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House of Representatives

The House was not in session today. Its next meeting will be held on Tuesday, January 20, 2004, at 12 noon.

Senate

TUESDAY, DECEMBER 9, 2003

The Senate met at 10 a.m. and was called to order by the President pro tempore (Mr. STEVENS).

PRAYER

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

Let us pray.

Eternal Spirit, Who directs the paths of all who love You, in this season of peace on Earth, we thank You for Your Word and for the eternal truths that guide us day by day. Thank You, Lord, for another day with opportunities to make a difference in Your world. Thank You also for the sureness of Your presence that brings us peace in the midst of this world's turmoil. Lord, teach us to turn to You so that Your thoughts can become our thoughts and Your ways our ways. Be for our Senators a refuge and a fortress and may they put their trust in You. Help each of us to depend upon Your strength as we navigate life's challenging seas. May we trust the wonderful laws of sowing and reaping, knowing You will bring us an abundant harvest. We pray this in Your great Name. Amen.

NOTICE

If the 108th Congress, 1st Session, adjourns sine die on or before December 9, 2003, a final issue of the Congressional Record for the 108th Congress, 1st Session, will be published on Monday, December 15, 2003, in order to permit Members to revise and extend their remarks.

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

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By order of the Joint Committee on Printing.

ROBERT W. NEY, *Chairman.*

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

PLEDGE OF ALLEGIANCE

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

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

RESERVATION OF LEADER TIME

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

RECOGNITION OF THE MAJORITY LEADER

The PRESIDENT pro tempore. The majority leader is recognized.

SCHEDULE

Mr. FRIST. Mr. President, I welcome everybody back from a short recess over the Thanksgiving holiday. I hope everyone did have a safe and a restful period after a very busy 3 to 4 weeks just prior to that. I hope everybody had an opportunity to spend good time, quality time with family and friends.

As I announced before the break, we have returned today with the hope of completing our work on the appropriations process. Chairman STEVENS finished the negotiations on the omnibus measure, and that conference report was filed in the House of Representatives before we departed for Thanksgiving.

Today, we hope to take up that conference report and dispose of it, although I understand this will not be possible. I will be discussing momentarily other options with the Democratic leader and will likely be propounding a unanimous consent request for consideration of the omnibus bill here later this morning.

We will not have any rollcall votes today, but in addition to any agreements we may reach here on the omnibus measure, we would like to also consider other legislative and executive matters that can be cleared over the course of the day. Specifically, there are a large number of important executive nominations that are pending on the calendar that I hope we will be able to address. Again, I will be working with the Democratic leader to proceed to any of these noncontroversial nominations before we conclude our business today.

At this juncture, I will be happy to yield to the Democratic leader, and then likely we will go into a period of morning business, and we will have a discussion about the further plans for the day.

RECOGNITION OF THE MINORITY LEADER

The PRESIDENT pro tempore. The Democrat leader is recognized.

Mr. DASCHLE. Mr. President, I join the majority leader in welcoming our colleagues and our staff. I, too, hope they all had a good Thanksgiving holiday, and I appreciate the work that has been done at the staff level over the course of the last couple weeks as we have prepared for this day.

I look forward to our discussions in the next couple of minutes with regard to how we might proceed. I have a more extensive statement with regard to the omnibus appropriations bill that I will make at a later time.

Obviously, there are some executive nominations that we believe could be addressed. We have been working together to find how we might move a large number of them today, and I hope before the end of this day we will have completed our work on that as well.

I look forward to working with the majority leader and our colleagues in the hope we can make this a very productive day.

I yield the floor.

The PRESIDENT pro tempore. The majority leader is recognized.

Mr. FRIST. Mr. President, the Democratic leader and I will be in discussions over the next several minutes, but I suggest we go ahead into morning business at this juncture.

MORNING BUSINESS

The PRESIDENT pro tempore. Under the previous order, there will now be a period for the transaction of morning business, with Senators permitted to speak therein for up to 10 minutes each.

Mr. DASCHLE. Mr. President, I suggest the absence of a quorum.

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

The assistant legislative clerk proceeded to call the roll.

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

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

UNANIMOUS CONSENT REQUEST—CONFERENCE REPORT TO ACCOMPANY H.R. 2673

Mr. FRIST. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of the conference report to accompany H.R. 2673, the omnibus appropriations language; further, I ask unanimous consent that the conference report be agreed to and the motion to reconsider be laid upon the table.

The PRESIDING OFFICER. Is there objection? The Democratic leader.

Mr. DASCHLE. Reserving the right to object—and I will have a lengthier statement—I ask unanimous consent, instead, that later today, at a time to be determined by the two leaders, the Senate proceed to the consideration of a resolution to correct the flaws in the omnibus appropriations bill by: Reinstating the Senate-passed provision to prohibit the administration's plan to abolish overtime for 8 million workers; reinstating the Senate-passed provision on media ownership; striking the House language blocking the implementation of country-of-origin labeling; striking the provision that weakens the background check requirements of the Brady bill; striking the provision to impose a voucher system on the DC public school system; striking the provision to allow the contracting out of over 400,000 Federal jobs and reinstating the House-passed language; and striking the provisions imposing arbitrary across-the-board cuts to education, Head Start, veterans health care, highway construction, and other needed programs. I further ask consent that the resolution be subject to 1 hour of debate equally divided, that no amendments or motions be in order, and that after the expiration of the time, the bill be agreed to and sent to the House of Representatives. Finally, I ask consent that upon approval of this correcting resolution by the House, the omnibus appropriations bill be agreed to by the Senate, and that it be sent to the President for his signature.

The PRESIDING OFFICER. Does the leader so modify his request?

Mr. FRIST. I object to the Democratic leader's request.

Mr. DASCHLE. Mr. President, then I object to the request made by the majority leader.

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

Mr. BYRD. Mr. President, both requests have thus far been objected to; am I correct?

The PRESIDING OFFICER. That is correct.

Mr. BYRD. I thank the Chair.

Mr. FRIST. Mr. President, I ask unanimous consent that at a time determined by the majority leader, after consultation with the Democratic leader, the Senate proceed to the conference report to accompany the omnibus bill, provided, further, that there be 5 hours for debate to be equally divided in the usual form. I further ask consent that following the use or yielding back of debate time, the Senate proceed to a vote on the adoption of the conference report, with no intervening action or debate.

Mr. DASCHLE. Mr. President, I object.

The PRESIDING OFFICER. Objection is heard.

Mr. FRIST. Mr. President, I am not surprised by these objections. I think that a number of colleagues, including the distinguished Senator from West Virginia and others on their side, have been very open and forthright with their intent to object to this legislation.

The conference report was filed before Thanksgiving, and it was my hope that over the intervening period of time people would have had the opportunity to review the language before we proceeded. I hope they have taken that opportunity to do so.

Given the objections we have just heard, it appears as though we will need to file cloture on the measure to assure a vote on the conference report. That cloture vote will occur on January 20. It is my hope that during this period Members will take the additional time to review it so everyone can fully understand the importance of much of the funding in this legislation.

AGRICULTURE, RURAL DEVELOPMENT, FOOD AND DRUG ADMINISTRATION, AND RELATED AGENCIES APPROPRIATIONS ACT, 2004—CONFERENCE REPORT

Mr. FRIST. Mr. President, I now ask unanimous consent that the Senate proceed to the conference report to accompany H.R. 2673, the omnibus bill, for the purpose of filing cloture. I further ask consent that following the filing of cloture on the conference report, the Senate then proceed to a period of morning business, with Senators permitted to speak therein for up to 10 minutes each.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered. The clerk will report.

The assistant legislative clerk read as follows:

The Committee of Conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 2673), making appropriations for Agriculture, Rural Development, Food and Drug Administration, and Related Agencies for the fiscal year ending September 30, 2004, and for other purposes, having met, have agreed that the House recede from its disagreement to the amendment of the Senate, and agree to the same with an amendment, signed by a majority of the conferees on the part of both Houses.

The PRESIDING OFFICER. The Senate will proceed to the consideration of the conference report.

(The conference report is printed in the proceedings of the House in the RECORD of November 25, 2003.)

CLOTURE MOTION

Mr. FRIST. Mr. President, for the reasons stated earlier, I send a cloture motion to the desk.

The PRESIDING OFFICER. The clerk will report.

The assistant 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, hereby move to bring to a close debate on the conference report to accompany H.R. 2673, a bill making appropriations for the Department of Agriculture and Related Agencies for fiscal year 2004, and for other purposes:

Bill Frist, Rick Santorum, George Allen, Robert F. Bennett, Jon Kyl, Ted Stevens, Kay Bailey Hutchison, Ben Nighthorse Campbell, Mitch McConnell, Judd Gregg, Orrin G. Hatch, John Cornyn, Christopher Bond, Saxby Chambliss, Sam Brownback, Larry E. Craig, Richard Shelby.

