an appropriations bill.

Our goal as taxpayers is to procure the best stuff we can for military use at the lowest possible price. I know that is not a popular view, but it is a rational view, whether it is popular or not.

This amendment is GATT illegal. It will be subject to retaliation if it actually becomes law. I don't know that anyone here is serious about it becoming law.

In any case, if you want to pick a debating point for the local high school and you get to pick which side you will be on, you want to pick this topic, and you want to pick Senator WELLSTONE's side.

But in terms of public policy, this is an amendment that is bad public policy. While it is easy to attack companies that are domiciled in other countries, especially countries with low tax rates, the bottom line is, for most of the 220-odd-year history of America, we have been the tax haven. We have had companies move from other countries to America seeking lower taxes and better opportunity.

How much better our time would be spent if we were debating ways to make America more competitive rather than trying to build walls around our country to try to keep capital in. What a far cry this is from the basic American approach, which has been to have an environment that is so favorable to investment and capital creation and wealth that other countries have to try to build walls around themselves to keep their capital in. Now we are talking about building walls around America to keep people from taking capital out.

I understand it is easy for us to say: Look, we think you should not use your money in a way that you view as most efficient. We know more about your money than you do. We did not invest it, we did not save it, we did not risk it, but we are perfectly capable of telling you how to do it.

I think, again, if we are debating this in terms of popular hoorah, we are basically saying that in a free country someone who owns wealth cannot take that wealth out of the country and invest it and still have the right to engage in commerce—which we grant to companies in Germany and Ireland and Czechoslovakia. We are going to take that position because right now slapping around people who are trying to engage in business is popular. It may be popular, but I do not think it is good public policy. We should be debating how we can change our laws so that no company would ever want to move out of the United States. But if they want to move out of the United States, you either believe in freedom or you do not—and I do.

So I wish they did not find it desirable to do it. I wish Stanley Works would keep their headquarters in America. But I have to say I am not an investor in Stanley Works. Now TIAA–CREF, my teacher retirement, may invest in Stanley Works. But so far as I know, I do not own any Stanley Works stock. So who am I to be trying to tell them where they put their money? I may not like how they do it, just like I do not like it when people waste their money. I have never understood why people buy lottery tickets. But I know it sends some people to college and it is a free country. If they want to do it, let them do it.

I never understood why people go out and spend their money buying a lot of different things that I do not value. People might not understand why I want to own a whole bunch of shotguns, more than I will ever pull the trigger on, but it is a free country and you either believe in freedom or you do not.

Now, some freedom is not popular. Here today on the floor of the Senate, the freedom to take your wealth that you created and put at risk and invest it in any one of the following countries—Gibralter, Cyprus, and others. I don't know why we are picking on Cyprus. I thought we were trying to make peace there. I thought we were trying to create jobs for both the Greeks and the Turks. But it is popular to say, today: It is your money, you earned it, you put it at risk, but you can't invest it in Cyprus and have the freedom to engage in international commerce and sell to the U.S. Government.

I know that is popular today, but the question is, Is it right? What if it were our money, if we owned these companies as public companies, and if this were really a socialistic country? I

know some dream of it being that, but it is not. Thank God. Thank you, sweet Jesus, it is not. The commanding heights of the world are dominated by capitalism. The Berlin Wall has collapsed. Tears are still shed about it, not just in East Germany, either.

But freedom is tested when it is unpopular, not when it is popular. Standing up and cheering for the team that wins the Super Bowl is an exercise in freedom of speech, but that is not where you measure freedom of speech. You measure it when somebody is saying something you do not agree with, something that is not popular. I would say that I do not own any Stanley Works stock. I did not invest in Stanley Works. Who am I to be telling them they can't have the rights that we give to every other company in the world that is domiciled in Germany or in Taiwan or Korea or the Philippines or Morocco or wherever? They can produce things and sell to the Defense Department, but Stanley Works, domiciled in Cyprus or elsewhere, they are not going to sell to the United States.

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

Mr. GRAMM. I am happy to yield.

Mr. GREGG. You made some excellent points. The point that the company that invests overseas, if it is a foreign company, it has the right to do that, but under this rule, if it is an American company, it would not have that right if it were domiciled outside the United States—

Mr. GRAMM. That is exactly right. Had they invested their money in a company domiciled in Germany, which competes with Stanley Works, they could have sold products to the Defense Department. But under this amendment, a company operating in Germany, making drills that might be bought by the Defense Department, having not one American employee, can sell to the Defense Department. Under this amendment, Stanley Works, which may have 40 percent of its employees in this country, many of them in the Northeast, as the Senator is aware, is not allowed to sell in this country if they choose to domicile in Cyprus or Gibraltar.

Mr. GREGG. Will the Senator yield for another question on that point. Aren't we talking about aftertax dollars? I mean basically what we are saying is if an American company generates American revenues, it has to pay taxes on those American revenues. When an international company generates American revenues, it has to pay taxes on those revenues. The United States Treasury has taken in dollars from American-generated income from an American or international company.

Mr. GRAMM. As I said earlier, every penny of American income is taxed under IRS code 881. But the point you are making is, the money they are investing abroad is after tax money, which belongs to them.

Mr. GREGG. Right.

Mr. GRAMM. Which gets back to my point: You either believe in freedom or you do not. If you believe in freedom, you have to believe if it is somebody's money—they have earned it, they pay taxes on it—and if they want to invest it in Cyprus. You may not like it, and you might get big cheers at the local coffee bar by saying we are not going to let people invest in Cyprus and sell to the United States. That is just wildly popular, but the point is it violates our basic precept of the right of people to use their own money for their own purposes, to promote their own goals.

Mr. GREGG. After they pay taxes on them.

Mr. GRAMM. And they pay taxes on that money. And it may not be the goal of the Members of the United States Senate, but the point is this: In a very real sense, when you cut through all the ability to make this a popular issue—when you cut through to the bottom line, it is about freedom; freedom to do something that is very unpopular. It is very unpopular. We all hate it. When there is a company operating in our State and they decide it is to their advantage to move their corporate headquarters to Ireland, we decide we do not want them to do it. We hate them doing it. They do it, not because it changes their taxes on their American-earned income but because it changes their taxes on money they make in Europe and Asia and because they can have a better business climate. We hate that they do it, but it is their money and they have a right to do it. They have a right to do what we think is wrong.

Now to come in through the back door and try to limit their right because they are doing something we do not like, we are saying: You can't do the same thing that a German company that never invested in America and that has no employees in America can do. So it is popular, it gets you applause, but it is fundamentally wrong.

I yield to the Senator.

Mr. NICKLES. Mr. President, I tell my friend and colleague that one Oklahoma-headquartered company relocated in Texas called Phillips Petroleum. I wasn't very happy about that, but they had the right to do that.

Let me make it clear. My friend and colleague from Texas read the statute that says you pay taxes on all American-source income. Isn't that correct?

Mr. GRAMM. That is correct.

Mr. NICKLES. Corporate income tax—not just payroll tax.

Mr. GRAMM. Section 881 of the IRS Code.

Mr. NICKLES. Really, the difference we are talking about is income generated in other countries.

Mr. GRAMM. And the greater flexibility they have in their tax treatment in those countries. But they still have to pay American taxes on American income. In fact, the language of art is ''any income effectively connected with the United States.''

Mr. NICKLES. Any contract with the Department of Defense—and any company doing that has to pay U.S. corporate income taxes if they generate income off those contracts.

Mr. GRAMM. That is right.

Mr. NICKLES. I appreciate the clarification.

Mr. GRAMM. I conclude by noting that with the adoption of this amendment, it will say to companies that pay half of their employees in America that we are not going to let you sell to the American Government, but to foreign companies that have no employees in America and have never invested a penny in America, we are going to let you sell to the U.S. Government.

Again, it is popular. It will get you a big hurrah anywhere in the country, but it is not good public policy.

Mr. NICKLES. Will the Senator yield for an additional question?

Mr. GRAMM. Yes.

Mr. NICKLES. There is a major automotive company called Chrysler that recently merged—or you could say was acquired by Daimler, a German company. They are headquartered now in Germany and domiciled in Bermuda. I am guessing; I don't know. If my memory serves me correctly, Chrysler used to make tanks, or used to make military equipment. They wouldn't be covered by this because the effective date is beginning January 1. But the theory is, if the effective date was earlier, they would be prohibited from making tanks or providing goods and services that maybe they provided for a long time. In other words, they might be providing an essential component to our national defense, and those thousands of employees who might be employed making products for national defense would find themselves unemployed.

Mr. GRAMM. They would be in Detroit, MI. That is the point.

We basically come down to the question as to whether or not this is good public policy. It is popular policy. It will always get applause. But the question is, Is it good public policy? I would answer no.

Should we be building walls around America? Can you imagine the United States of America trying to penalize people who want to transfer their wealth somewhere else? We are the country where people from all over the world send wealth here. This is a role reversal, if I have ever seen it. These are games that other countries play.

This is GATT-illegal. This has no redeeming virtue, other than it is momentarily popular and it will get you a rousing applause.

I yield the floor.

Mr. GRASSLEY. Mr. President, I want to make a few comments about Senator WELLSTONE's amendment.

Ironically, I agree with Senator WELLSTONE's amendment, but also agree with some of the points made by my distinguished friends from Oklahoma and Texas.

First of all, I want to be clear that I agree with Senator WELLSTONE's purpose. As I have said repeatedly in public, companies should have their hearts

in America. If they don't have their hearts in America, they ought to get their rear ends out of America. In my mind, this notion applies especially to Government contracts.

Mr. President, when the Finance Committee marked up legislation to shutdown corporate expatriation, I considered adding this Government contracting ban to the tax legislation. However, out of deference to the Governmental Affairs Committee, the committee with jurisdiction over Government contracts, I withheld. So, let's be clear that this matter is not a Finance Committee matter. Chairman BAUCUS and I moved legislation on this matter out of committee. If Government contracting were within Finance Committee jurisdiction, we would've addressed it.

Now, let me say that my friends from Oklahoma and Texas are correct in one respect. That is, the problem of corporate expatriation springs from our flawed international tax code. It needs to be reformed. I am committed to reform. In the meantime, we need to stop the bleeding of the U.S. tax base and not reward expatriate companies with Government contracts.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. REID. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. REID. 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. REID. Mr. President, I ask unanimous consent that the Senator from Illinois, Mr. DURBIN, be recognized for up to 15 minutes; following that, Senator WELLSTONE be recognized for up to 4 minutes, and, following that, this matter be voted on. And we will do that by voice. We will announce that to the Members.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

Mr. DURBIN. Mr. President, thank you very much.

I will probably not take the entire 15 minutes.

I do concede the point made by the Senator from Texas that many of us come to this debate with a level of emotion. I am not happy to read in the newspaper that a company such as Stanley Tools has decided, for tax reasons, they are going to forsake their American citizenship and move to Bermuda. I will guarantee you, I will never knowingly buy one of their products again.

I honestly believe the American corporations—proud to be in this country, proud to be part of this country, accepting their obligation to support this country, and paying taxes here—deserve my business before the folks at Stanley who decided it is much more fashionable to wear Bermuda shorts than to wear the red, white, blue.

Let me address three specific elements that came out in debate.

I have read, over the course of my education and my service in Congress, a lot of things relative to rights. I have read a great deal about the rights of individuals and the rights of others.

We all know about the rights of life, liberty, and the pursuit of happiness. We have heard about those, and some trace them back to Plato and Aristotle. They go through all the great Renaissance thinkers, and certainly to the Founding Fathers and Mothers of America, who came to these concepts and fought for them.

But I never read about the inalienable, immutable, nontransferable right of a business, wherever it is located, to bid on contracts at the U.S. Department of Defense. That does not exist. That is a creature of law and policy.

We, in the United States, decide who will bid on Government contracts. We establish standards. We establish qualifications. And we establish disqualifications.

Should Saddam Hussein's agent show up at the Pentagon tomorrow and suggest that the Iraqi National Business Corporation wants to start bidding on American defense contracts, you can imagine, we will laugh him out of town. We decide who will bid on our defense contracts, in the name of our national values and our national defense.

What the Senator from Minnesota brings before us is a very basic challenge: If it is not an inalienable right to bid on contracts at the Department of Defense, are we going to offer that right to bid to a company which has forsaken and denounced its American citizenship in order to avoid paying taxes in the United States?

I will go back to the point made earlier by the Senator from Texas. I do not think there is any right to that. And I do not think he can find it.

The second point I would like to make is this: The argument that these poor companies go to Bermuda, the Virgin Islands, Barbados, and the Isle of Man in order to escape American taxes—our critics say it is really a condemnation as to the high tax rates in America. They argue that we should lower our corporate tax rates so they will not even consider going to a tax haven such as Bermuda.