The PRESIDING OFFICER. The majority leader is recognized.

Mr. FRIST. Mr. President, I now ask unanimous consent that the mandatory quorum under rule XXII be waived and, further, that notwithstanding rule XXII, this cloture vote occur on January 20 at 2:30 p.m.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

UNANIMOUS CONSENT REQUEST—H.R. 2800

Mr. DASCHLE. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of H.R. 2800, the Foreign Operations appropriations bill, as passed by the Senate on October 30, that all after the enacting clause be stricken and the text of division D of H.R. 2673, the omnibus appropriations bill, be inserted in lieu thereof, the bill be read the third time, passed, and the motion to reconsider be laid upon the table, without intervening action or debate.

Mr. FRIST. Reserving the right to object, Mr. President, I think much of what is in the Foreign Operations bill and part of the real focus of the proposed unanimous consent request is on global HIV/AIDS funding. As most in this body know, I do believe HIV/AIDS has presented the greatest moral, humanitarian, and public health challenge of really the last 100 years, if you look at the impact it is having.

We are under a continuing resolution and I have looked very closely to make sure that sufficient moneys will not be interrupted over the intervening period of time. Indeed, there is sufficient money that has not been allocated in the appropriate funds that can be used and that would cover the increment of the next 1 month in terms of funding.

Again, it is important for colleagues and others to understand we will be operating under a continuing resolution and the funding that is currently being appropriated, given to the organizations and to serve the needs of the people, will continue and there can be increased funding allocated within the appropriate categories to cover that increment over time for HIV/AIDS funding.

With that, I object.

The PRESIDING OFFICER. Objection is heard.

UNANIMOUS CONSENT REQUEST—S. 1853

Mr. DASCHLE. Mr. President, I ask unanimous consent that the Senate proceed to the legislative session, that the Finance Committee be discharged from further consideration of S. 1853, a bill to extend unemployment insurance benefits for displaced workers, that the Senate proceed to its immediate consideration, the bill be read the third time and passed, and the motion to reconsider be laid upon the table.

The PRESIDING OFFICER. Is there objection?

Mr. FRIST. Reserving the right to object, Mr. President, the unemployment insurance is an issue we will continue to discuss with our colleagues. The House has not yet acted on unemployment insurance. It is an issue we will continue to have under discussion as we go forward.

With that said, I do object.

The PRESIDING OFFICER. Objection is heard.

OMNIBUS SPENDING BILL

Mr. DASCHLE. Mr. President, unless the majority leader has additional comments, I wish to take a few moments to address my concerns about the current draft of the appropriations bill.

I believe the appropriations process has fallen apart. This is a Frankenstein monster of a bill born of a badly broken process. It is time to send it back to the laboratory.

At the beginning of the year, we were told the White House and the Senate Republican leadership would make sure the appropriations process ran more smoothly than ever before. In fact, the process broke down to an extent never seen before, opening the door to the worst kind of legislative abuses and special interest giveaways.

This bill, this monstrosity, combines 7 appropriations bills, including 11 of 15 Cabinet-level Departments, comprising $820 billion in Government spending. To agree to a unanimous consent request this morning I believe would represent a shocking abrogation of our responsibilities to the people of this country. We have not finished until 2½ months into the fiscal year. This was supposed to have been done on October 1. It is now early December.

These delays are becoming regrettably common. But what makes this omnibus unique is its utter disregard for the expressed will of each House of Congress. The process was an abomination, closed largely to Democrats, hidden from the light of day, written to satisfy nothing more than special interest wish lists.

It didn't have to be this way. The Senate passed 12 of the 13 appropriations bills by wide bipartisan margins. The House passed 13 appropriations bills with wide margins. None of the bills posed difficulties. The only reason the process was handled this way was to ram through divisive provisions and pork spending that could never win the support of the Congress on their own.

I thank Chairman STEVENS and especially my ranking member, Senator BYRD, for the work they did to avoid this calamity. They understand the proper process and worked to employ it in this case. However, they were overruled by the White House and Republican leadership. That's why we find ourselves in this regrettable situation today.

This brand of legislating opens the door to the most ludicrous examples of pork spending, which has contributed to citizens' loss of faith in the process itself.

Even the conservative Taxpayers for Common Sense said:

This bill includes thousands of frivolous, bizarre, and special interest earmarks for every congressional district in the nation.

For example, in this bill, somewhere in these pages, you will find $2 million to encourage young people to play golf; half a million dollars for halibut data collection; money for a replica mule barn in LaSalle, IL; and most ironic, a half a million dollars for the ''Exercise in Hard Choices'' Program at the University of Akron which attempts to replicate House and Senate meetings in which congressional members review a budget and vote to include or exclude various options.

Alongside this kind of wasteful spending, this bill includes several mean-spirited damaging offsetting cuts. These cuts will result in 24,000 fewer children who will be served by title I educational programs; 5,500 fewer kids will be able to attend Head Start; 26,500 fewer veterans will receive medical care; and $170 million will be cut from needed highway construction projects. I could go on all day.

What is most troubling about this bill is the fact that some of the most egregious provisions that were sneaked into this bill at the last minute had already been rejected by one or both Houses of Congress. The fact that the White House directed conferees to include them shows a contempt both for the procedures of Congress and the citizens they were designed to protect.

This bill once more allows the White House to end overtime protection for American workers. The Senate voted to stop the White House's plan by a vote of 54 to 45. The House agreed by a vote of 221 to 203. The reason is clear. Ending overtime is bad for working families, and it is bad for the economy. At this precarious moment for our economy, the White House's plan would deliver a pay cut to 8 million workers, including emergency medical personnel, criminal investigators, nurses, physician assistants, teachers, agriculture inspectors, and more.

Overtime accounts for nearly a quarter of these workers' take-home pay. For many Americans, their overtime offers them the chance to save for college or a down-payment for a house, or simply to meet their medical bills. It has been vital protection for workers for the past 70 years, and now Congress's defense of working families, overwhelmingly approved by both the Senate and in the House, mysteriously was stripped from this bill.

Media ownership is another example. Real damage to our democracy occurs when a few companies control the airwaves. We had broad bipartisan support for maintaining the limits—wide majorities, again, in both the House and the Senate.

After first agreeing to retain the language passed by the House and Senate to limit the number of stations a network can own, conferees bowed to White House pressure to permanently raise the limit to make it easier on media conglomerates, again, directly overturning rollcall votes taken in the House and Senate on media ownership. Mysteriously, once more, the legislation confronted reality and the sentiment of the Members of both bodies.

Consider country-of-origin labeling: The omnibus legislation I have in front of me includes language actually delaying the implementation of country-of-origin labeling for 2 years. The Senate passed country-of-origin labeling on two occasions—in May of 2002 as part of the farm bill, as well as just last month with a vote of 56 to 32.

Consumers deserve the right to make informed choices. The economic benefit to farmers and ranchers in struggling rural communities could not be more apparent. It was supported by 167 farm organizations representing 50 million Americans but opposed by the four meatpackers that control 80 percent of the U.S. beef market. They worked behind the scenes to kill this rule and that, too, is in this legislation.

This bill also undermines our ability to stop gun crimes: This bill requires the destruction of background check records within 24 hours. Current law requires records to be maintained for 90 days. It is vital to the war on terror, as well as to domestic violence cases, that retention of these records be maintained. The retention of records has been critical to audit NICS and correct mistaken approvals. We will no longer have that ability as a result of the provisions included in this bill.

The General Accounting Office reports that the 90-day retention allowed the FBI to retrieve 235 guns that were bought by people with criminal records.

We also had a big debate—a very aggressive debate—about DC vouchers. We stripped out the provision that was reinserted to circumvent Democratic objections. There was no accountability here. In addition, we are undermining the Washington, DC, schools to advance a theory that absolutely has no evidence to back it up. Vouchers threaten to create two-tiered education system in which more children each year are left behind. But as with the other controversial provisions, vouchers, for the first time at the Federal level, are in this bill.

This bill also undermines our protection of federal workers. Language was dropped that blocked the OMB plan to contract out 400,000 Federal workers. The conferees had reached a bipartisan compromise, but that was rejected by the White House. What remains provides so many loopholes for OMB that the Federal workers have very little protection.

This bill is to good legislating what a dank basement corner is to good housekeeping. Both could stand a good dose of sunlight, and that is just what we intend to do.

We will not allow this bill to be sneaked through a procedural back door when no one is looking. It may mean further delay, but 1 more month of delay is nothing compared to the enduring damage this bill will cause to the Senate, our Government, and our Nation.

EXTENSION OF THE FEDERAL UNEMPLOYMENT BENEFITS PROGRAM

Mr. President, with regard to the unanimous consent request I had made, this holiday season is bringing the same bad news that millions of jobless workers heard last year. Nearly 3 million Americans have lost their jobs; 2.6 million in manufacturing alone. The number of people looking for work for more than 6 months has now tripled since the beginning of the Bush administration.

In fact, the economy would have to create over 347,000 jobs per month just to keep the Bush administration from having the worst rate of job creation of any administration since the Great Depression.

Today, there are three job seekers for every job opening. Yet the Republican leadership in the Congress is again refusing to address this urgent problem.

During this holiday season, the temporary Federal Unemployment Benefits Program will expire. This means each week after December 21, more than 80,000 Americans will run out of their State unemployment benefits. These workers will not be eligible for any additional assistance.

Last fall, before Congress adjourned, the Senate worked on a bipartisan basis to ensure that unemployment workers would not be left out in the cold. Unfortunately, the House Republican leadership decided to turn its back on these families, and the administration has failed to act as well. As a result, thousands of workers were stranded until Congress reconvened, and we were able to pass an extension. Over the last several weeks, Senate Democrats have repeatedly propounded unanimous consent requests to pass an extension to the Federal Unemployment Insurance Program. We faced Republican objections every time. House Majority Leader TOM DELAY went so far as to say he sees no reason to extend the Federal unemployment compensation program.

Clearly, inaction is an unacceptable position. It was last year, and it remains so this year. Since it appears Congress may not return until the end of January, it is now even more urgent that the administration influence congressional Republicans to work with us to pass a 6-month extension before Congress adjourns.

As we approach the holiday season, we have to ensure that families are not left without the ability to make ends meet while searching for employment.

FOREIGN OPERATIONS CONFERENCE REPORT

Mr. President, finally, let me briefly explain why I felt the need to ask unanimous consent to pass the Foreign Operations conference report. AIDS is the worse public health crisis the world has ever known. Mr. President, 8,000 people—8,000—die each and every day;

15,000 people contract HIV every day, the majority of them young people.

The Foreign Operations conference report provides $800 million for an increase—a much needed increase—in the Global AIDS Program. It is a positive step in our effort to fight and defeat this pandemic. It should have been done 2 months ago. We should not have to wait another 2 months. The crisis is simply too pressing.

Unfortunately, the Republican leadership and the House Appropriations Committee would have us wait. There are a lot of controversial items in this huge omnibus, but let's be clear: The Foreign Operations conference report and the increased AIDS funding is certainly not one of them. Foreign Operations was signed by every single conferee. It was minutes from being filed. Unfortunately, some Republicans intervened and demanded that it be rolled into the larger bill.

Why? Because they wanted increased leverage on the omnibus and the controversial policy provisions, provisions that go against the will of bipartisan majorities in both Houses of Congress.

So let's be clear. The reason they insisted on this was to hold increased AIDS funding hostage to these special interest giveaways. In a season of disappointments, that is especially disappointing. So I am very deeply disappointed that by unanimous consent we could not take up a bill that had passed unanimously in conference, signed by all the conferees, recognizing that 8,000 people who die every day will not get the kind of attention, the resources, the commitment, and the response they so desperately need.

I yield the floor.

The PRESIDING OFFICER. The Senator from Ohio.

ARMY CHIEF WARRANT OFFICER BRIAN VAN DUSEN

Mr. DEWINE. Mr. President, I rise to remember a native of Columbus, OH, a brave man who sacrificed his life to save another, that of a little Iraqi girl who had been severely injured in an explosion near the Tigris River. That man is Army CWO Brian Van Dusen. On May 9, 2003, Brian, age 39, and fellow soldiers, CWO Hans Gukeisen from Lead, SD, and CPL Richard Carl from King Hill, ID, were killed when their air medical helicopter crashed after that little girl had been safely carried away in a separate aircraft.

These three men were selfless. They were courageous. They understood how precious human freedom is and how precious human life is. At a memorial service for them at Fort Carson, CO, Chaplain James Ellison said: Our last act can demonstrate our life's purpose.

Indeed, Brian Van Dusen's purpose was to preserve and protect freedom for his children and his family, for us and our families, and, yes, for that little girl in Iraq and her family. He gave his last full measure of devotion so that a little girl whom he did not know, a little girl living in a land far away from his own children, could grow up and live her life in freedom with a future filled with hope and opportunity.

Brian Van Dusen had been flying military helicopters for 19 years. He was stationed with the 571st Air Ambulance Medical Company in Fort Carson. In fact, he voluntarily deferred a post in Germany so that he would be deployed with his own company to Iraq. He chose to go to Iraq because he believed in saving lives, and he believed in what we were doing. He wanted to go.

He did, in fact, save lives. He also wanted to bring hope to the Iraqi people, especially the children. He also wanted to serve our country.

When he left for Iraq, Brian filled his duffle bag full of lollipops that he would give to the children in Iraq. Not only did he give all of those lollipops away but he wrote letters home asking his wife to send even more.

Brian Van Dusen cared. His friends and family say he had a gentle manner; that he was a family man, a loving husband to his wife Bridgette and devoted father to his younger children Angel and Joseph and to his older children Joshua and Kelly. Bridgette described him as a selfless man and a wonderful father.

From Iraq, he took the time to write home regularly to send his love and make sure Angel and Joseph were learning to ride their mini-motorcycles. ''Make sure mommy takes you riding,'' he wrote. He loved his children and his family with all of his heart.

Brian Van Dusen also loved NASCAR and was an avid hunter. He cherished the deer hunting trips he took with his older brother David. As David so eloquently said after Brian's death:

> You just can't take anything for granted. I'm going to miss him. He was a good brother and a great father. God bless him—wherever he is.

Brian Van Dusen was a man of great devotion. He was devoted to his wife. He was devoted to his children. He was devoted to our Nation. He gave of himself in every way. He served selflessly with compassion, courage, and strength. Clare Booth Luce once said that courage is the ladder on which all other virtues mount. Without question, CWO Brian Van Dusen's courage created a ladder with rungs of great virtue. He is an American hero who will live on in our hearts and minds forever.

I yield the floor.

The PRESIDING OFFICER. The Senator from Alaska.

URGING PASSAGE OF FISCAL YEAR 2004 OMNIBUS APPROPRIATIONS BILL

Mr. STEVENS. Mr. President, yesterday the House passed the fiscal year 2004 omnibus appropriations bill by a bipartisan vote. Republicans and Democrats alike joined in adopting this bill. I had hoped today the Senate could be given the opportunity to pass this bill which would fund a variety of programs critical to the American people and indeed the world.

That does not seem possible now, but the consequences of delay on this bill are real and the dangers are great. Many people will be affected by this delay. One of the bills included in the omnibus appropriations bill is the foreign operations budget. That measure includes increases in funds to combat the world's growing AIDS epidemic. With the support of Democrats and Republicans alike, $2.4 billion was added to this bill to combat AIDS, tuberculosis, and malaria around the world. This money would be used to buy life-giving medicines to treat people suffering with AIDS. It will help save the lives of mothers, fathers, and their children afflicted by this deadly disease of AIDS.

If they have to wait another month or two, will it make a difference? Unfortunately, the stark answer is yes.

Bono, the founder of Data, a worldwide humanitarian group, has urged us to pass this bill now. He knows better than most of us what a delay will mean to the people on the ground who wait patiently for our help. Can they wait another month or two? Probably not.

Closer to home, there are others who will suffer if this measure is delayed. Our conferees provided an increase of $38 million to provide more AIDS drugs domestically through the AIDS drug assistance program at the Health and Human Services Department.

Our Nation's veterans will be among groups hit hardest by a delay on this bill.

Again, on a bipartisan basis, the Senate led the way in providing additional funds to make sure America's veterans will get the medical treatment they were promised. In my own State of Alaska, some veterans have had to wait months for a basic doctor's appointment. Unfortunately, the veterans in Alaska are not alone. The waiting lists for veterans around the country, from Arizona to West Virginia, North Dakota to Florida, are on the rise. As veterans return from Iraq, the demand for medical care will increase even more. Coupled with the 1 percent attrition rate for VA doctors per month—I repeat that, a 1 percent attrition rate in VA doctors per month—the waiting periods for veterans will only get longer with this delay.