Trust me, no matter how low we bring our corporate taxes, some small country somewhere in the world will have a lower corporate tax rate. We cannot race to the bottom and expect to sustain the civilization we enjoy and the common defense which is funded under this bill if we do not have a tax base in America.

These same people could argue, logically, that we should encourage companies to move overseas to the lowest possible wage rate where people are being paid 5 and 10 cents an hour because it is such a smart business decision. We do not encourage it. We discourage it. We should continue to.

But to argue that somehow we are at fault as a nation because we ask businesses to pay their fair share of sustaining the strength and quality of life in America, I think is ludicrous.

The third point I will make is this: This is a Defense bill. We talk about the Department of Defense, but we all know that within the pages of these bills, particularly this bill, we will find not just words, but we will find the support for the men and women in uniform in America.

Think about what we ask of the men and women in uniform sustained by this Department of Defense appropriations.

We ask these men and women, out of loyalty to America, to be willing to pay with their lives for the privilege to be an American citizen. And each and every one of us is so proud that young men and women come forth willing to do so, willing to give their careers, their lives, to their country.

But think about what those who oppose this amendment are saying: That corporations with so little loyalty to the United States that they are unwilling to pay taxes to this country should somehow be honored with the right to bid on Department of Defense contracts.

I disagree. I disagree. Let me hope that this amendment is adopted. Let me hope that after it is adopted, the next time a major corporation draws its board of directors together and brings in their shifty accountant, who says, ''I just came up with a great idea: We're moving to Bermuda, and we can save taxes, and you all can make more money,'' somebody will say, ''What impact is that going to have on our customer base in America? What impact is that going to have on our business in America? Shouldn't we think twice before we abandon this Nation because we want to save a few bucks on taxes?''

My friends and colleagues in the Senate, I support this amendment by the Senator from Minnesota. I will concede that I come to it with some emotion when I consider these businesses that are moving overseas to avoid paying taxes to our Government. Businesses are moving their operations overseas to avoid hiring men and women in the United States. I do not think we should reward them or applaud them or say it is just an exercise of their freedom. They have the freedom to leave. We should have the freedom in the Senate to tell them that their departure is going to cost them an opportunity to bid on these contracts.

I yield the floor.

The PRESIDING OFFICER. The Senator from Minnesota is recognized.

Mr. WELLSTONE. Mr. President, we had a long debate this afternoon. My understanding is that my colleagues are going to accept the amendment. I am appreciative of that. I think it is a very good amendment. I think it is important to have good, strong bipartisan support.

I thank Senator DURBIN and Senator REID, our whip, for their help. And if it

is OK with them, I ask unanimous consent they be added as cosponsors to my amendment.

Mr. DURBIN. Yes.

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

Mr. WELLSTONE. I am looking at just a few editorials and op-ed pieces. I will quote from them and do it in 3 minutes so we can get on with this vote:

The trouble is that hinting, even by silence, that it's O.K. not to pay taxes is a dangerous game, because it can quickly grow into a major revenue loss. Accountants and tax planners have taken the hint; they now believe that it's safe to push the envelope. . . . Furthermore, what does it say to the nation when companies that are proud to stay American are punished, while companies that are willing to fly a flag of convenience are rewarded?

That was from columnist Paul Krugman of the New York Times, May 14:

Even more galling is the fact that many of the same companies are giving the taxman the brushoff as they shield themselves with their Bermuda ZIP codes think nothing of holding out their hand when Uncle Sam is doling out government contracts.

That is from columnist Arianna Huffington, LA Times, May 15.

I ask unanimous consent material from the New York Times to the Houston Chronicle, to the Springfield Union News editorial, to the Philadelphia Inquirer—there is a ring of editorials and opinions on this question, and I ask unanimous consent they be printed in the RECORD.

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

EDITORIALS AND OPINIONS AGAINST CORPORATE EXPATRIATION

''Tax policy of this sort is outrageously offensive, if not masochistic. It penalizes businesses that behave ethically and responsibly and rewards those that do not. It increases the federal deficit and decreases the federal resources to keep the country running and rivers clean. It extends privileges to corporations that can afford the legal bills which it won't extend to $20,000-a-year day-care workers. Americans should be outraged, and so should Congress, which should move quickly to pass pending legislation outlawing the dodge.''—Peoria Journal Star editorial, May 12.

''The company has thumbed its nose at anyone who questioned its plans. Stanley officials initially tried to bar reporters from the annual meeting, despite high public interest in the Bermuda vote. They also mailed confusing shareholder information about how the vote would be tabulated. Businesses that want to enjoy the benefits and protections provided by this country should pay their fair share of taxes. Guess who will wind up picking up the tab as a result of Stanley's tax avoidance? Other American taxpayers, of course.''—Hartford Courant editorial, May 14.

''Even in the best of times, it is outrageous for companies to engage in offshore shenanigans to avoid paying their fair share of taxes. Doing so after the Enron scandal, in dire fiscal times and when the nation is at war is unconscionable.''—New York Times editorial, May 13.

''American companies that have no headquarters, no employees or operations in foreign tax havens should not be able to lower their taxes by, in essence, acquiring an island post office box. Basic fairness to American companies that remain incorporated in the United States is at stake.''—Houston Chronicle editorial, May 9.

''When a U.S.-based corporation decides to reincorporate, basing its operations in, say, the Cayman Islands when the company has little more than a mailbox there, it can legally avoid millions of dollars in taxes. . . . there will come no better moment than this one to right that wrong. We look forward to the floor vote.''—Springfield Union News editorial, May 7.

''Even more galling is the fact that many of the same companies are giving the taxman the brushoff as they shield themselves with their Bermuda ZIP codes think nothing of holding out their hand when Uncle Sam is doling out government contracts.''—Columnist Arianna Huffington, Los Angeles Times, May 15.

''The trouble is that hinting, even by silence, that it's O.K. not to pay taxes is a dangerous game, because it can quickly grow into a major revenue loss. Accountants and tax planners have taken the hint; they now believe that it's safe to push the envelope. . . . Furthermore, what does it say to the nation when companies that are proud to stay American are punished, while companies that are willing to fly a flag of convenience are rewarded?''—Columnist Paul Krugman, New York Times, May 14.

''Yet it [Stanley] won't have to pay its fair share for the good life and safe business climate we have created here. It shouldn't be allowed to get away with this. It's time to slam this loophole shut—for Stanley and other companies that have the so-called inversion strategy.''—Columnist Jeff Brown, Philadelphia Inquirer, May 12.

Mr. DODD. Will my colleague yield for a second?

Mr. WELLSTONE. I am pleased to yield.

Mr. DODD. I thank our colleague from Minnesota.

A lot of people are talking about Stanley Works. I represent the State where that company was located, with a wonderful history and tradition for many years of the Stanley Works Company, with the contribution of employment in my State.

It is a source of great disappointment to many of us that they have taken this position of setting up a shell operation, in this case in Bermuda, with no people there at all—nothing—to avoid taxes. That is deeply disturbing to people in my State. And we are embarrassed, in a sense, that this has become the poster child, if you will, on this issue.

But the Senator from Minnesota has raised a very important point, one that all of us here, in a time such as this, over the last 10 months, after 9/11 understand taxes may be too high. We need to work at that. We need to improve the situation. But to have people stand up in a company and say that, right now, we are going to have profits trump patriotism, that we are going to worry about our pocketbook before we worry about what is best for America, is something over which all of us ought to be outraged.

So I thank the Senator for raising this issue. We are going to have a vote shortly. I believe it is going to carry overwhelmingly, and it should. The other body has voted similarly on a different bill. Nonetheless, I suspect they may on this as well. We need to send a united message that this kind of behavior we do not like to see in individual citizens, who would trade their citizenship, and we do not want to see it in corporations either.

I thank the Senator for the amendment.

Mr. WELLSTONE. I thank the Senator from Connecticut.

Mr. President, I just want to also, for the record, say I have spoken to Senator GRASSLEY, who said he would be very proud to be a supporter. And I talked with the staff of both Senator GRASSLEY and Senator BAUCUS, and we want to work together on exactly what the reach of this is. We will work hard on that in conference.

The date of 9/11 has been mentioned more than once. The truth is, it also ties into Enron and WorldCom and all the rest. Frankly, people are tired. Thank goodness there are many corporations and businesses that are very good corporate citizens, but people are really tired of this. This is an egregious practice.

Again, this amendment puts everybody on notice, forthwith, actually reaching back to January 1 of this year, if you are going to go to another country and set up a dummy corporation and then shift some of your profits to that corporation and not pay taxes, you are not going to be eligible for any of the defense contracts.

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

The Republican leader.

Mr. LOTT. Mr. President, I believe in short order the Senate will be prepared to dispose of this amendment. I wish to take a minute at this time to express my appreciation and the appreciation of the entire Senate and I think a grateful country for the outstanding work that is done year in and year out by these two Senators managing this legislation.

Senator INOUYE and Senator STEVENS are two unique personalities, first of all. The service they gave to their country and the military during World War II would be enough by itself to cause us to want to express our appreciation to them. But their service in this institution and their leadership in these Defense bills year after year is really outstanding. They have done a tremendous job. They have helped keep America strong. They have helped make sure we have the facilities and the equipment our men and women need to do the job.

That is why when we made the decision to go to war against terrorism and put our men and women into a situation in Afghanistan to deal with al-Qaida, the terrorists, we had some incredible equipment. The American people got glimpses of some of the tremendous things that have been done.

Once again this year they have done a fantastic job. Unless I am mistaken,

this is the largest Defense bill in the history of the country. It was asked for by the President. They have been very careful to be judicious in how they have handled it. But they have brought it to the floor in such a way that Senators on both sides of the aisle agree with their product, and I thought I should take a minute to tell them how much I appreciate it.

Obviously, I am prejudiced. In my neck of the woods we build ships. We are very close to the Navy, but we also have Camp Shelby where Senator INOUYE got his training at the beginning of World War II. They have made sure that we paid attention to what we needed for the future in ships, even though the Navy actually had a declining request in this area.

On a personal basis and one based on knowledge of what would have been in the bill but what is in it, what needed to be done, I express my appreciation to the managers and thank them for what they have done here, in the past for the country, and what I know they will always do in their roles in the Senate.

They and their staffs spent many long hours hammering out the details of what amounts to the largest defense budget in the history of our nation and they are to be commended for their hard work.

I want to particularly thank Senators INOUYE and STEVENS for filling a major hole in the defense budget—the distinct lack of ship production for our Navy. During this time of war against terrorism, we need to maintain our ability to strike at the heart of our enemy far from American shores—namely, their training camps, intelligence centers, chemical/biological weapon production facilities, and conventional arms caches. Ships play a central role in our ability to project power and—before the actions of the Senate Appropriations Sub-committee on Defense—it looked like we, as a nation, were close to losing a key pillar in our fight against global terrorism.

Mr. President, the military budget as presented to this body earlier this year represented the largest increase in military spending that our country has seen in a long time, and yet the Navy's request for shipbuilding represented a decline in spending from the previous year. It certainly was difficult to understand and even more difficult to understand given that our forces are engaged in combat overseas. This spending profile not only threatened the capability of our Navy, but also threatened to severely dismantle our capability to produce ships in the United States. I don't need to spell out the dire implications of losing what little shipbuilding capacity that we have left in America.

Thanks to Senators INOUYE and STEVENS and their staffs' hard work, we have made great strides in righting our ship that was about to sink. I want to applaud the foresight and efforts of committee staff, particularly Charlie Houy, Steve Cortese, Leslie Kalan, Menda Fife and Kraig Siracuse to correct this problem. They put a lot of hard work into this mark-up and I believe they hit a home run for shipbuilding. This SAC–D mark-up has set the vision for the future and will help the Pentagon as they develop the shipbuilding plan for POM '04.

I also want to acknowledge the forward thinking of Pete Aldridge, John Young, and Dov Zakheim for identifying future funds in POM '04 that will be leveraged into the fleet of tomorrow—a fleet that will be fully capable of addressing threats to our nation that we cannot yet envision. An early version of the ship building plan for POM '04 includes laying the keel for a CVN in 2007; ramps up production of Virginia Class submarines from one ship per year in fiscal years 2004 through 2006 to two ships in 2007 through 2009; production of three DDG–51 class ships per year in 2004 and 2005; commencement of DD(X) production in 2005 with continuation of that program well into 2020; steady-state production of LPD–17 class ships through 2009; and a three-year interval between production of LHA(R)/LHD class ships in 2006 and 2009.

Again, I thank Senators INOUYE and STEVENS for putting together a Defense Appropriations bill that makes sense for our Navy, our nation, and our ship building industry. Thank you. I commend you for the great service you have done for our Nation, our military, and our service members.