Likewise, without the additional money provided in the bill, 48 community-based outpatient clinics will be in jeopardy. Since the VA is forced to operate under the lower funding level provided in the continuing resolution, those clinics cannot open. In addition, pharmacy costs are going up for our Nation's veterans. In 2003, drug costs rose by a whopping 11 percent. The VA is incurring increased demands for prescriptions every month. To cover the high cost of drugs, the VA has been forced to cut other high-priority medical programs. They are forced by this

delay to continue operating under last year's lower funding level. So the problem, again, will only get worse.

Some of the older veterans, especially those with whom I served during World War II, may be forced to wait longer for long-term care because of the delay of this bill. The VA had planned to increase long-term care by 20 percent with the funds in this bill. I am not sure those veterans from World War II can wait additional months for that care.

Worst of all, the VA has raised concerns that the continuing resolution may not authorize mandatory compensation and benefit payments for veterans which were scheduled to begin in January. So, according to that information that we received from the VA, unless we pass this bill this week, beginning on New Year's Day, the VA will not be able to make the compensation payments to 2.5 million veterans and 314,000 of their survivors. There remains some confusion about this issue.

Likewise, the VA will not be able to make benefit payments to another 537,000 veterans. These benefit payments are needs-based pensions and sustain veterans with no other means of support. The payments will average $790 per person per month. Obviously, those with no income cannot wait another month without the money to pay for their rent or their food.

I do not think it is fair to ask disabled veterans, for some of whom this is their only income, to wait an additional time. I do not think this is how our returning veterans from Iraq should be welcomed home.

Unfortunately, it is not just our Nation's veterans who will suffer as the Government is forced to continue operating under last year's levels for another month or two. The Federal Housing Administration at HUD has indicated to our committee that its prorated insurance authority under this continuing resolution is not enough to meet the current projections for either FHA mutual mortgage insurance or the FHA general insurance and special risk insurance fund. That means that sometime in January the FHA insurance program for single-family and multifamily housing will run out of money. Needy families will also be forced to wait for the section 8 rent subsidy vouchers. They are living in shelters and must stay there for a few more months because we cannot bring this bill to a vote.

Under the continuing resolution, the AmeriCorps Program, which helps needy families and communities, would also be in jeopardy. Passage of our omnibus bill in January will delay this. Unless we pass this omnibus bill in January, there will be a delay in the enrollment of tens of thousands of new volunteers.

The Nation's schoolchildren will also suffer if we do not pass this omnibus bill before the end of the year. On a bipartisan basis, the conferees agreed to an increase of $2.9 billion for education programs to help our Nation's schools. Unfortunately, that money is just not available under the continuing resolution, based on last year's appropriations. Undoubtedly, now, despite our pledge, some children will be left behind.

Under the continuing resolution, assistance for school districts, States, and colleges will also be delayed. For example, the conferees provided an increase of $728 million for poor schools under the title I grant program which helps disadvantaged children. These moneys are not available under the continuing resolution based on last year's level, and that money will not be there when the second semester starts the first week of January.

Kids with disabilities are also going to suffer. The conferees provided $1.26 billion in new funding to help States meet their responsibility for kids with learning disabilities and physical and mental challenges. Instead of continuing impressive increases in Federal commitment to reaching the 40 percent payment authorized for students with disabilities, under the continuing resolution the Federal contribution will be frozen at 17.5 percent. This bill would have paid 40 percent; the continuing resolution provides only 17.5 percent. I do not think our Nation's schools should have to wait for this additional money, which they should have received back in October shortly after the school year began.

Other education programs will suffer under the continuing resolution. New funds for reading, some $57 million, will be delayed; impact aid, about $49 billion for children of military families, will be affected; $50 million for our Nation's colleges will be in jeopardy. Saddest of all, to me, will be the delay in funding for Head Start. We had provided an additional $148 million to expand and improve Head Start programs around the country. That also will be delayed because the money is not within the continuing resolution.

In addition to the adverse impact on health care for our veterans, the continuing resolution will also have a negative effect on health care programs for other Americans. Most immediate, this bill provides an additional $50 million to prepare for a pandemic flu outbreak, which is upon us now. It is upon us as I speak. Normally the flu season does not begin in earnest until late January, but this year it is early. If this measure is delayed, that $50 million will sit in the Treasury while Americans go untreated and unvaccinated for the flu. I seriously question whether they can wait for January for that flu shot. I hope something will be done to meet that very pressing problem.

Likewise, the $261 million provided in this measure for the Centers for Disease Control to combat emerging infectious diseases is also not available under the continuing resolution. That means the funds needed to combat diseases such as SARS, monkeypox, and hepatitis may not be there when they are needed.

The $122 million the conferees added to strengthen and expand community health centers will be delayed under the continuing resolution. This medical care to the underserved and uninsured across the country should not be delayed, but it will be.

Similarly, the $1 billion in new money for health research at the National Institutes of Health will be delayed under the continuing resolution. That is research on heart disease, cancer, diabetes, and other killers. It will have to be delayed until the bill is finally passed.

Our omnibus bill also includes an additional $159 million to combat substance abuse and mental health diseases. Hundreds of thousands of Americans suffering from addiction and mental illness, who could have received additional care, will go untreated under the continuing resolution. These additional funds could treat thousands of Americans. They will not be available now.

The omnibus bill also funds the Agriculture Department which helps feed the Nation. On a bipartisan basis, the conferees agreed to make substantial increases in funding for programs to make sure that no child goes to bed hungry.

The conferees provided an additional $3.6 billion over the 2003 funding level for the Food Stamp Program. That money is continued now at the 2003 level—not at the higher level of this bill. In fact, it is not enough money to allow every qualified applicant to participate in the Food Stamp Program without this bill.

Not only that, but this bill provides an additional $1 billion in reserve funding to provide for any unanticipated increase in program participation in food stamps.

In total, that is an extra $4.6 billion for the Food Stamp Program, or just under $400 million a month. That is what is going to be delayed—at least $400 million a month.

This bill cannot possibly get to the President until the end of January. It means that almost $800 million will not be available to feed hungry families between now and the end of January. It means that some families may not have a Christmas dinner.

Likewise, the conferees provided an additional $837 million over the 2003 funding level for other child nutrition programs—programs such as school lunches, school breakfasts, child and adult food programs, and the special milk program. Since this bill has been delayed, that money will not be available to help the hungry. A 2-month delay will mean about $70 million a month will not be there for those people.

The omnibus appropriations bill funds the Department of Transportation programs for fiscal year 2004, as well as other critical programs.

For example, the conferees agreed to add an additional $1.5 billion to complete preparations for the November

Presidential election. Continued operation under a continuing resolution means the full amount of funding will be delayed, along with the installation of state-of-the-art voting machines. This is very critical to our Nation. We all remember the last election, and we pledged to fix that. I do not think it will be possible because of the delay of this bill.

This measure also funds transit programs at $7.3 billion to address traffic congestion around the country. It provides $13.9 billion for the Federal Aviation Administration to ensure the safety of our air transportation system. Increases in both programs are now in jeopardy because this bill will not pass before the end of the year.

I have great concerns about the delay in funding for counterterrorism that will result in not passing this measure now. The conference report includes significant new funding for the Department of the Treasury to disrupt the financing of terrorist groups. Delayed funding could hamper the ongoing efforts to disrupt the cash-flow to the terrorist groups throughout the world.

The State-Justice-Commerce bill is also included within this omnibus measure. If this bill is not adopted, critical funds for the FBI and counterterrorism programs will be delayed. In addition, the United States would be late in paying its dues to the United Nations Educational, Scientific, and Cultural Organization, which is due January 1.

The District of Columbia bill is funded in this legislation, including the voucher program which was controversial, I will admit. But it is to give kids attending failing schools a chance to succeed in life. If this voucher program which is now authorized is delayed, it probably cannot go into effect the next semester. It is uncertain whether the program can be up and running by the next school year unless this bill passes before the end of this year.

Despite reports in the press and some opponents, I think this is a bipartisan bill. I don't believe there is a Senator in the Chamber who cannot or has not claimed credit for at least one program in this bill. It funds programs for Republicans and Democrats alike, and includes projects for Senators who are up for election regardless of party. Each of these seven bills was worked out largely by the chairman and ranking member, a Republican and a Democrat, on each subcommittee. Only a handful of these issues were resolved at the full committee level in conference.

Are there provisions in this bill to which the minority object? Yes. Does the White House endorse all of what we have done in this bill? Absolutely not. Are there sections in the bill that even I oppose? Yes. I do oppose some of the provisions. But the bill is the product of compromise, and unfortunately, it is a compromise that comes about when we are forced to join bills together into an omnibus bill. Senator BYRD and I have consistently opposed the concept of omnibus bills, and we sought to have bills pass singularly as they should be—13 separate appropriations bills.