The PRESIDING OFFICER. Is there further debate on the amendment? If not, the question is on agreeing to amendment No. 4412.

The amendment (No. 4412) was agreed to.

Mr. WELLSTONE. I move to reconsider the vote.

Mr. REID. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. REID. Mr. President, the underlying Wellstone amendment was adopted; is that right?

The PRESIDING OFFICER. That is not correct. The Wellstone amendment is now pending. Is there further debate on the amendment?

Mr. STEVENS. I ask unanimous consent that the action on amendment 4412 be vitiated and the amendment withdrawn.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

Without objection, the amendment is agreed to.

The amendment (No. 4364) was agreed to.

Mr. INOUYE. I move to reconsider the vote.

Mr. WELLSTONE. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. WELLSTONE. Mr. President, I have spoken with Senator GRASSLEY and with his staff and the Staff of Senator BAUCUS about the definition of expatriating firms and tax havens in my amendment. It would be my hope that the conferees to the Defense Appropriations bill could conform the definition in my amendment with the definition in S. 2119, the Reversing the Expatriation of Profits Offshore Act.

The PRESIDING OFFICER. The Senator from Minnesota.

Mr. WELLSTONE. I thank my colleagues. I think this is an amendment of which we can be proud, and I am very proud that it passed.

The PRESIDING OFFICER. The Senator from Hawaii is recognized.

AMENDMENTS NOS. 4388 AND 4422 THROUGH 4434, EN BLOC

Mr. INOUYE. Mr. President, the managers of this bill, Senator STEVENS and I, wish to submit several amendments for consideration. We ask unanimous consent that these amendments be considered en bloc and adopted en bloc. Before we do that, may I explain the amendments.

They are; an amendment for Senator AKAKA earmarking $6 million for critical infrastructure protection; an amendment for Senator CLINTON earmarking $500,000 for renovation of a hangar at Griffiss Air Force Base; an amendment for Senator INHOFE earmarking $5 million for remote logistic network; an amendment for Senator FEINSTEIN earmarking $5 million for integrated chemical biological warfare detector chips; an amendment for Senator HUTCHISON earmarking $1 million for nanoenergetic material research; an amendment for Senator FRIST and Senator THOMPSON earmarking $2 million for the Communicator force notification system; an amendment for Senator LANDRIEU earmarking $5 million for the D-Day museum; an amendment for Senator NELSON earmarking $6 million for the Center for Advanced Power Systems; an amendment for Senator BUNNING earmarking $1 million for security locks; an amendment for Senator KENNEDY earmarking $10 million for the Non-Self Deployable water craft study; an amendment for Senator CARNAHAN earmarking $850,000 for National Guard medical equipment; an amendment for Senators SMITH, WYDEN, and MURRAY to earmark $8 million for the Navy's Sealion program; an amendment for Senator CRAIG earmarking $3 million for foreign document digitization.

May I advise the Chair that there is not a single dollar added to the appropriation. These are just earmarks. It has been cleared by both sides.

I send the amendments to the desk. I ask that they be considered en bloc and approved en bloc.

The PRESIDING OFFICER. Is there objection? The Senator from Indiana is recognized.

Mr. LUGAR. Mr. President, reserving the right to object, in the list that the distinguished Senator just read, was there a Lugar amendment dealing with weapons of mass destruction?

Mr. INOUYE. No.

Mr. LUGAR. Mr. President, I will not object. I simply was hopeful that the amendment might be included at this point.

Mr. INOUYE. It was objected to because it was not authorized.

Mr. LUGAR. Reserving the right to object, I shall not object, a point of parliamentary procedure: When would be the appropriate time for this amendment to be considered or this Senator to offer the amendment or for the managers to offer the amendment?

Mr. STEVENS. Mr. President, it is my understanding the bill is still open to amendment. The Senator still has his right to offer it at any time.

Mr. LUGAR. Very well. So it would be appropriate, if I can gain the floor, to do so following the resolution of the amendments the Senator has offered. I thank the Chair.

The PRESIDING OFFICER. The Senator from Alaska.

Mr. STEVENS. Mr. President, I ask to amend the request of the Senator from Hawaii and ask unanimous consent that the amendment I shall send to the desk for the Senator from Iowa, Mr. GRASSLEY, be adopted. It deals with the awarding of a Medal of Honor flag to recipients of the Medal of Honor.

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

The amendments (Nos. 4388 and 4422 through 4434) were agreed to en bloc, as follows:

AMENDMENT NO. 4388

(Purpose: To provide for the designation of a Medal of Honor Flag and for presentation of that flag to recipients of the Medal of Honor)

On page 223, between lines 20 and 21, insert the following:

SEC. 8124. (a) Congress finds that—

(1) the Medal of Honor is the highest award for valor in action against an enemy force which can be bestowed upon an individual serving in the Armed Forces of the United States;

(2) the Medal of Honor was established by Congress during the Civil War to recognize soldiers who had distinguished themselves by gallantry in action;

(3) the Medal of Honor was conceived by Senator James Grimes of the State of Iowa in 1861; and

(4) the Medal of Honor is the Nation's highest military honor, awarded for acts of personal bravery or self-sacrifice above and beyond the call of duty.

(b)(1) Chapter 9 of title 36, United States Code, is amended by adding at the end the following new section:

**"§ 903. Designation of Medal of Honor Flag**

''(a) DESIGNATION.—The Secretary of Defense shall design and designate a flag as the Medal of Honor Flag. In selecting the design for the flag, the Secretary shall consider designs submitted by the general public.

''(b) PRESENTATION.—The Medal of Honor Flag shall be presented as specified in sections 3755, 6257, and 8755 of title 10 and section 505 of title 14.''.

(2) The table of sections at the beginning of such chapter is amended by adding at the end the following new item:

''903. Designation of Medal of Honor Flag.''.

(c)(1)(A) Chapter 357 of title 10, United States Code, is amended by adding at the end the following new section:

**"§ 3755. Medal of honor: presentation of Medal of Honor Flag**

''The President shall provide for the presentation of the Medal of Honor Flag designated under section 903 of title 36 to each person to whom a medal of honor is awarded under section 3741 of this title after the date of the enactment of this section. Presentation of the flag shall be made at the same time as the presentation of the medal under section 3741 or 3752(a) of this title.''.

(B) The table of sections at the beginning of such chapter is amended by adding at the end the following new item:

''3755. Medal of honor: presentation of Medal of Honor Flag.''.

(2)(A) Chapter 567 of such title is amended by adding at the end the following new section:

**"§ 6257. Medal of honor: presentation of Medal of Honor Flag**

''The President shall provide for the presentation of the Medal of Honor Flag designated under section 903 of title 36 to each person to whom a medal of honor is awarded under section 6241 of this title after the date of the enactment of this section. Presentation of the flag shall be made at the same time as the presentation of the medal under section 6241 or 6250 of this title.''.

(B) The table of sections at the beginning of such chapter is amended by adding at the end the following new item:

''6257. Medal of honor: presentation of Medal of Honor Flag.''.

(3)(A) Chapter 857 of title 10, United States Code, is amended by adding at the end the following new section:

**"§ 8755. Medal of honor: presentation of Medal of Honor Flag**

''The President shall provide for the presentation of the Medal of Honor Flag designated under section 903 of title 36 to each person to whom a medal of honor is awarded under section 8741 of this title after the date of the enactment of this section. Presentation of the flag shall be made at the same time as the presentation of the medal under section 8741 or 8752(a) of this title.''.

(B) The table of sections at the beginning of such chapter is amended by adding at the end the following new item:

''8755. Medal of honor: presentation of Medal of Honor Flag.''.

(4)(A) Chapter 13 of title 14, United States Code, is amended by inserting after section 504 the following new section:

**"§ 505. Medal of honor: presentation of Medal of Honor Flag**

''The President shall provide for the presentation of the Medal of Honor Flag designated under section 903 of title 36 to each person to whom a medal of honor is awarded under section 491 of this title after the date of the enactment of this section. Presentation of the flag shall be made at the same time as the presentation of the medal under section 491 or 498 of this title.''.

(B) The table of sections at the beginning of such chapter is amended by inserting after the item relating to section 504 the following new item:

''505. Medal of honor: presentation of Medal of Honor Flag.''.

(d) The President shall provide for the presentation of the Medal of Honor Flag designated under section 903 of title 36, United States Code, as added by subsection (b), to each person awarded the Medal of Honor before the date of enactment of this Act who is living as of that date. Such presentation shall be made as expeditiously as possible after the date of the designation of the Medal of Honor Flag by the Secretary of Defense under such section.

AMENDMENT NO. 4422

(Purpose: To set aside $6,000,000 of operation and maintenance, Navy, funds for Servicewide Communications for the Critical Infrastructure Protection Program)

On page 223, between lines 20 and 21, insert the following:

SEC. 8124. Of the total amount appropriated by title II under the heading ''OPERATION AND MAINTENANCE, NAVY'', for Servicewide Communications, $6,000,000 may be used for the Critical Infrastructure Protection Program.

AMENDMENT NO. 4423

(Purpose: To make available from amounts available for the Air Force for operation and maintenance $500,000 for a contribution to the renovation of Hangar Building 101 at former Griffiss Air Force Base, New York, in order to facilitate the reuse of the building for economic development purposes)

On page 223, between lines 20 and 21, insert the following:

SEC. 8124. Of the amount appropriated by title II under the heading ''OPERATION AND MAINTENANCE, AIR FORCE'', up to $500,000 may be available for a contribution to the Griffiss Local Development Corporation (GLDC) for the renovation of Hangar Building 101 at former Griffiss Air Force Base, New York, in order to facilitate the reuse of the building for economic development purposes. Such renovation may include a new roof, building systems, fixtures, and leasehold improvements of the building.

AMENDMENT NO. 4424

(Purpose: To make available from amounts available for Defense-Wide research, development, test, and evaluation $5,000,000 for the Maintainers Remote Logistics Network)

On page 223, between lines 20 and 21, insert the following:

SEC. 8124. Of the amount appropriated by title IV under the heading ''RESEARCH, DEVELOPMENT, TEST, AND EVALUATION, DEFENSE–WIDE'', up to $5,000,000 may be available for the Maintainers Remote Logistics Network.

AMENDMENT NO. 4425

(Purpose: To make available from amounts available for the Navy for research, development, test, and evaluation $5,000,000 for the Integrated Chemical Biological Warfare Agent Detector Chip)

On page 223, between lines 20 and 21, insert the following:

SEC. 8124. Of the amount appropriated by title IV under the heading ''RESEARCH, DEVELOPMENT, TEST, AND EVALUATION, NAVY'', up to $5,000,000 may be available for the Integrated Chemical Biological Warfare Agent Detector Chip.

AMENDMENT NO. 4426

At the appropriate place in the bill insert the following:

Of the funds provided under the heading ''Research and Development, Air Force,'' up to $1,000,000 may be made available for research on nanoenergetic materials.

AMENDMENT NO. 4427

(Purpose: To make available from amounts available for the Army National Guard for operation and maintenance $2,000,000 for the Communicator emergency notification system)

On page 223, between lines 20 and 21, insert the following:

SEC. 8124. Of the amount appropriated by title II under the heading ''OPERATION AND

MAINTENANCE, ARMY NATIONAL GUARD'', up to $2,000,000 may be available for the Communicator emergency notification system.

AMENDMENT NO. 4428

(Purpose: To authorize a grant of $5,000,000 to the National D–Day Museum)

On page 223, between lines 20 and 21, insert the following:

SEC. 8124. The Secretary of Defense may, using amounts appropriated or otherwise made available by this Act, make a grant to the National D–Day Museum in the amount of $5,000,000.

AMENDMENT NO. 4429

(Purpose: To make available from amounts available for the Navy for research, development, test, and evaluation $6,000,000 for the Center for Advanced Power Systems)

On page 223, between lines 20 and 21, insert the following:

SEC. 8124. Of the amount appropriated by title IV under the heading ''RESEARCH, DEVELOPMENT, TEST, AND EVALUATION, NAVY'', up to $6,000,000 may be available for the Center for Advanced Power Systems.

AMENDMENT NO. 4430

(Purpose: To allow the Department of Defense to obligate funds to secure its sensitive and classified materials to further enhance the national security of the United States)

At the appropriate place in the bill insert the following section:

SEC. . Out of the Operation and Maintenance, Defense-Wide, funds appropriated, $1,000,000 may be available to continue the Department of Defense's internal security-container lock retrofit program for purchasing additional security locks which meet federal specification FF–L–2740A.