I know there are items in here with which Senator BYRD disagrees. As I said, I know there are provisions with which I disagree. But the one thing I do thank the Senator from West Virginia for is working to try to get 13 separate bills. It has not been possible for us to do that. We were forced at the last minute to make some concessions to the White House and to the House in order to get a bill that the House would pass and which the President would sign. Some of those concessions are not acceptable to the minority. I understand that. I understand the process. Unfortunately, the timing of this bill is such that we had no alternative but to make the concessions in order to get the bill to the House.

I had hoped that we would be able to pass it today. I know that is not possible. Delay of this bill is going to cause real problems for people around this country and around the world, as I said in the beginning. It will hit the neediest among us hardest of all. And for some, unfortunately, this delay may be a matter of life or death. During the season of peace and helping each other, particularly the spirit of Christmas and the spirit of bipartisanship, I had hoped the 2004 omnibus appropriations bill would be able to pass today. I regret deeply as chairman of committee that is not possible. I take full responsibility for the delay because it was just not possible for us, within the rules, to finish the bills and get them to the Senate before this time.

I yield the floor.

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

OMNIBUS APPROPRIATIONS

Mr. BYRD. Mr. President, let me begin by thanking my colleague, Senator STEVENS, the chairman of the Appropriations Committee, for the excellent work he has done on the bill that is now before the Senate, H.R. 2673, the omnibus appropriations bill. It consists of seven appropriations bills. Senator STEVENS has consistently sought to avoid having omnibus appropriations bills. He has zealously tried to have all of the 13 appropriations bills pass on time before the beginning of the new fiscal year and sent to the President of the United States for his consideration. Senator STEVENS has at all times been fair—eminently fair to me and to all members of the Appropriations Committee. I congratulate Senator STEVENS. He is an excellent chairman. And I congratulate the other members of the committee, both Democrats and Republicans, for working together as they have on this bill and as they have always done as long as I have been on that committee; and that is 45 years.

I share the disappointment of the distinguished chairman of the Appropriations Committee. I share his disappointment. He has been valiant in his efforts. He has been consistent in his search for ways by which we can come together and pass a bill on time. I could ask for nothing more.

Members of this Congress have a duty and a responsibility to the American people, to the men and women who send us to represent them in this great Capitol. Those men and women who send us to represent them in this Capitol do not expect us to rubberstamp legislation. They do not expect us to cash our own paychecks without doing the work that we were sent here to do. Senators are paid to be in the Capitol when votes are taken. Today is such a day, yet few Senators are present.

The 1,182-page conference report before the Senate totals more than $328 billion. I hold my hand on the top of this 1,182-page conference report. Here it is. What a mammoth bill, 1,182 pages. Yet we were asked to adopt this mammoth piece of legislation by unanimous consent. The majority leader asked Senators for their consent to bring this bill up, which is in the form of a conference report, and pass it without a rollcall vote. Is that the way the American people want their business to be conducted?

This bill totals more than $328 billion. It provides funds for 11 of 15 Federal Departments. It wraps together the work of seven appropriations bills. This conference report funds our Nation's schools and highways, our veterans clinics, workplace safety initiatives, and medical research. It funds priorities that directly touch the lives of every American citizen. Yet Members of this body do not have the time, apparently, or the will, to be here at their desks in the Senate and vote on this mammoth piece of legislation. Instead of a rollcall vote, the majority leader sought unanimous consent to take up and pass this legislation by voice. My voice is not so good today but it is good enough to say no. I object to passing this bill without a rollcall.

I announced my intention days ago to object to any unanimous consent request to pass this bill without a rollcall vote. I am here, at my place, as I said I would be. Senators may have travel plans or schedule conflicts. They may prefer to be in their home States or traveling around the globe rather than be here in the Capitol. Our responsibility is here in this Chamber when we have an appropriations measure of this nature, of this size, of this importance.

Our responsibility is to work. Our responsibility is to debate and vote on this conference report. We should not have postponed this matter until next year. We should not have put this matter off for several weeks. There is no good excuse for putting this debate on hold.

Now, stop and think for a moment. We have had since April to pass these seven bills. The budget resolution was adopted in early April, on April 11.

That gave us our directions and the Appropriations Committees could go forward at that time. Here we have been since April 11 and we have only passed and sent to the President of the United States six appropriations bills. So more than half of the total of 13 appropriations bills are right here in this conference report and no Senator—no Senator and I daresay no House Members, perhaps a few—I will leave myself a little wiggle room—I can say no Senator has seen everything that is in this massive bill. No Senator, under God's heaven, knows everything that is in this conference report. No Senator's staff person knows everything that is in this conference report. This represents the people's business.

It is the people's money and Senators are asked to come here today and vote no. They were asked to come and pass this massive piece of legislation without a rollcall vote. This is an abomination. The American people deserve better from us.

I understand the reluctance of the majority leader. The leadership worries there may not be enough votes to pass the conference report and send it to the White House. But we would not know that until we voted. It is not unheard of to ask Members of the Senate to come back and vote. It has been done before. I have done it when I was majority leader. It has been done by other majority leaders. I don't criticize the current majority leader. He is doing what he thinks he has to do under the circumstances. But I think we all could have done better. I think the Members should have been asked to come back and do their work and finish the job, debate the conference report, have a rollcall vote and then go home for Christmas.

Make no mistake, there are many problems with this conference report: contracting out Federal jobs, stripping employees of bipartisan job protections, voiding an effort to protect overtime protections established by the Fair Labor Standards Act of 1938, taking away the right of as many as 8 million employees to earn time and a half for extra hours worked. Last minute closed-door changes would postpone country-of-origin labeling. Let me say that again: Last minute closed-door changes would postpone country-of-origin labeling on meat and vegetables, robbing Americans from knowing where their food was grown for 2 years and breaking the balance crafted as part of the 2002 farm bill.

The 1-year limitation on the FCC media ownership rule was turned into a permanent cap at 39 percent. The practical effect of changes demanded by the White House is to protect Rupert Murdoch's FOX Television Network and CBS-Viacom from having to comply with the lower 35-percent ownership caps a congressional version of the bill would put in place. The White House is boosting special corporate interests at the expense of the people's interest for balanced news and information.

One could go on for quite some time ticking off the problems that are in this conference report, problems dictated to Congress by the Bush White House.

There are many provisions within this package that never came before the Senate—never. Yet Senators were asked to buy a pig in a poke, to vote for a pig in a poke, unknown, unseen, yet vote by unanimous consent—no, not vote, but asked to pass this gargantuan piece of legislation here by unanimous consent without a rollcall vote.

Can you imagine, $328 billion and not even a recorded vote? What would Everett Dirksen say today? He said: A billion here and a billion there and pretty soon you have a lot of money. He should be here today. There is $328 billion. That is $328 for every minute since Jesus Christ was born. That is a lot of money. We are asked to close our eyes, plug our ears—no debate, no questions asked—just hold your nose and vote for it. Hold your nose and say: Pass it without a vote. That is what we are asked to do.

Four of the bills contained in this omnibus did not have a recorded vote in the Senate. One of the bills, the Commerce-Justice-State bill, was never even debated in the Senate, let alone adopted. Scores of provisions are included in the so-called Miscellaneous Appropriations Act portion of the conference report that were never debated in the House or Senate.

Under pressure from the White House, provisions that were approved by both the House and the Senate have been dropped. Under pressure from the White House, controversial provisions that were written as 1-year limitations when they were before the House or Senate have been mutated into permanent changes in authorization law. Now, that is going a far piece—going a fer piece, I would say. Houdini was nothing when compared with what the conference did here under pressure from the Bush White House.

In fact, the majority leadership created a new appropriations authority: the Miscellaneous Appropriations Act. That is a new one on me. There are 13 appropriations subcommittees, but I have yet to meet the chairman of the Subcommittee on Miscellaneous Appropriations.

That section, whatever its genesis, is home to administration pet projects and priorities. Scores of provisions are included in the so-called miscellaneous appropriations umbrella that were never debated in the House or Senate. Under direct pressure from the White House, provisions approved previously by both the House and the Senate have been dropped. Under pressure from the White House, controversial provisions originally crafted by the House or Senate as 1-year limitations, may I say again, have mutated into permanent changes in authorization law.

This conference report includes an across-the-board cut that has never been debated in the Senate, an arbitrary cut that would apply to legislation already signed into law. It would cut homeland security. We are talking about your safety, and your safety, Mr. President, the safety of your home, your children, your grandchildren. Homeland security is the usual term. It would cut counterterrorism efforts. It would cut education and health care. This across-the-board cut would reach back into bills signed months ago and say: No, sorry. No, no, sorry, but that is just too much money. So we are going to take a little off the top.