AMENDMENT NO. 4431

(Purpose: To make available from the National Defense Sealift Fund $10,000,000 for implementing the recommendations resulting from the Navy's Non-Self Deployable Watercraft (NDSW) Study and the Joint Chiefs of Staff Focused Logistics Study to determine the requirements of the Navy for providing lift support for mine warfare ships and other vessels)

On page 223, between lines 20 and 21, insert the following:

SEC. 8124. Of the amount appropriated by title V under the heading ''NATIONAL DEFENSE SEALIFT FUND'', up to $10,000,000 may be available for implementing the recommendations resulting from the Navy's Non-Self Deployable Watercraft (NDSW) Study and the Joint Chiefs of Staff Focused Logistics Study, which are to determine the requirements of the Navy for providing lift support for mine warfare ships and other vessels.

AMENDMENT NO. 4432

(Purpose: To set aside from amounts available for the Air National Guard for operation and maintenance $350,000 for medical equipment)

On page 223, between lines 20 and 21, insert the following:

SEC. 8124. Of the amount appropriated by title II under the heading ''OPERATION AND MAINTENANCE, AIR NATIONAL GUARD'', up to $350,000 may be available for medical equipment.

AMENDMENT NO. 4433

(Purpose: To make available from amounts available for the Navy for research, development, test, and evaluation $18,000,000 for the Sealion Technology Demonstration program)

On page 223, between lines 20 and 21, insert the following:

SEC. 8124. Of the amount appropriated by title IV under the heading ''RESEARCH, DEVELOPMENT, TEST, AND EVALUATION, NAVY'' and available for Ship Concept Advanced Design up to $18,000,000 may be available for the Sealion Technology Demonstration program for the purchase, test, and evaluation of a Sealion craft with modular capability.

AMENDMENT NO. 4434

(Purpose: To provide for standardized digitizing, conversion, indexing, and formatting of captured foreign documentary materials, and for other purposes)

At the appropriate place in Title VIII, insert the following:

''SEC. . Of the funds made available in this Act under the heading 'Research, Development, Test and Evaluation, Defense-Wide', up to $3,000,000 may be made available to digitize, convert, index, and format captured foreign documentary materials (including legacy materials) into a standard, usable format, to enable the timely analysis and use of mission critical data by analytical and warfighter personnel.

Mr. STEVENS. Mr. President, I move to reconsider that action.

Mr. BYRD. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The Senator from Indiana is recognized.

AMENDMENT NO. 4435

(Purpose: To authorize the waiver of the prohibition on the use of Cooperative Threat Reduction funds for chemical weapons destruction)

Mr. LUGAR. Mr. President, I send an amendment to the desk.

The PRESIDING OFFICER. The clerk will report.

The bill clerk read as follows:

The Senator from Indiana [Mr. LUGAR], for himself, Mr. BIDEN, Mr. DOMENICI, Mr. HAGEL, Mr. GRAHAM, Mr. LEVIN, Mr. DODD, and Mr. MCCAIN, proposes an amendment numbered 4435:

On page 223, between lines 20 and 21, insert the following:

SEC. 8124. Section 1305 of the National Defense Authorization Act for Fiscal Year 2000 (Public Law 106–65; 22 U.S.C. 5952 note) is amended—

(1) by inserting ''(a) LIMITATION.—'' before ''No fiscal year''; and

(2) by adding at the end the following new subsection:

''(b) WAIVER.—(1) The limitation in subsection (a) shall not apply to funds appropriated for Cooperative Threat Reduction programs for a fiscal year if the President submits to the Speaker of the House of Representatives and the President pro tempore of the Senate a written certification that the waiver of the limitation in such fiscal year is important to the national security of the United States.

''(2) A certification under paragraph (1) for fiscal year 2003 shall cover funds appropriated for Cooperative Threat Reduction programs for that fiscal year and for fiscal years 2000, 2001, and 2002.

''(3) A certification under paragraph (1) shall include a full and complete justification for the waiver of the limitation in subsection (a) for the fiscal year covered by the certification.''.

The PRESIDING OFFICER. The Senator from Indiana is recognized.

Mr. LUGAR. Mr. President, during the Memorial Day recess, it was the privilege of this Senator to travel again with my colleague and partner, Senator Sam Nunn, and with Representative JOHN SPRATT and Representative CHRISTOPHER SHAYS to a number of sites in Russia. One of particular interest to us was the chemical weapons facility at Shchuch'ye, which is approximately 1,200 miles east of Moscow. That particular installation has been a part of the Cooperative Threat Reduction Program insofar as the United States has worked cooperatively with Russia to put extensive fencing and various other security around what amounts to 1.9 million weapon shells—that is, chemical weapon shells—filled with nerve gas, saran, and VX.

I had visited the sites 18 months before, and this was a return to envision precisely these 85-millimeter shells, these small shells that you can put in a small suitcase. Indeed, I have an illustration of this, Mr. President.

Here is the small suitcase, and here is the Senator from Indiana, and a Russian major took the picture.

As we discuss proliferation, this intersection between terrorists and weapons of mass destruction, envision, if you will, that there are 1.9 million more of these 85-millimeter shells. The Russians on the site estimate if one shell was put into a stadium of 100,000 people, everybody would die. It has that degree of efficacy and it has this degree of portability.

This is why the United States takes seriously the penning up of the chemical weapons of Russia. Russia has declared 40,000 metric tons. One-seventh of them are at Shchuch'ye, in this condition. Also at Shchuch'ye is our greatest hope in working with the Russians to destroy the chemical weapons. They are in the process of building a plant that will require U.S. money to complete. The German Bundesbank has appropriated money this year for this plant, and so has Great Britain, Canada, and Norway, in modest amounts, to join us.

The Russian Duma has appropriated substantially more money for this purpose. Why? Because Russia and the United States and many other nations ratified the Chemical Weapons Convention. We did so 5 years ago. The Russians did so a short time thereafter. It is a 10-year treaty. We are almost at halftime and not the first pound of chemical weapons has, in fact, been destroyed because there was not the money, not the technical organization, until at least this present point.

Mr. President, when I came back from Russia, Senator BIDEN, the chairman of the Foreign Relations Committee, and I were asked to come to the White House to visit with the President and the Vice President, Condoleezza Rice, and Andrew Card. Six of us sat there and talked about the new treaty between the United States and Russia, on which we have had testimony at some of our committee hearings. The point made by the President, Secretary Powell, and Secretary Rumsfeld is that we have a turn

of the road with Russia. We are not naive with regard to all of the problems with Russia, but the President is asking for ratification of this new treaty that would substantially reduce nuclear warheads in the next 10 years.

I took the opportunity to point out to the President of the United States that it is one thing to ratify a treaty, and to negotiate one to begin with, and it is quite another to see actual results from the treaty. We are working in this country to reduce our chemical weapons, and we hope to do so in the 10 years. We have pledged to do so under the treaty. The Russians have a whole lot more of them. My point is that there has not been a reduction there. In this case, it is not a lack of good will, it is a lack of money, lack of technical support.

In the midst of all of this, the dilemma for President Bush—and he raised this during our face-to-face meeting—is: What can I do about it? With the other Nunn-Lugar programs, the Cooperative Threat Reduction Programs, the President could certify that the conditions imposed by Congress on the Nunn-Lugar Act are being met. In the past 10 years, such certification has come each year. This year, it did not.

Ms. Rice and the Vice President advised the President that the administration has sought authorization to waive the certification requirement so that the money could be spent. In effect, no new programs under cooperative threat reduction have occurred for 10 months of this fiscal year due to lack of certification and lack of waiver.

Now, in the supplemental appropriations bill we passed the other evening, as this becomes law—at least for the last 2 months of this year—our Government can actively move to destroy weapons of mass destruction with new contracts—nuclear, chemical, and biological—for 2 months. In a conference now on the authorization of the Defense Department, there is a debate as to how long a waiver might last. The President has asked for permanent authority, and the Senate has offered that in its bill. The House has offered, as I understand it, a 3-year time for the President to waive this certification. But when we come to chemical weapons, the President apparently has no ability to waive anything, or to certify anything.

An additional six requirements are posed, and they have not been met, in the judgment at least of those in the administration who were involved in these deliberations. So as a result, nothing is happening with regard to American money or the destruction of these weapons.

Following my meeting with the President, I wrote a letter to Condoleezza Rice, and I stated everything that I have indicated in these remarks today. I appreciate the fact that she has responded and indicated to me that:

The President has repeatedly emphasized the importance of cooperative threat reduction in his strategy to reduce and prevent the proliferation of weapons of mass destruction, delivery means, and the materials and technology to develop them. Because of the program's value to the nation's security, the President has asked the Congress to grant him permanent authority to waive CTR certification requirements if he determines that is in the national interest. We strongly support the waiver provision of the Senate version of the FY2003 Defense Reauthorization bill, and have urged the conferees to adopt it.

Our serious concerns about Russian chemical and biological weapons activities make it difficult for the Secretary of State to certify Russia as eligible for CTR assistance. Waiver authority will enable the Administration both to pursue essential CTR weapons reduction and nonproliferation projects, and to work with Russia to resolve our concerns about its chemical and biological weapons activities.

Parenthetically, I might say that one of the concerns is the four installations, allegedly with biological weapons or preparations for them, in Russia to which none of us have had access.

It is my hope in the coming recess to enter two of these and at least clear away whatever may be the dilemmas of those two situations and maybe in the fullness of time to make the other two.

I have been permitted to go into a number of biological situations, in addition to the full gamut of the chemical ones, largely because there is a sense of cooperative threat reduction.

The Russians themselves appreciate that if there are accidents, theft, or a breakdown of the system, Russians will be killed first and in large numbers. This is a grim and serious business which ought not be a part of parliamentary byplay and that has been the dilemma this year.

Condoleezza Rice continues:

Similarly, we welcome your proposal of a waiver of the legislative conditions on CTR assistance to construct a nerve agent destruction facility at Shchuch'ye. As you point out, the small, transportable munitions at Shchuch'ye pose a real proliferation risk. The President underscored the importance of assistance to Russian chemical weapons destruction in his December speech at the Citadel and most recently in the G8 Leaders announcement of Global Partnership Against the Spread of Weapons and Materials of Mass Destruction.

We have been working hard with Russia to meet the legislative conditions on the Shchuch'ye project, and have made considerable progress. Nevertheless, it may be difficult to assess with confidence that the information we have from Russia on its chemical weapons stockpile is full and accurate. At a minimum, the information-gathering process will be very time-consuming, but the proliferation threat gives us no time to delay. Indeed, the Administration concluded after its thorough review of nonproliferation assistance to Russia that the destruction project at Shchuch'ye should be accelerated.

Therefore, the Administration has urged the conferees to the FY2003 Defense Authorization bill to provide the President the authority to waive the conditions on CTR chemical weapons destruction assistance, if he determines that to do so is in the national interest.

Given this letter, Mr. President, I have offered the amendment that is at the desk. It achieves that objective of giving the President waiver authority that he does not have with regard to these chemical weapons. In due course, the conference committee and the armed services will come to a decision as to whether the request by the President for permanent waiver authority on all Nunn-Lugar programs is to be granted to the President.

In a commonsense way, I pray that will be the case. I cannot imagine that it is in the national interest for us to deliberately, having authorized money for Nunn-Lugar, having appropriated money for the Nunn-Lugar program, to have it all tied up in terms of new projects for 10 months.

My point to the President has been: Mr. President, that could very well be the fate of a nuclear treaty with regard to warheads. Why do we believe that somehow that might be exempt because, clearly, American money is going to be involved if we are to make progress in seeing those warheads reduced.

The Russians may want to reduce the warheads to 2,200 or 1,700 or whatever figure is in their national interest, but they clearly do not have the means to do so.

Some Americans, perhaps even Members of this body, may say: Well, that is the Russian's problem; they made their bed; let them sleep in it. But it is our problem because those warheads are aimed at us. The nerve gas at Shchuch'ye will not be aimed at us if it is destroyed, and it can be destroyed during this historical window of opportunity.

Therefore, I earnestly ask for support of the Senate in adopting this amendment so it is absolutely clear that the President has the authority to give the waivers so that we may move ahead on something I think is vital not only to our national interest but in the war against terrorism is imperative. My feeling always has been if the Senate had any idea of this general problem, there would be a speedy resolution.

The purpose of my speech tonight is to make sure this Senate does understand and makes a commitment to destroy these weapons as rapidly as possible, given the storage and given the destruction facility.

I add finally that for those who are at all wondering how they destroy the stockpile, this is the weapon in the suitcase. It would be taken down to a vacuum space. Two holes would be drilled in the bottom of the weapon. The material would be drained out and put in a chemical formulation which finally renders that toxic material without consequence. This has to happen 1.9 million times. It will take 6 years if we begin now.

I hope it will begin now. My plea is for immediate action on the amendment which I hope will be favorable.

I ask unanimous consent that a letter addressed to Dr. Rice dated July 12, 2002, and her response to me dated July 30, 2002, be printed in the RECORD.

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

CONGRESS OF THE UNITED STATES,
*Washington, DC, July 12, 2002.*

Dr. CONDOLEEZZA RICE,
*Assistant to the President for National Security Affairs,*
*The White House, Washington, DC.*

DEAR DR. RICE: We write out of great concern over the current status of various projects in the Nunn-Lugar Cooperative Threat Reduction (CTR) Program at the Department of Defense. Final disposition has yet to be reached on an Administration request for permanent annual waiver authority relative to legislatively-imposed conditions requiring certification by the Executive branch in order to permit elements of the program to go forward. That will remain dependent on the outcome of a conference between the two houses of Congress on the FY 2003 Defense Authorization bill.

Despite the Administration's difficulties in attempting to secure permanent waiver authority from the Congress in order to proceed with the overall Nunn-Lugar/CTR program, we are encouraged that the Administration has continued to seek the waiver to the certification requirements. The same cannot be said with respect to the Administration's approach to the Nunn-Lugar/CTR chemical weapons elimination project in Russia. Congressional conditions—above and beyond those that apply to CTR in general—continue to stymie and delay construction of a chemical weapons destruction facility at Shchuchye, Russia, that is decidedly in the national security interests of the United States. A swift solution to the current stalemate is only possible with strong Administration leadership.

The project at Shchuchye was reviewed by the Administration as part of its non-proliferation program review last year. In a Fact Sheet released December 27, 2001, the White House stated that: ''The Department of Defense will seek to accelerate the Cooperative Threat Reduction project to construct a chemical weapons destruction facility at Shchuchye, to enable its earlier completion at no increased expense. We welcome the contributions that friends and allies have made to this project thus far, and will work for their enhancement.'' Unfortunately, little progress has been made in this direction.

Several of us recently visited Shchuchye and have come to the conclusion that the U.S. needs to move forward expeditiously if we are to eliminate this critical proliferation threat. The depot houses nearly 2,000,000 modern ground-launched chemical weapons. These artillery shells and SCUD missile warheads are in excellent working condition and many are small and easily transportable and could be deadly in the hands of terrorists, religious sects, or para-military units. We were told by our Russian hosts that the weapons stored at Shchuchye could kill the world's population some twenty times over. The size and lethality of the weapons at Shchuchye are clearly a direct proliferation threat to the American people.

Last year, the House of Representatives attached six conditions to the Shchuchye project. Of the original six conditions, four can be met but two continue to be problematic. The remaining conditions require the Secretary of Defense to certify that the information provided by Russia on the size of its chemical weapons stockpile is full and accurate and that Russia has developed a practical plan for destroying its stockpile of nerve agents. We share the goals associated with these conditions, but these same concerns prompted the Administration to seek a waiver to the larger certification requirements required under the Nunn-Lugar program. Unfortunately, without a similar White House request for a waiver at Shchuchye, it is unlikely that the Pentagon will be able to begin construction of a facility to destroy these weapons in the foreseeable future.

We urge the Administration to weigh in with conferees to the FY 2003 Defense Authorization bill to include a national security waiver of congressionally-imposed conditions on the spending of funds authorized for chemical weapons elimination under the Nunn-Lugar program. As the war on terrorism continues we must ensure that terrorists do not intersect with weapons of mass destruction. Failure to begin destruction of the chemical weapons arsenal at Shchuchye would leave these dangerous, highly portable weapons in an unsafe and insecure location and vulnerable to proliferation. Construction could start tomorrow if Congress were to embrace the proper policy prescription.

The Administration's plans to speed up implementation of this important Nunn-Lugar project cannot coexist with the current Congressional conditions on the program. We urge you to provide vitally needed leadership to permit the Pentagon to begin dismantlement efforts. Without strong White House leadership we fear that progress will again be stymied and U.S. national security interests will suffer.

We look forward to discussing this with you in the near future.

Sincerely,

Richard G. Lugar, U.S. Senator; Joseph R. Biden Jr., U.S. Senator; Chris Shays, U.S. Representative; John Spratt, U.S. Representative; Pete Domenici, U.S. Senator; Jeff Bingaman, U.S. Senator; Ellen Taushcher, U.S. Representative; Bob Graham, U.S. Senator; Chuck Hagel, U.S. Senator; Vic Snyder, U.S. Representative.

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THE WHITE HOUSE,
*Washington, July 30, 2002.*

Hon. RICHARD G. LUGAR,
*U.S. Senate, Washington, DC.*

DEAR SENATOR LUGAR: Thank you for your letter on the Department of Defense Cooperative Threat Reduction (CTR) program.

The President has repeatedly emphasized the importance of CTR in his strategy to reduce and prevent the proliferation of weapons of mass destruction, delivery means, and the materials and technology to develop them. Because of the program's value to the nation's security, the President has asked the Congress to grant him permanent authority to waive CTR certification requirements if he determines that is in the national interest. We strongly support the waiver provision in the Senate version of the FY2003 Defense Authorization bill, and have urged the conferees to adopt it.

Our serious concerns about Russian chemical and biological weapons activities make it difficult for the Secretary of State to certify Russia as eligible for CTR assistance. Waiver authority will enable the Administration both to pursue essential CTR weapons reduction and nonproliferation projects, and to work with Russia to resolve our concerns about its chemical and biological weapons activities.

Similarly, we welcome your proposal for a waiver of the legislative conditions on CTR assistance to construct a nerve agent destruction facility at Shchuch'ye. As you point out, the small, transportable munitions at Shchuch'ye pose a real proliferation risk. The President underscored the importance of assistance to Russian chemical weapons destruction in his December speech at the Citadel and most recently in the G8 Leaders announcement of the Global Partnership Against the Spread of Weapons and Materials of Mass Destruction.

We have been working hard with Russia to meet the legislative conditions on the Shchuch'ye project, and have made considerable progress. Nevertheless, it may be difficult to assess with confidence that the information we have from Russia on its chemical weapons stockpile is full and accurate. At a minimum, the information-gathering process will be very time-consuming, but the proliferation threat gives us no time to delay. Indeed, the Administration concluded after its thorough review of nonproliferation assistance to Russia that the destruction project at Shchuch'ye should be accelerated.

Therefore, the Administration has urged the conferees to the FY2003 Defense Authorization bill to provide the President the authority to waive the conditions on CTR chemical weapons destruction assistance, if he determines that to do so is in the national interest.

Sincerely,

CONDOLEEZZA RICE,
*Assistance to the President for National Security Affairs.*

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U.S. SENATOR CARL LEVIN (D-MI) HOLDS HEARING ON NUCLEAR TREATY WITH RUSSIA, JULY 25, 2002, SENATE ARMED SERVICES COMMITTEE, WASHINGTON, DC

LEVIN: My final question. Secretary Rumsfeld, the Cooperative Threat Reduction Program is coming to a halt because of the inability to make the necessary certifications. The Senate bill that's in conference contains the legislative authority that the administration requested which is permanent authority for the president to grant an annual wavier of the prerequisites in the Freedom Support Act and the Cooperative Threat Reduction Act. The House bill contains authority to grant waivers for three years. I assume that you support the administration positions relative to permanent authority, and so, I won't ask you that. But if you disagree with it, perhaps in your answer to the question I'm going to ask you, you could let me know that, too. But here's the issue. The permanent authority requested by the administration to grant annual waivers of the prerequisites to Implementation of the Cooperative Threats Reduction Program does not include an ability to waive the special prerequisites for the Russian chemical weapons destruction program being carried out under the CTR program. President Bush said that not only did he support this important effort to destroy the Russian chemical weapons destruction program, he actually wanted to accelerate it. But there's no authority to waive those special prerequisites for the chemical destruction, then that program is going to be shut down. Will you be asking for waiver authority for the special prerequisites for the Russian chemical weapons destruction program?

RUMSFELD: The administration either has or will be asking for that waiver authority with respect to the chemical weapon destruction program——

LEVIN: Do you support that request?

RUMSFELD: Indeed, I do.

LEVIN: Thank you. General, you support that, too?

MYERS: Yes sir.

LEVIN: Thank you very much.

The PRESIDING OFFICER (Mr. CORZINE). The Senator from Connecticut.

Mr. DODD. Mr. President, I ask unanimous consent to be added as a cosponsor to the amendment of the distinguished Senator.

Mr. LUGAR. I will be delighted.

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

Mr. DODD. Mr. President, I commend my colleague from Indiana and thank him and our former colleague, Senator Nunn, whom he has mentioned on several occasions during his remarks this evening. These two individuals have made a significant contribution to the improved environment in which the world finds itself today, with all of its problems. Had it not been for the efforts of Senator Nunn and Senator LUGAR over the years, we would not find ourselves in the position we are today to significantly reduce the kinds of threats the Senator from Indiana just highlighted in his remarks.

I am confident this amendment will be overwhelmingly supported. It should be. My cosponsorship is not a gratuitous act, but I want to be identified with the substance of his remarks and, more importantly, the substance of this amendment.

We had some testimony this morning, in fact, before the Senate Committee on Foreign Relations in talking about Iraq. These are very fine hearings that the chairman of the committee, Senator BIDEN, and Senator LUGAR have cosponsored to give us a wonderful opportunity to consider what options we have with regard to Iraq.

I do not want to dwell on that except to point out that Ambassador Butler this morning, when talking about various options and what we ought to consider and specifically talking about the issue of containment and whether we have exhausted the containment approach, questioned himself as to whether we had. But he said one thing we need to do, if anything at all, is to work more closely with Russia because they could play a very important role.

What the Senator from Indiana is doing, not only with this amendment in the short term, is creating at least the possibility of that cooperation which may be essential in the months and years ahead.

It is a staggering statistic. I do not know if my colleagues were listening carefully. Over the next 6 years, I presume working 5 or 6 days a week, 10- or 12-hour days—that is how long it will take to eliminate this incredible risk. The idea that we would be prohibited from doing so because we deny the President waiver authority because of an existing parliamentary situation or treaties that require some prior action I think would be a great missed opportunity.

I commend the Senator from Indiana immensely for his efforts in this regard, and I thank Senator Nunn as well for his previous work here and his continuing work. I wish to associate myself in this effort. This may be one of the most important things we will do in this bill, and I commend the Senator for offering the amendment.

The PRESIDING OFFICER. The Senator from Indiana.

Mr. LUGAR. Mr. President, I thank the distinguished Senator from Connecticut for his cosponsorship.

Cosponsoring this amendment are the chairman of the Foreign Relations Committee, Mr. BIDEN; Mr. DOMENICI; Mr. HAGEL; Mr. GRAHAM; Mr. LEVIN, chairman of the Armed Services Committee; Mr. DODD; and I am pleased to add my colleague from Arizona, Mr. MCCAIN.

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

The Senator from Hawaii.

Mr. INOUYE. We are prepared to accept this amendment and take it to conference.

The PRESIDING OFFICER. Is there further debate on the amendment?

If not, the question is on agreeing to amendment No. 4435.

The amendment (No. 4435) was agreed to.

The PRESIDING OFFICER. The Senator from Arizona.

AMENDMENT NO. 4443

Mr. MCCAIN. Mr. President, I have a couple of amendments the managers have accepted, and I have another amendment that would be the subject of debate. I send those two amendments that I think are agreed to, to the desk at this time and ask for their immediate consideration, either separately or en bloc. The first amendment I would request be called up would be amendment No. 4443.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Arizona [Mr. MCCAIN] proposes an amendment numbered 4443.

The amendment is as follows:

(Purpose: To remove the waiting period in the limitation on use of funds for conversion of the 939th Combat Search and Rescue Wing)

Beginning on page 221, line 24, strike ''60 days after''.

Mr. MCCAIN. Mr. President, the first amendment would remove the reporting period required for the positioning of UH–60s and would allow that the report be submitted at any time. It is largely technical in nature.

The PRESIDING OFFICER. Is there further debate on the amendment?

If not, the question is on agreeing to amendment No. 4443.

The amendment (No. 4443) was agreed to.

***NOTICE***

***Incomplete record of Senate proceedings. Except for concluding business which follows, today's Senate proceedings will be continued in the next issue of the Record.***

## ORDERS FOR THURSDAY, AUGUST 1, 2002

Mr. REID. Mr. President, I ask unanimous consent that when the Senate completes its business today, it stand adjourned until 9:30 a.m. tomorrow, August 1; that on Thursday, following the prayer and the pledge, the Journal of proceedings be approved to date; that the time for the two leaders be reserved for their use later in the day, and that the Senate then resume consideration of the conference report to accompany H.R. 3009, the Andean Trade Act, with the time until 10:30 a.m. equally divided and controlled between the proponents and opponents, with Senator BAUCUS or Senator GRASSLEY controlling the proponents' time and Senator DORGAN or his designee controlling the time in opposition; that at 10:30 a.m., without further intervening action or debate, the Senate proceed to vote on the motion to invoke cloture on the conference report.