Apparently, in the view of the White House, the United States can afford $1.7 trillion in tax cuts. When it comes to the Medicare bill, we can afford $12 billion for subsidies for private insurance companies. When it comes to the Energy bill, we can afford over $25 billion of tax cuts and $5 billion of mandatory spending for big energy corporations. But when it comes to initiatives funded in these appropriations bills, initiatives that help Americans every day, the President insists: Cut, cut, cut, cut. A cut of 0.59 percent would reduce funding for No Child Left Behind programs by more than $73 million, resulting in 24,000 fewer children being served by title I.

We are talking about this across-the-board cut now. This across-the-board cut does not sound like it would be much, a cut of 0.59 percent, but what does it do to the No Child Left Behind program? It would reduce funding for the No Child Left Behind program by more than $73 million, resulting in 24,000 fewer children being served by title I. Overall, the title I Education for the Disadvantaged program would be $6 billion below the level authorized by the No Child Left Behind Act that the President signed in January of 2002 with great fanfare—another promise unfulfilled.

The across-the-board cut would reduce Head Start funding by $40 million, resulting in 5,500 fewer children attending Head Start. Veterans medical care funding would be cut by $159 million, resulting in 26,500 fewer veterans receiving medical care or 198,000 veterans not getting the prescription drugs they need.

I spoke earlier about cuts in homeland security. The across-the-board cut would chop funding for homeland security initiatives. How many more baggage screeners would be laid off resulting in longer lines and less security at our airports? How many flights will have fewer air marshals on board? How many fewer flights will have air marshals on board? How many more containers will come into this country uninspected? How many more illegal aliens will be able to remain in this country or how many will be able to come into this country? This is a threat to the Nation's security. How many potential terrorists will never be investigated because of cuts in the FBI program?

All this, and the distinguished majority leader sought consent that this

package be approved without a rollcall vote. That is no way to legislate. How would I feel facing my constituents and having to say: Well, it was getting close to Christmas and Members had other things they had to do; we did pass it; I wish now we would have had a rollcall vote but I wasn't there to object?

That is no way to be accountable to the American people. Taxpayers of this country rightly expect Senators to be accountable for funds drawn out of the Federal Treasury. It is your money. How many times have we heard that? I say to those who are looking at the Senate Chamber today through those electronic lenses: It is your money. How can Members be accountable when they are scattered to the four winds across the globe? What kind of perversion of the appropriations process would result in Senators approving this monstrosity without a recorded vote?

When Members took their oath of office, they pledged, standing right there at the Presiding Officer's desk with their hands on the Bible—''so help me God,'' they said—that they would support and defend the Constitution. So we have a responsibility to faithfully discharge the duties of the office of U.S. Senator. We took a pledge to do that. We took an oath to do that. We took an oath before God and man to do that. Senators did not pledge to do so just when it was convenient or when the schedule permits.

The House of Representatives saw fit to return to vote on this conference report. Why then could the Senate not do the same? We all get the same pay. Senators as well as House Members are paid to work for 12 months each year, not 10 months.

Chairman STEVENS and I worked with each Senator on the Appropriations Committee to produce 13 individual appropriations bills to send to the President. I have commended—and do so again—the senior Senator from Alaska for his effort, but the process was hijacked.

By whom? Who is doing the hijacking? The Bush White House. The White House hijacked the process. The process was hijacked by the White House and the Republican leadership in both Houses. Instead of sending 13 fiscally responsible appropriations bills to the President, the Senate was asked to close its eyes, plug its ears, and be gagged in order to rubberstamp a 1,182-page conference report combining 7 appropriations bills for 11 of the 15 Departments of the Federal Government, on an unrecorded approval of a unanimous consent request. No vote to it—no rollcall vote, no vote by division, no vote viva voce, no vote by voice, with only a handful of Senators. You could count the number of Senators in this Chamber on one hand this morning. This would be legislating without accountability.

What is the use of having elections if the voters are prevented from knowing how their Senators voted on investing $328 billion of the people's money, your money? This is wrong. The people have a right to know how their elected representatives stand on this legislation which will affect the lives of so many.

I am saddened by the majority leader's decision to postpone a vote on this legislation until January 20. This is no way to govern. We have had since April 11 to pass these seven bills. That is no way to serve the American people.

I thank the Chair, and I thank all Senators. 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. CHAMBLISS. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

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

HONORING REPRESENTATIVE BILL EMERSON

Mr. CHAMBLISS. Mr. President, I want to take a moment this morning to honor a dear friend of mine and a former colleague in the other Chamber, the late Congressman Bill Emerson of Missouri. On December 13, a new bridge spanning the Mississippi River at Cape Girardeau in Missouri is being dedicated to Bill who represented the people of southern Missouri in the House of Representatives with dedication and integrity for 15 years before his untimely death in 1996.

I was privileged to meet, know, and work with Bill Emerson during my freshman year in Congress. He was an example of hard work, common sense, and the ability to put differences aside to get the job done. Bill and I shared a common constituency of rural Americans and served on the House Agriculture Committee together. Bill's spirit of uncompromising principle and his ability to lead under the most difficult circumstances are assets that I have endeavored to emulate.

Bill's commitment to his family was unparalleled. His wife Jo Ann succeeded him in his congressional seat, and he would be so proud of her today for the work she is doing. His daughters, Abby, Liz, Tory, and Katharine, were the lights of his life. I have come to know all four of them over the years, and he would, again, be so proud of them.

Jo Ann has carried on Bill's legacy of building bridges between people to promote communication, trade, and civic pride and is making a mark in her own right. This is something which I know would have brought Bill a great deal of satisfaction.

Bill Emerson's habit of bridging gaps between people is captured perfectly in the Bill Emerson Memorial Bridge. This $120 million structure replaces the bridge that was built 76 years ago. It will tie together the two States of Missouri and Illinois and promote trade and progress. It is a fitting monument to a man who brought credit to his family, his community, his State, his country, and the Congress of the United States.

Bill Emerson was a dear friend. I miss him every day. What a fitting tribute to a great man and a great American.

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

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

Mr. BYRD. Mr. President, is the Senate still in morning business with a 10-minute limitation?

The PRESIDING OFFICER (Mr. SMITH). The Senator is correct.

Mr. BYRD. Mr. President, I ask unanimous consent that I may speak as long as I must speak. I can assure the Chair it will not be over 30 minutes.

The PRESIDING OFFICER. Without objection, it is so ordered. The Senator from West Virginia is recognized for 30 minutes.

Mr. BYRD. I thank the Chair.

(The remarks of Mr. BYRD pertaining to the introduction of S. 1997 are printed in today's RECORD under ''Statements on Introduced Bills and Joint Resolutions.'')

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

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

COMMENDING KOFI ANNAN, SECRETARY GENERAL OF THE UNITED NATIONS, AND STRENGTHENING THE UNITED NATIONS

Mr. WARNER. Mr. President, I rise today to bring to the attention of my colleagues a very thoughtful article written by Kofi Annan, Secretary General of the United Nations, entitled ''Search For A New U.N. Role.''

I commend the Secretary for his strong leadership over these years, and particularly for the courage he has shown as manifested by this op-ed piece, the courage he has shown to look to the future and to take such, what you might call, corrective measures or revisions as will further strengthen the United Nations as we, the body of nations, face a very perilous and uncertain world, a world filled with threats which really have little precedent in history and weapons that have little precedent in history.

Fifty-two years ago, this humble soul was a second lieutenant in the U.S. Marine Corps and served under the United Nations banner in the Korean conflict in Korea. My service was—I say with deepest humility—very modest, for I have often said on this floor that such military service as I had in the closing months of World War II and in Korea was very modest compared to others, but it did much for me. I am continuously trying to pay back to the current generation, the men and women of the Armed Forces, what was done for me.

I simply cite that it was the U.N. banner under which the U.S. forces and the forces of a number of other nations, a coalition, fought those battles. This was the United Nations' first military mission, as I look back over this half century. Of course, we all recognize there has been no peace treaty. There has never been one signed. But also there has been no recourse to major military use of force on the Korea peninsula in this half century. So that mission of the United Nations, I would say, had a strong measure of success. To this day, our U.S. forces still serve in that theater under the U.N. banner to keep the peace on that peninsula.

As Secretary Annan notes in his oped piece, the United Nations has been greatly tested in recent years. To his credit, the Secretary has been willing to face head on these challenges to the historic institution he is privileged to lead and has led with great distinction. Indeed, one of those tests was with the United States as we approached obligations which I strongly support, obligations the President has pointed out many times, obligations to bring a greater measure of freedom to the people of Iraq. But that is history. It was clearly a lesson learned by all who participated.