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

## ADJOURNMENT UNTIL 9:30 A.M. TOMORROW

Mr. REID. Mr. President, if there is no further business to come before the Senate, I ask unanimous consent that the Senate stand in adjournment under the previous order.

There being no objection, the Senate, at 8:27 p.m., adjourned until Thursday, August 1, 2002, at 9:30 a.m.

## NOMINATIONS

Executive nominations received by the Senate July 31, 2002:

INTERNATIONAL MONETARY FUND

NANCY P. JACKLIN, OF NEW YORK, TO BE UNITED STATES EXECUTIVE DIRECTOR OF THE INTERNATIONAL MONETARY FUND FOR A TERM OF TWO YEARS, VICE RANDAL QUARLES, RESIGNED.

BROADCASTING BOARD OF GOVERNORS

D. JEFFREY HIRSCHBERG, OF WISCONSIN, TO BE A MEMBER OF THE BROADCASTING BOARD OF GOVERNORS FOR A TERM EXPIRING AUGUST 13, 2004, VICE MARC B. NATHANSON, TERM EXPIRED.

IN THE ARMY

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT IN THE RESERVE OF THE ARMY TO THE GRADE INDICATED UNDER TITLE 10, U.S.C., SECTION 12203:

*To Be Major General Brig. Gen.*

TIMOTHY M. HAAKE, 0000

IN THE AIR FORCE

THE FOLLOWING NAMED OFFICERS FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES AIR FORCE AND FOR REGULAR APPOINTMENT (IDENTIFIED

BY AN ASTERISK (*)) UNDER TITLE 10, U.S.C., SECTIONS 624 AND 531:

*To be major*

DEBRA A. * ADAMS, 0000
TIMOTHY F. * AHERN, 0000
DONALD R. * AIDE, 0000
HEATHER M. * ALEXANDER, 0000
JAN M. * ALLEN, 0000
CLINTON R. * ANDERSON, 0000
OLUWANISHOLA * ASENUGA, 0000
NAHED I. * BAHLAWAN, 0000
JOEL L. * BARCLAY, 0000
JOSEPH M. * BARTLE II, 0000
VICTOR A. * BAUMGARTEN, 0000
BUCK TONITA R. * BELL, 0000
MELANIE L. * BENE, 0000
JAMES A. * BENJACK, 0000
AARON J. * BILOW, 0000
SUSAN L. * BLACK, 0000
ARCHIE D. * BOCKHORST, 0000
SUSAN B. * BOWES, 0000
CHRISTOPHER S. * BOYD, 0000
MARC G. * BOYER, 0000
GARY C. * BROWN, 0000
LORILEE H. * BUTLER, 0000
ARTURO C. * CASTRO, 0000
J. CARL * CEMBRANO, 0000
BRUCE E. * CHRISTENSEN, 0000
STEVEN P. * CLANCY, 0000
KATHY L. * CORNELIUS, 0000
ANDREW A. * CRUZ, 0000
MARTHA * DANIEL, 0000
EFRAIN A. * DELVALLEORTIZ, 0000
STEVEN C. * DEWEY, 0000
LAUREL A. * DOVE, 0000
ALANE D. DURAND, 0000
JOSEPH R. * ETHERAGE, 0000
JOHN W. * FEARING, 0000
LAURA C. * FIELDS, 0000
GLEN S. * FISHER, 0000
OSCAR * FONSECA, 0000
CRAIG H. * FORCUM, 0000
CAROL J. * FORREST, 0000
NORMAN C. * FOX, 0000
BENJAMIN J. * FRANKLIN, 0000
TIMOTHY S. * GARTEN, 0000
ROBERT SHAN SANCH * GHOLSON, 0000
PHILIP E. * GOFF, 0000
CALVIN * GRAHAM, 0000
JOHN A. * GRIGG, 0000
DANIEL T. * GUSTAFSON, 0000
ANA M. D. * HALL, 0000
BETH B. * HARRISON, 0000
ANTHONY M. * HASSAN, 0000
DANIEL J. * HESER, 0000
CHARLES R. * HOPKINS, 0000
DAVID M. * HUNT, 0000
CHRISTINE M. * HUNTER, 0000
CHRISTOPHER L. * HUNTER, 0000
WILLIAM C. * ISLER III, 0000
BRENT A. * JOHNSON, 0000
DONALD S. * JOHNSTON, 0000
WILLIAM M. * JONES, 0000
JOHN H. * JORGENSEN, 0000
MAHENDRA B. * KABBUR, 0000
MICHELLE R. * KASTLER, 0000
BRYAN K. * KEMPER, 0000
DAWN * KESSLER, 0000
MATTHEW T. * KILLIAN, 0000
JAMES C. * KING JR., 0000
MICHELLE T. * KOE, 0000
SEMIH S. * KUMRU, 0000
JOHN F. * LECKIE, 0000
PAMELA A. * LUCAS, 0000
TINA M. * LUICHINGER, 0000
MARK A. * MARTELLO, 0000
TERRY R. * MATHEWS, 0000
CHARLES E. * MAYS II, 0000
JOSE O. * MAYSONET, 0000
RANDY P. * MCCALIP, 0000
JOHN E. * MCDERMOTT, 0000
MARY JO * MCHUGH, 0000
ANDREW B. * MEADOWS, 0000
THERESA J. * MEDINA, 0000
JOHN F. * MILESKI, 0000
CARL S. * MILLER, 0000
RICHARD D. * MILLER, 0000
PAUL * MOITOSO, 0000
MIRIAM * MONTES, 0000
MARK C. * MULLEN, 0000
COREY J. * MUNRO, 0000
ANN MARIE * MUSTO, 0000
DAVID C. * NEWMAN, 0000
JASON P. * NOLZ, 0000
BRIAN P. * OCONNOR, 0000
YOUNG R. * OH, 0000
PATRICK S. * OMAILLE, 0000
GENE T. * OMOTO, 0000
DARRIN K. * OTT, 0000
ERIC G. * OWEN, 0000
ENRICO S. * PAEZ, 0000
ROSEMARIE B. * PALTING, 0000
WANDA L. * PARHAM, 0000
CHRISTOPHER I. * PATRICK, 0000
KENNETH R. * PATTERSON, 0000
CHRISTINE A. * POEL, 0000
JULIE M. * RAFFERTY, 0000
RAYMOND H. * RESER JR., 0000
GARY D. * RICE, 0000
ROBERT A. * RODGERS, 0000
MICHAEL D. * ROSS, 0000
DAVID N. * SCHAAF, 0000
MICHAEL H. * SCHROEDER, 0000
MONICA U. * SELENT, 0000
EUGENE V. * SHEELY, 0000
GAYL L. * SIEGEL, 0000
RICHARD D. * SMITH, 0000
CHU H. SOH, 0000
MARK A. * STAAL, 0000
MITZI D. * THOMASLAWSON, 0000
TODD M. * TOMLIN, 0000
JUAN I. * UBIERA JR., 0000
BERNARD L. * VANPELT, 0000
TRISHA K. * VORACHEK, 0000
JENNY K. * VOSS, 0000
SHAWN R. * WAGNER, 0000
PAMELA P. * WARDDEMO, 0000
DIANE L. * WARMOTH, 0000
PETER G. * WEBER III, 0000
MARK P. * WESTRICK, 0000
DANA L. * WHELAN, 0000
JULIE M. WHITMAN, 0000
KIRK P. * WINGER, 0000
KEVIN L. * WRIGHT, 0000
DIRK P. * YAMAMOTO, 0000
CHRISTINA D. * ZOTTO, 0000
JULIE F. * ZWIES, 0000

THE FOLLOWING NAMED OFFICERS FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES AIR FORCE AND FOR REGULAR APPOINTMENT (IDENTIFIED BY AN ASTERISK (*)) UNDER TITLE 10, U.S.C., SECTIONS 624 AND 531:

*To be major*

NICOLA S. * ADAMS, 0000
PRUDENCE R. * ANDERSON, 0000
DEBRA L. * ARABIA, 0000
TERESA L. * BABAKAN, 0000
WENDY J. * BEAL, 0000
IWONA E. * BLACKLEDGE, 0000
VICKI L. * BRADY, 0000
STEPHANIE J. * BUFFETT, 0000
LINDA M. * CASSAVOY, 0000
DEBBIE F. CAVESE, 0000
CRAIG R. CLOSE, 0000
WILLIAM P. * COLEMAN, 0000
DARREL D. * COWLISHAW, 0000
TONIA J. * DAWSON, 0000
KELLY M. * DUFFEK, 0000
GRETCHEN J. * ENGLAND, 0000
CASSANDRA W. * FONSECA, 0000
COLLEEN M. * FROHLING, 0000
BETH ANN LUMPKIN * GAMBILL, 0000
VIRGINIA A. * GARNER, 0000
DENYSE * GEHRIG, 0000
DEBORAH L. * GRAY, 0000
TESFAY K. * GSELASSIE, 0000
SARA W. * HARTWICH, 0000
KATHERINE A. * HEATH, 0000
WILLIAM M. * HIRST, 0000
DIANE M. * HUMERICK, 0000
KAREE M. * JENSEN, 0000
EDWIN L. * JESKE, 0000
VELDA L. * JOHNSON, 0000
VIRGINIA M. * JOHNSON, 0000
DENNIS J. * JORDAN, 0000
MARLENE M. * KERCHENSKI, 0000
ALLEN J. * KIDD, 0000
BRENDA J. * KOIRO, 0000
AARON E. * KONDOR, 0000
PAULA R. * KROSKEY, 0000
THERESE M. * LAPERLE, 0000
JULIA L. * LEDUC, 0000
GWENDOLYN A. * LOCHT, 0000
TERRI S. * LOMENICK, 0000
KELLI T. * LORENZO, 0000
CHRISTINE R. * LOWERY, 0000
MARGARET H. * LYNN, 0000
JACQUELINE L. * MACK, 0000
MARTIN J. * MCGEE, 0000
KERIN D. * MCKELLAR, 0000
DEBRA J. * MCKITRICK, 0000
WILLIAM S. * MCLAURY, 0000
DIANA J. * MCMAINS, 0000
EDWARD S. * METZEL, 0000
BRENT E. * MITCHELL, 0000
KAREN A. * MORAHAN, 0000
ALBERT S. MORENO, 0000
JACQUELINE A. * MUDD, 0000
JAMES J. * NEIMAN, 0000
CAROL F. * NELSON, 0000
ROBYN D. * NELSON, 0000
LISA L. * NESSELROAD, 0000
DEVIN M. * NIX, 0000
KAREN M. * OCONNELL, 0000
ERIN L. * PETERSON, 0000
RITA A. * PHILLIPS, 0000
KEVIN S. * POITINGER, 0000
KATRINA M. * POOLE, 0000
STEVEN L. * POPE, 0000
BLAISE * QUIRAOPASAYAN, 0000
LEE M. * RANSTROM, 0000
IRIS A. * REEDOM, 0000
CYNTHIA J. * ROBISON, 0000
DEREK * ROGERS, 0000
YOLANDA * ROGERS, 0000
MICHAEL H. * ROSS, 0000
FRANCIS * SCHLOSSER, 0000
PATRICIA D. * SEIVERT, 0000
DENISE E. * SEWELL, 0000
ELIZABETH C. * SHAW, 0000
PAIRIN * SKAGGS, 0000
JACK R. * SMITH II, 0000
KEITH R. * SMITH, 0000
LINDA M. * STANLEY, 0000
TOBY R. * STEIN, 0000
JUDY D. * STOLTMANN, 0000
NATALIE A. * SYKES, 0000
CHRISTINE S. * TAYLOR, 0000
KAREN A. * TAYLOR, 0000
LESA R. * TILLEY, 0000
BRIAN G. * TODD, 0000
RANDALL J. * TWENHAFEL, 0000
CHERYL A. * UDENSI, 0000
BRENDA S. * VELAZQUEZ, 0000
SHARON C. * WALKER, 0000
BRENDA I. * WATERS, 0000
KATHRYN W. * WEISS, 0000
MELISSA R. * WELLS, 0000
DEANNA M. * WHITE, 0000
BERNICE J. * WILDER, 0000
DARLENE E. * WILLIAMS, 0000
NNEKA C. WILLIAMS, 0000
TAMBRA L. * YATES, 0000

IN THE ARMY

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES ARMY MEDICAL CORPS UNDER TITLE 10, U.S.C., SECTIONS 624 AND 3064:

*To be lieutenant colonel*

KENNETH S. AZAROW, 0000 MC

THE FOLLOWING NAMED OFFICERS FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES ARMY CHAPLAIN CORPS AND FOR REGULAR APPOINTMENT (IDENTIFIED BY AN ASTERISK(*)) UNDER TITLE 10, U.S.C., SECTIONS 624, 531, AND 3064:

*To be major*

OSCAR T * ARAUCO, 0000
SAMUEL A * CABRERA, 0000
JAMES Y * CHOI, 0000
KEITH N * CROOM, 0000
DWIGHT D * CROY, 0000
JIMMY C * DAVIS JR., 0000
ALBERT L * DOWNING, 0000
BARTH G * EDISON, 0000
CHARLES M * FIELDS, 0000
ALONZO A * FORD, 0000
STREMLER W * GODWIN, 0000
TERRENCE E * HAYES, 0000
YVONNE C * HUDSON, 0000
HARRY C * HUEY JR., 0000
JAY S * JOHNS III, 0000
DONALD W * KAMMER, 0000
SCOTT C * KENNEDY, 0000
RANDALL D * KIRBY, 0000
MICHAEL T * KLEIN, 0000
RODIE L * LAMB, 0000
TRENTON E * LEWIS, 0000
STEVEN A * MAGLIO, 0000
CHAD L * MAXEY, 0000
HOMER V * MCCLEARN JR., 0000
ANTONIO J * MCELROY, 0000
RAYMOND W * MILBURN, 0000
JOHN J * MURPHY, 0000
KIM M * NORWOOD, 0000
RONALD L * OWENS, 0000
JOHN S * PECK, 0000
DOUGLAS L * PRENTICE, 0000
JOHN H * RASMUSSEN, 0000
ACEVEDO J * RESTO, 0000
ARMANDO I * REYES JR., 0000
JOSEPH H * RILEY, 0000
CARL W * ROSENBERG, 0000
OLEN Z * SELLERS, 0000
RON F * SERBAN, 0000
TERRY L * SIMMONS, 0000
ROBERT P * SINNETT JR., 0000
KENNETH R * SORENSON, 0000
STEVEN W * THORNTON, 0000
JEFFREY B * WALDEN, 0000
BRADLEY A * WEST, 0000
JOHN C * WHEATLEY, 0000

IN THE NAVY

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES NAVY UNDER TITLE 10, U.S.C., SECTION 624:

*To be commander*

PAUL T. CAMARDELLA, 0000

## CONFIRMATIONS

### Executive nominations confirmed by the Senate July 31, 2002:

FEDERAL RESERVE SYSTEM

DONALD L. KOHN, OF VIRGINIA, TO BE A MEMBER OF THE BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM FOR A TERM OF FOURTEEN YEARS FROM FEBRUARY 1, 2002.

BEN S. BERNANKE, OF NEW JERSEY, TO BE A MEMBER OF THE BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM FOR THE UNEXPIRED TERM OF FOURTEEN YEARS FROM FEBRUARY 1, 1990.

THE ABOVE NOMINATIONS WERE APPROVED SUBJECT TO THE NOMINEES' COMMITMENT TO RESPOND TO REQUESTS TO APPEAR AND TESTIFY BEFORE ANY DULY CONSTITUTED COMMITTEE OF THE SENATE.

THE JUDICIARY

D. BROOKS SMITH, OF PENNSYLVANIA, TO BE UNITED STATES CIRCUIT JUDGE FOR THE THIRD CIRCUIT.

IN THE ARMY

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT IN THE UNITED STATES ARMY TO THE GRADE INDICATED WHILE ASSIGNED TO A POSITION OF IMPORTANCE AND RESPONSIBILITY UNDER TITLE 10, U.S.C., SECTION 601:

*To be general*

LT. GEN. JAMES T. HILL

IN THE NAVY

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT IN THE UNITED STATES NAVY TO THE GRADE INDICATED WHILE ASSIGNED TO A POSITION OF IMPORTANCE AND RESPONSIBILITY UNDER TITLE 10, U.S.C., SECTION 601:

*To be admiral*

VICE ADM. EDMUND P. GIAMBASTIANI, JR.

IN THE AIR FORCE

THE FOLLOWING NAMED OFFICERS FOR APPOINTMENT IN THE UNITED STATES AIR FORCE TO THE GRADE INDICATED UNDER TITLE 10, U.S.C., SECTION 624:

*To be brigadier general*

COL. CHARLES J. DUNLAP, JR.
COL. MICHAEL N. MADRID

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT IN THE UNITED STATES AIR FORCE TO THE GRADE INDICATED WHILE ASSIGNED TO A POSITION OF IMPORTANCE AND RESPONSIBILITY UNDER TITLE 10, U.S.C., SECTION 601:

*To be lieutenant general*

MAJ. GEN. ROBERT R. DIERKER

IN THE ARMY

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT IN THE UNITED STATES ARMY TO THE GRADE INDICATED WHILE ASSIGNED TO A POSITION OF IMPORTANCE AND RESPONSIBILITY UNDER TITLE 10, U.S.C., SECTION 601:

*To be lieutenant general*

LT. GEN. BRYAN D. BROWN

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT IN THE UNITED STATES ARMY TO THE GRADE INDICATED WHILE ASSIGNED TO A POSITION OF IMPORTANCE AND RESPONSIBILITY UNDER TITLE 10, U.S.C., SECTION 601:

*To be lieutenant general*

MAJ. GEN. PHILIP R. KENSINGER, JR.

IN THE MARINE CORPS

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT AS ASSISTANT COMMANDANT OF THE MARINE CORPS AND APPOINTMENT TO THE GRADE INDICATED WHILE ASSIGNED TO A POSITION OF IMPORTANCE AND RESPONSIBILITY UNDER TITLE 10, U.S.C., SECTIONS 601 AND 5044:

*To be general*

LT. GEN. WILLIAM L. NYLAND

IN THE ARMY

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT IN THE UNITED STATES ARMY TO THE GRADE INDICATED WHILE ASSIGNED TO A POSITION OF IMPORTANCE AND RESPONSIBILITY UNDER TITLE 10, U.S.C., SECTION 601:

*To be lieutenant general*

LT. GEN. PAUL T. MIKOLASHEK

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT IN THE UNITED STATES ARMY TO THE GRADE INDICATED WHILE ASSIGNED TO A POSITION OF IMPORTANCE AND RESPONSIBILITY UNDER TITLE 10, U.S.C., SECTION 601:

*To be lieutenant general*

MAJ. GEN. RICHARD A. CODY

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT IN THE UNITED STATES ARMY TO THE GRADE INDICATED WHILE ASSIGNED TO A POSITION OF IMPORTANCE AND RESPONSIBILITY UNDER TITLE 10, U.S.C., SECTION 601:

*To be lieutenant general*

MAJ. GEN. BANTZ J. CRADDOCK

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT IN THE UNITED STATES ARMY TO THE GRADE INDICATED WHILE ASSIGNED TO A POSITION OF IMPORTANCE AND RESPONSIBILITY UNDER TITLE 10, U.S.C., SECTION 601:

*To be lieutenant general*

MAJ. GEN. WILLIAM E. WARD

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT IN THE RESERVE OF THE ARMY TO THE GRADE INDICATED UNDER TITLE 10, U.S.C., SECTION 12203:

*To be major general*

BRIG. GEN. WILLIAM S. CRUPE

IN THE MARINE CORPS

THE FOLLOWING NAMED OFFICERS FOR APPOINTMENT IN THE UNITED STATES MARINE CORPS TO THE GRADE INDICATED UNDER TITLE 10, U.S.C., SECTION 624:

*To be major general*

BRIG. GEN. JAMES F. AMOS
BRIG. GEN. JOHN G. CASTELLAW
BRIG. GEN. TIMOTHY E. DONOVAN
BRIG. GEN. ROBERT M. FLANAGAN
BRIG. GEN. JAMES N. MATTIS
BRIG. GEN. GORDON C. NASH
BRIG. GEN. ROBERT M. SHEA
BRIG. GEN. FRANCES C. WILSON

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT IN THE UNITED STATES MARINE CORPS TO THE GRADE INDICATED WHILE ASSIGNED TO A POSITION OF IMPORTANCE AND RESPONSIBILITY UNDER TITLE 10, U.S.C., SECTION 601:

*To be lieutenant general*

MAJ. GEN. MARTIN R. BERNDT

IN THE NAVY

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT IN THE UNITED STATES NAVAL RESERVE TO THE GRADE INDICATED UNDER TITLE 10, U.S.C., SECTION 12203:

*To be rear admiral*

REAR ADM. (LH) STEVEN B. KANTROWITZ

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT IN THE UNITED STATES NAVAL RESERVE TO THE GRADE INDICATED UNDER TITLE 10, U.S.C., SECTION 12203:

*To be rear admiral*

REAR ADM. (LH) JAMES MANZELMANN, JR.

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT IN THE UNITED STATES NAVY TO THE GRADE INDICATED UNDER TITLE 10, U.S.C., SECTION 624:

*To be rear admiral*

REAR ADM. (LH) DENNIS M. DWYER

THE FOLLOWING NAMED OFFICERS FOR APPOINTMENT IN THE UNITED STATES NAVY TO THE GRADE INDICATED UNDER TITLE 10, U.S.C., SECTION 624:

*To be rear admiral*

REAR ADM. (LH) RICHARD A. MAYO
REAR ADM. (LH) DONALD C. ARTHUR, JR.

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT IN THE UNITED STATES NAVY TO THE GRADE INDICATED UNDER TITLE 10, U.S.C., SECTION 624:

*To be rear admiral (lower half)*

CAPT. GREGORY R. BRYANT

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT IN THE UNITED STATES NAVY TO THE GRADE INDICATED UNDER TITLE 10, U.S.C., SECTION 624:

*To be rear admiral (lower half)*

CAPT. ANDREW M. SINGER

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT IN THE UNITED STATES NAVY TO THE GRADE INDICATED WHILE ASSIGNED TO A POSITION OF IMPORTANCE AND RESPONSIBILITY UNDER TITLE 10, U.S.C., SECTION 601:

*To be vice admiral*

REAR ADM. MICHAEL D. MALONE

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT IN THE UNITED STATES NAVY TO THE GRADE INDICATED WHILE ASSIGNED TO A POSITION OF IMPORTANCE AND RESPONSIBILITY UNDER TITLE 10, U.S.C., SECTION 601:

*To be vice admiral*

VICE ADM. JOHN B. NATHMAN

AIR FORCE NOMINATIONS BEGINNING JOHN W. BAKER AND ENDING DAVID E. WILSHEK, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON FEBRUARY 27, 2002.

AIR FORCE NOMINATIONS BEGINNING SHELLEY R. ATKINSON AND ENDING RANDY K. YOUNG, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON JUNE 28, 2002.

AIR FORCE NOMINATION OF FREDRIC A. MARKS.

AIR FORCE NOMINATIONS BEGINNING MEREDITH L. * ADAMS AND ENDING EDWIN W. * WRIGHT, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON JULY 18, 2002.

AIR FORCE NOMINATIONS BEGINNING SARA K. * ACHINGER AND ENDING CHARLES E. * WIEDIE, JR., WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON JULY 18, 2002.

AIR FORCE NOMINATIONS BEGINNING CHRISTOPHER R. * ABRAMSON AND ENDING ANNAMARIE * ZURLINDEN, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON JULY 18, 2002.

AIR FORCE NOMINATION OF KURT R.L. PETERS.

AIR FORCE NOMINATIONS BEGINNING BUENAVENTURA Q. ALDANA AND ENDING

ANDREW W. TICE, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON JULY 25, 2002.

ARMY NOMINATIONS BEGINNING LAURA R BROSCH AND ENDING CONNORS A WOLFORD, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON DECEMBER 11, 2001.

ARMY NOMINATIONS BEGINNING ANN L BAGLEY AND ENDING KEITH A WUNSCH, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON JANUARY 28, 2002.

ARMY NOMINATIONS BEGINNING ROBERT C ALLEN, JR. AND ENDING CHRISTINA M YUAN, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON JANUARY 28, 2002.

ARMY NOMINATIONS BEGINNING MARVIN P * ANDERSON AND ENDING KENNETH O * WYNN, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON JUNE 7, 2002.

ARMY NOMINATIONS BEGINNING JOHN G ANGELO AND ENDING VIRGINIA D * YATES, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON JUNE 7, 2002.

ARMY NOMINATIONS BEGINNING WILLIAM A. BENNETT AND ENDING CHARLES B. TEMPLETON, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON JULY 18, 2002.

ARMY NOMINATIONS BEGINNING JOHN W. BAILEY AND ENDING JOYCE L. STEVENS, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON JULY 18, 2002.

ARMY NOMINATION OF ALONZO C. CUTLER.