Last week, Secretary Annan announced he has convened a panel to take a hard look at the mission of the U.N. and what changes the U.N. should make to ensure that it can be a relevant and effective institution in the future. The panel is expected to issue a report in the fall of 2004.

I commend the Secretary for his courage in looking to the future and tasking this panel to give their views not only to him but to the entire community of nations which proudly form the United Nations. Without a doubt, the world needs a stronger United Nations, one that can address with greater decisiveness and swiftness the challenges to freedom in the future.

I ask unanimous consent that the oped piece be printed in the RECORD.

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

[From the Los Angeles Times, Dec. 4, 2003]

SEARCH FOR A NEW U.N. ROLE

(By Kofi A. Annan)

We have come to a decisive moment in history. The great threat of nuclear confrontation between rival superpowers is now behind us. But a new and diverse constellation of threats has arisen in its place. We need to look again at the machinery of international relations. Is it up to these new challenges? If not, how does it need to be changed?

The events of the last year have exposed deep divisions among members of the United Nations on fundamental questions of policy and principle. How can we best protect ourselves against international terrorism and halt the spread of weapons of mass destruction? When is the use of force premissible—and who should decide? Does it have to be each state for itself, or will we be safer working together? Is ''preventive war'' sometimes justified, or is it simply aggression under another name? And, in a world that has become ''unipolar,'' what role should the United Nations play?

These new debates come on top of earlier ones that arose in the 1990s. Is state sovereignty an absolute and immutable principle, or does our understanding of it need to evolve? To what extent is it the international community's responsibility to prevent or resolve conflicts within states (as opposed to wars between them)—particularly when they involve genocide, ''ethnic cleansing'' or other extreme violations of human rights?

These questions cannot be left unanswered. Yet they are not the only questions. And for many people they may not even be the most urgent.

In fact, to many people in the world today, especially in poor countries, the risk of being attacked by terrorists or with weapons of mass destruction, or even of falling prey to genocide, must seem relatively remote compared to the so-called ''soft'' threats—the ever-present dangers of extreme poverty and hunger, unsafe drinking water, environmental degradation and endemic or infectious disease.

Let's not imagine that these things are unconnected with peace and security, or that we can afford to ignore them until the ''hard threats'' have been sorted out. We should have learned by now that a world of glaring inequality—between countries and within them—where many millions of people endure brutal oppression and extreme misery is never going to be a fully safe world, even for its most privileged inhabitants.

Today, the common ground we used to stand on no longer seems solid. In seeking new common ground for our collective efforts, we need to consider whether the United Nations itself is well suited to the challenges ahead.

During the last year, the United Nations has been held under a microscope. In an atmosphere of acrimony surrounding the crisis in Iraq, the importance and, indeed, the relevance of the institution have in some quarters been called into question. This was especially true at the time of the United States decision to go to war in Iraq without the explicit approval of the Security Council.

I know that over the years our record has been far from perfect. The Security Council has been unable to prevent horrendous atrocities—the rule of the Khmer Rouge in Cambodia, ethnic cleansing in the former Yugoslavia, genocide in Rwanda. But, to paraphrase Henry Cabot Lodge, the United Nations may not have brought us to heaven but it played a vital role in saving us from hell.

Peace was brought to many lands through the U.N.—Cambodia, El Salvador, Guatemala, Mozambique. We helped protect against a drift toward nuclear holocaust, including during the Cuban missile crisis. We served as a vehicle for action against North Korea, against Iraq after the invasion of Kuwait. We've brought relief to millions affected by fighting, famine and floods, and we have helped reduce child mortality and eradicate smallpox. We were critical in helping the developing world throw off the yoke of colonialism.

To my mind, recent events have only underlined the need for the United Nations. That's why I convened a panel, chaired by former Prime Minister Anand Panyarachun of Thailand, to examine the future of our organization. The panel holds its first meeting this weekend.

Its role is threefold: to analyze current and future threats to peace and security; to assess the contribution that collective action can make in meeting these threats; and to recommend the changes needed to make the United Nations a legitimate and effective instrument for a collective response. How, in particular, can the United Nations ''take effective collective measures for the prevention and removal of threats to the peace,'' which is one of its purposes, as defined in Article I of its charter? I hope the panel will complete its report by autumn 2004.

If it does its work well, history may yet remember the current crisis as a great opportunity that wise men and women used to strengthen the mechanisms of international cooperation and adapt them to the needs of the new century.

(The remarks of Mr. WARNER and Mr. DEWINE pertaining to the introduction of S. 1993 are located in today's RECORD under ''Statements on Introduced Bills and Joint Resolutions.'')

THANKING STAFF

Mr. WARNER. Mr. President, I wish to speak with regard to two matters of great concern to me. I recognize in all probability this will be the last day of the current session of this Congress. I simply express my warm greetings and thank-yous to my fellow colleagues in this Chamber, the staff who serve us in this Chamber, to the pages, to the guards and policemen, to those who work in the cafeterias—all of those, the greater body of infrastructure we are privileged to have in this magnificent institution known as the United States Senate.

Each year I have been privileged to be here—and I must say with some great sense of humility, I mark my 25th year in the Senate late this month. When I was sworn in, in 1978, I believe, I filled a vacancy that occurred in December, and I did it on the second or third of January. So actually my 25th anniversary occurs in the first few days of January.

It has been an enormously great, rewarding privilege for this humble soul to have served in the Senate.

I believe I have served with well over 100 Senators in addition to those I am privileged to serve with in this Congress. Again, I am always mindful of all of those who make it possible in the infrastructure and the institution of the Senate to enable me and others to serve our Nation as best we can in diverse but nevertheless constructive ways for the betterment of all mankind and, yes, America and much of the free world.

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

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

Mr. DEWINE. I ask unanimous consent to proceed as in morning business.

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

TRIBUTE TO LEWIS AND JEAN MOORE

Mr. DEWINE. Mr. President, I rise today to pay tribute to two Ohioans who dedicated their lives to serving their local community of Urbana. Lewis B. Moore passed away on October 21, 2002, at the age of 91. His wife, Jean, passed away on September 12, 2001. I would like to take a few moments to reflect here today on this couple's legacy of service and the mark they left on the people of Urbana.

Lewis Moore—Lew to his friends—was born in Paducah, KY, on July 23, 1911. He graduated from Cleveland Heights High School in 1929 and from Case Institute of Technology in Cleveland in 1933 with a bachelor of science degree in electrical engineering. He married Jean Lillian Wenger in 1938, and they moved to Urbana in 1940, where Lew joined Grimes Manufacturing Company as a sales engineer. Later he served as chief engineer, sales manager, and vice president before eventually becoming president and board chairman.

Under Lew's leadership, the company grew from 12 to more than 1,300 employees. As president, he served as a mentor to many and as an example to all. If there were ever a disagreement with a customer, Lew used to tell his employees to always be honest with the customers. He would say: ''Tell them the truth—tell them what happened.'' Indeed, Lew Moore was a model of integrity.

Together, Lew and Jean's values and visions for the future changed Urbana. Lew eventually ran for public office and served as Mayor of Urbana from 1980 to 1991. Under his leadership, Urbana underwent some big changes in the city government. Known affectionately as ''Mr. Urbana,'' Mayor Moore transformed the City of Urbana from a statutory system into a charter form of government—one of the most important of his contributions to the city government, noted Larry Wolke, former director of administration. According to David Martin, former Grimes employee and current Urbana City Council president, ''He had the best interests of the city and the citizens of Urbana in his heart and mind.''

Working side-by-side with Lew to serve the Urbana community, Jean participated in the campaign that created the city's first youth center and organized and led her church's Prayer Connection. As one Prayer Connection member, Jack Neer, said of Jean, ''She was there for anyone in need.''

No better illustration of their commitment to the interests and community of Urbana is found, however, than in Lew and Jean's involvement with the University of Urbana, where Lew served as building fundraiser and Jean served on the board of trustees for more than 35 years. Through much of their lifetimes, Lew and Jean dedicated much of their time and resources to expanding and improving the institution. As Dr. Robert Head, Urbana University president said, ''It is not an overstatement to say that if it hadn't been for Lew and Jean Moore, Urbana University would not be here today.''

Together, Jean and Lew spearheaded several campaigns to raise funds to enhance the university. In one project, they helped raise $400,000 to build the Warren G. Grimes Community Center. In the early 1990's, Lew co-chaired efforts to raise funds for the math and science center—a project totaling $3.1 million. According to Dr. Francis Hazard, former University president, ''When no one else stepped forward to head the campaign, they volunteered.'' He added that as the campaign neared its end and the structure had been completed, Moore cashed in a $75,000 insurance policy to furnish its classrooms and laboratories.