ARMY NOMINATIONS BEGINNING DOMINIC D. ARCHIBALD AND ENDING RICHARD L. THOMAS, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON JULY 18, 2002.

ARMY NOMINATIONS BEGINNING RICKY W. BRANSCUM AND ENDING FREDERICK O. STEPAT, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON JULY 18, 2002.

ARMY NOMINATIONS BEGINNING CURTIS W. ANDREWS AND ENDING THOMAS F. STEPHENSON, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON JULY 18, 2002.

ARMY NOMINATIONS BEGINNING ANTONIO CORTESSANCHEZ AND ENDING KIMBERLY D. WILSON, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON JULY 25, 2002.

ARMY NOMINATIONS BEGINNING HENRY G. BERNREUTER AND ENDING MARK D. SCRABA, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON JULY 25, 2002.

COAST GUARD NOMINATIONS BEGINNING GEORGE H. TEUTON AND ENDING BLAKE L. NOVAK, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON JULY 18, 2002.

MARINE CORPS NOMINATIONS BEGINNING MICHAEL J. BISSONNETTE AND ENDING DANIEL J. MCLEAN, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON APRIL 11, 2002.

NAVY NOMINATION OF DUANE W. MALLICOAT.

NAVY NOMINATION OF FRANCIS MICHAEL PASCUAL.

NAVY NOMINATIONS BEGINNING LARRY D PHEGLEY AND ENDING JEFFREY ROBERT VANKEUREN, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON APRIL 16, 2002.

NAVY NOMINATIONS BEGINNING ARTHUR KELSO DUNN AND ENDING WAYNE TYLER NEWTON, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON APRIL 16, 2002.

NAVY NOMINATIONS BEGINNING MARK THOMAS DAVISON AND ENDING RICHARD SHANT ROOMIAN, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON APRIL 16, 2002.

NAVY NOMINATIONS BEGINNING JENNITH ELAINE HOYT AND ENDING ROBERT A. WOOD, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON APRIL 16, 2002.

NAVY NOMINATIONS BEGINNING EDMUND WINSTON BARNHART AND ENDING L M SILVESTER, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON APRIL 16, 2002.

NAVY NOMINATIONS BEGINNING ROBERT M CRAIG AND ENDING MELANIE SUZANNE WINTERS, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON APRIL 16, 2002.

NAVY NOMINATIONS BEGINNING ROBERT KENNETH BAKER AND ENDING RICHARD H RUSSELL, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON APRIL 19, 2002.

NAVY NOMINATIONS BEGINNING DAVID STEWART CARLSON AND ENDING MICHAEL JOSEPH ZULICH, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON APRIL 16, 2002.

NAVY NOMINATIONS BEGINNING JOHN ALDA, JR. AND ENDING KATHRYN DICKENS YATES, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON APRIL 16, 2002.

NAVY NOMINATIONS BEGINNING MICHAEL P ARGO AND ENDING MARK STEVEN SPENCER, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON APRIL 16, 2002.

NAVY NOMINATIONS BEGINNING RONALD DAVID ABATE AND ENDING GLENN L ZITKA, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON APRIL 16, 2002.

NAVY NOMINATIONS BEGINNING DAVID B AUCLAIR AND ENDING RYAN M WILSON, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON JUNE 4, 2002.

NAVY NOMINATIONS BEGINNING KENNETH C ALEXANDER AND ENDING TIMOTHY G ZAKRISKI, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON JUNE 4, 2002.

NAVY NOMINATIONS BEGINNING DAVID F BAUCOM AND ENDING JONATHAN A YUEN, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON JUNE 4, 2002.

NAVY NOMINATIONS BEGINNING ROBERT D BECHILL AND ENDING PHILIP H WRIGHT, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON JUNE 4, 2002.

NAVY NOMINATIONS BEGINNING LYNN P ABUMARI AND ENDING SUSAN YOKOYAMA, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON JUNE 4, 2002.

NAVY NOMINATIONS BEGINNING DAVID W ANDERSON AND ENDING STEPHEN R STEELE, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON JUNE 4, 2002.

NAVY NOMINATIONS BEGINNING BARNEY R BARENDSE AND ENDING KRISTIANE M WILEY, WHICH NOMINATIONS

WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON JUNE 5, 2002.

NAVY NOMINATIONS BEGINNING MICHAEL J BOOCK AND ENDING ALEXANDER W WHITAKER IV, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON JUNE 5, 2002.

NAVY NOMINATIONS BEGINNING STEPHEN T AHLERS AND ENDING KERRY R THOMPSON, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON JUNE 5, 2002.

NAVY NOMINATIONS BEGINNING DANIEL C ALDER AND ENDING ERIC J ZINTZ, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON JUNE 5, 2002.

NAVY NOMINATIONS BEGINNING ALAN T BAKER AND ENDING DOUGLAS J WAITE, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON JUNE 5, 2002.

NAVY NOMINATION OF JAMES T. CONEN.

NAVY NOMINATIONS BEGINNING JOSEPH D. CALDERONE AND ENDING RICHARD A. WILLIAMS, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON JUNE 5, 2002.

NAVY NOMINATIONS BEGINNING TIMOTHY G. ALBERT AND ENDING JANICE M. STACYWASHINGTON, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON JUNE 5, 2002.

NAVY NOMINATIONS BEGINNING WARREN WOODWARD RICE AND ENDING MARK J. SAKOWSKI, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON JUNE 5, 2002.

NAVY NOMINATIONS BEGINNING BARBARA S. BLACK AND ENDING DOUGLAS D. WRIGHT, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON JUNE 5, 2002.

NAVY NOMINATIONS BEGINNING MICHAEL R. BONNETTE AND ENDING DAVID C. PHILLIPS, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON JUNE 5, 2002.

NAVY NOMINATIONS BEGINNING JOSE R ALMAGUER AND ENDING KENNETH M STINCHFIELD, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON JUNE 5, 2002.

NAVY NOMINATIONS BEGINNING ROXIE T. MERRITT AND ENDING JACQUELINE C. YOST, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON JUNE 26, 2002.

NAVY NOMINATIONS BEGINNING TRECI D. DIMAS AND ENDING DAVID G. SIMPSON, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON JUNE 26, 2002.

NAVY NOMINATIONS BEGINNING STEPHEN W. BARTLETT AND ENDING JAMES M. TUNG, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON JUNE 26, 2002.

NAVY NOMINATIONS BEGINNING DAVID R. ARNOLD AND ENDING LORI F. TURLEY, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON JUNE 26, 2002.

NAVY NOMINATIONS BEGINNING VICTOR G. ADDISON, JR. AND ENDING ZDENKA S. WILLIS, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON JUNE 26, 2002.

NAVY NOMINATIONS BEGINNING ROBERT J. FORD AND ENDING EDWIN F. WILLIAMSON, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON JUNE 26, 2002.

NAVY NOMINATIONS BEGINNING DAVID A. BELTON AND ENDING JAMES A. THOMPSON, JR., WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON JUNE 26, 2002.

NAVY NOMINATIONS BEGINNING JEFFREY A. BENDER AND ENDING DAVID E. WERNER, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON JUNE 26, 2002.

NAVY NOMINATIONS BEGINNING ALEXANDER P BUTTERFIELD AND ENDING ELIZABETH L TRAIN, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON JUNE 26, 2002.

NAVY NOMINATIONS BEGINNING TERRY J BENEDICT AND ENDING EDWARD D WHITE III, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON JUNE 26, 2002.

NAVY NOMINATIONS BEGINNING PETER D BAUMANN AND ENDING ALLISON D WEBSTERGIDDINGS, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON JUNE 26, 2002.

NAVY NOMINATIONS BEGINNING STEPHEN C BALLISTER AND ENDING JEROME ZINNI, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON JUNE 26, 2002.

NAVY NOMINATIONS BEGINNING VERNON E BAGLEY AND ENDING BOYD T ZBINDEN, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON JUNE 26, 2002.

NAVY NOMINATIONS BEGINNING WESTON J ANDERSON AND ENDING STEPHEN C WOLL, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON JUNE 26, 2002.

NAVY NOMINATIONS BEGINNING KATHLEEN B DANIELS AND ENDING TERIANN SAMMIS, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON JUNE 26, 2002.

NAVY NOMINATIONS BEGINNING DAVID A BONDURA AND ENDING WILBURN T STRICKLAND, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON JUNE 26, 2002.

NAVY NOMINATIONS BEGINNING CHRISTIAN D BECKER AND ENDING SCOTT M WOLFE, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON JUNE 26, 2002.

NAVY NOMINATIONS BEGINNING JULIENNE E ALMONTE AND ENDING MICHAEL F WEBB, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON JUNE 26, 2002.

NAVY NOMINATIONS BEGINNING ALFREDO L ALMEIDA AND ENDING MARK A WISNIEWSKI, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON JUNE 26, 2002.

NAVY NOMINATIONS BEGINNING JON D ALBRIGHT AND ENDING MICHAEL W ZARKOWSKI, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON JUNE 26, 2002.

NAVY NOMINATIONS BEGINNING TODD A ABLER AND ENDING THOMAS A ZWOLFER, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON JUNE 26, 2002.

NAVY NOMINATION OF ROGER E. MORRIS.

NAVY NOMINATION OF JANE E. MCNEELY.

NAVY NOMINATIONS BEGINNING GENARO T. BELTRAN, JR. AND ENDING THEODORE T. POSUNIAK, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON JUNE 28, 2002.

NAVY NOMINATIONS BEGINNING SEVAK ADAMIAN AND ENDING CLIFFORD ZDANOWICZ, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON JUNE 28, 2002.

NAVY NOMINATIONS BEGINNING PIUS A AIYELAWO AND ENDING GEORGE S WOLOWICZ, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON JUNE 28, 2002.

NAVY NOMINATIONS BEGINNING SALVADOR AGUILERA AND ENDING DONALD P TROAST, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON JUNE 28, 2002.

NAVY NOMINATIONS BEGINNING DANIEL L ALLEN AND ENDING MICHAEL J WILSON, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON JUNE 28, 2002.

NAVY NOMINATIONS BEGINNING DANIEL J ACKERSON AND ENDING JOHNNY WON, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON JUNE 28, 2002.

NAVY NOMINATIONS BEGINNING CONNIE J BULLOCK AND ENDING BRENDAN F WARD, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON JUNE 28, 2002.

NAVY NOMINATIONS BEGINNING ANGELICA L C ALMONTE AND ENDING LESTER M WHITLEY, JR., WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON JUNE 28, 2002.

NAVY NOMINATIONS BEGINNING KATHRYN A ALLEN AND ENDING JOHN A ZULICK, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON JUNE 28, 2002.

NAVY NOMINATION OF WILLIAM W. CROW.

NAVY NOMINATION OF JOEL C. SMITH.

NAVY NOMINATION OF JOSEPH R. BECKHAM.

NAVY NOMINATION OF MICHAEL E. MOORE.

NAVY NOMINATIONS BEGINNING CHARLES W BROWN AND ENDING TANYA L WALLACE, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON JULY 22, 2002.

NAVY NOMINATIONS BEGINNING TODD E BARNHILL AND ENDING DOMINICK A VINCENT, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON JULY 22, 2002.

NAVY NOMINATIONS BEGINNING COLLEEN M BARIBEAU AND ENDING KIM C WILLIAMS, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON JULY 22, 2002.

NAVY NOMINATIONS BEGINNING VINCENT A AUGELLI AND ENDING REESE K ZOMAR, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON JULY 22, 2002.

NAVY NOMINATIONS BEGINNING ANGEL BELLIDO AND ENDING WALTER J WINTERS, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON JULY 22, 2002.

NAVY NOMINATIONS BEGINNING MICHAEL P BANASZEWSKI AND ENDING BRIAN S ZITO, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON JULY 22, 2002.

NAVY NOMINATIONS BEGINNING STUART R BLAIR AND ENDING JON E WITHEE, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON JULY 22, 2002.

NAVY NOMINATIONS BEGINNING WILLIAM L ABBOTT AND ENDING RYSZARD W ZBIKOWSKI, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON JULY 22, 2002.

NAVY NOMINATION OF STEVEN D. KORNATZ.

NAVY NOMINATION OF MARY B. GERASCH.

NAVY NOMINATION OF BARON D. JOLIE.

NAVY NOMINATION OF TODD A. MASTERS.

NAVY NOMINATION OF PERRY W. SUTER.

NAVY NOMINATIONS BEGINNING WILLIAM L ABBOTT AND ENDING DONALD E WYATT, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON JULY 25, 2002.