Lew and Jean Moore were selfless. They loved their community—their family, their friends, and their neighbors. It is no wonder the Urbana community affectionately refers to Lew as ''Mr. Urbana.'' Throughout their lives, they were devoted to their community. And through their service, Lew and Jean Moore provided a vision for Urbana's future. That is their legacy. We certainly miss them both deeply.

My wife Fran and I continue to remember Lew, and we continue to remember Jean. They were both great friends. Left to cherish their memories and to pass on this legacy are their sons, Keith and Greg, and their wonderful families.

We thank both Lew and Jean for their wonderful service to their community.

JUDGE WILLIAM AMMER

Mr. DEWINE. Mr. President, I would like to pay tribute here on the floor of the U.S. Senate to a dear friend, a gracious man, and a wonderful human being. That man is former Pickaway County, OH, Common Pleas Judge William Ammer. Judge Ammer, of Circleville, Ohio, passed away January 30, 2003 at the age of 83.

William Ammer was born on May 21, 1919, to Moses and Mary Ammer. He graduated from Circleville High School in 1937, and then went on to receive a business degree from the Ohio State University. After serving in the U.S. Army for 3 years during World War II, he returned to Ohio State to get his law degree.

After law school, he quickly proved himself a skilled attorney. He served as Assistant Ohio Attorney General from 1951 to 1952 and then returned to Pickaway County as a prosecuting attorney from 1955 to 1957.

During this time, he was also Circleville's Assistant City Prosecutor, while finding the time to maintain a busy private law practice. He developed a reputation as a tireless worker and dedicated public servant.

In 1957, he was appointed to the post in which he would serve the rest of his career—he was appointed Pickaway County Common Pleas Court Judge and was re-elected to this post every six years until his retirement on December 31, 1994.

While serving on the bench for those 37 years, Judge Ammer handled more than 30,000 cases. Few of these cases were appealed, and most of those cases that were appealed were affirmed by higher courts. As a member of the Senate Judiciary Committee, I can tell you that this low reversal rate is one of the best indicators of a good, sound judge.

But I can also say that another great indicator is the man's reputation in the community. Anyone who knew Judge Ammer, and anyone who knew the attorneys who practiced in Pickaway County or the area certainly knew Judge Ammer's great reputation. And they knew how well respected he was in the Pickaway County community and the surrounding counties.

In addition to handling cases in Pickaway County, Judge Ammer often was assigned to preside in other counties by the Supreme Court of Ohio. This is also the mark of a good, well-respected judge. Only those capable of handling the toughest cases are sent on assignments to other jurisdictions. Once again, Judge Ammer's reputation for hard work and diligence clearly preceded him.

While Judge Ammer was frequently sent on assignment outside of Pickaway County, his heart remained in Circleville. Each year, Judge Ammer sent out memorable Christmas cards depicting Circleville landmarks.

Certainly my wife Fran and I each year were recipients of those Christmas cards as were so many other people. And we always looked forward to receiving them. These cards reflected his love for the community and were eagerly awaited each holiday season by those of us fortunate enough to be on his Christmas card list.

Judge Ammer was also involved with a number of community organizations. He was President of the Ted Lewis Museum, an institution honoring that great native of Circleville. He was actively involved in the American Legion, the Kiwanis Club, the Pickaway Country Historical and Genealogical Society, and the Masonic Lodge.

Perhaps the greatest testament, however, to his connection to the Circleville community comes now after his death. As the last member of the Ammer family in Circleville, Judge Ammer arranged to have much of his

estate go toward providing scholarships for Circleville High School students. This act certainly reveals Judge Ammer's generous and giving nature and his desire to help other Circleville natives succeed.

In tribute to Judge Ammer, who has been a true role model for so many of us in Ohio, my wife Fran and I say thank you. Judge Ammer was a kind human being who left an unbelievable print on the lives of so many countless people who he touched. He truly helped people. He changed lives. He made a difference. We all miss him. We miss him dearly. He will always be remembered by his beloved community.

TRIBUTE TO DELBERT LATTA

Mr. DEWINE. Mr. President, this afternoon I pay tribute to a dear friend and beloved Ohioan, a man who has been a great public servant for the last half century, a man who I served with in the House of Representatives for a number of years. I am talking about Representative Delbert Latta. Representative Delbert Latta devoted 30 years of distinguished service to Ohio's 5th Congressional District in the House of Representatives. In his honor, earlier this year, President George Bush signed into law a bill that renamed the Bowling Green Ohio Post Office the Delbert L. Latta Post Office Building. This is a well-deserved tribute to a man who inspires all around him to strive to be a better public servant.

This afternoon I will take a few minutes to explain to my colleagues why Del is so revered by the citizens of the 5th District and all the citizens of Ohio. Del was raised in McComb, OH. He graduated from McComb High School and later worked in a shoestore and put himself through Ohio Northern University from where he received his undergraduate and then his law degree.

Del practiced law in Bowling Green for several years before he successfully ran for an Ohio State Senate seat. After serving three terms in the Ohio State Senate, Del Latta decided to serve his community at the Federal level and was elected to the House of Representatives in 1958.

Before retiring from the House of Representatives in 1989, constituents of Ohio's 5th District showed Del their appreciation by electing him and reelecting him 15 times. He was the dean of the Ohio Republican delegation and as dean of the delegation was deeply respected for the leadership role he played for fellow Ohio Representatives as well as for the party. He was the person to whom, frankly, we all went.

I remember when I was first elected in 1982. I remember driving north to Bowling Green and going to see Del in his office and talking to him about committee assignments. I told him I wanted to be on the Judiciary Committee if that were possible. I remember Del sitting behind his desk talking to me about that and telling me he would see what he could do about it. It was not too long after that I was on the Judiciary Committee in the House of Representatives. Del was the person you went to. Del was the person you went to for advice, for counsel, and to get things done.

Del served as leader of the Rules Committee. Del was the ranking Republican in all the House on the Budget Committee. Del was not only recognized as a key leader of the Republican Party, he was a consensus builder who also earned the respect of Members on both sides of the aisle. The Honorable Democrat Senator and Representative Claude Pepper, of Florida, had this to say about Del:

> Del's conduct as a Member of the [Rules] Committee and a Member of the House has exemplified the best and noblest traditions of this House. His integrity has been exemplary. His kindliness, gentleness and graciousness of manner have endeared him to all of his colleagues. I shall always honor the service Del Latta has rendered to the Rules Committee, to the Budget Committee and the House because what he did, he did as an able, honorable patriotic American.

Del Latta had a significant impact on so many pieces of legislation and events over his 30-year tenure in the House. One notable example is the leadership he demonstrated during Watergate, but perhaps he is best well-known as a champion of balanced budgets and fiscal responsibility. In 1981, Del spearheaded President Reagan's economic recovery program in the House by sponsoring and helping to pass the Gramm-Latta bill. This bill is often cited as the single most influential measure in stimulating America's economic recovery in the 1980s. Del Latta was there. Del Latta led. It was Del Latta who got it done.

Expressing his admiration for Del's humility and work ethic, the Honorable Chip Pashayan, Jr., of California, said this about a dinner experience he had with Del after the passage of this momentous bill that bears Del Latta's name.

> No gloating, no bragging, no brandishing. To [Del] Gramm-Latta was just another bill, just another day's work for the American people. . . . As usual, we finished dinner by 8:30 or 9 p.m. because Del had to get back to his office to do some constituent work. No constituency ever had a harder working Member that I ever saw.

I could not agree more. In 1982, when I first came to the House of Representatives, as I said, Del was instrumental in teaching me the ropes. What I admired most about Del was his ability to work with an unwavering commitment and passion for his constituents. He never forgot who sent him to Washington. He never forgot who he worked for. In everything he did, you could see how much he cared for the people he represented, the people of northwest Ohio. He understood how much he cared about our great country.

People have always come first for Del Latta. It is what drives him. He has said his greatest satisfaction comes from helping people find solutions to their problems, whether it is big problems or small problems, helping people find solutions to their problems, especially problems they could not solve on their own.

At his retirement Del said this:

> Being a representative [of Ohio's 5th district] has given me and members of my family the opportunity to make untold thousands of wonderful friendships which we shall always treasure. I will also cherish the many friendships I have made over the years with my congressional colleagues.

And to be sure, Del Latta has not finished giving of himself, certainly not. To this day, he continues to do everything he can for his community. From local businessmen to neighborhood schoolchildren, Del Latta is there for them.

The dedication of the Bowling Green Post Office in Del's name—a post office that Del once helped secure funds to build—is simply a reminder that although it has been 15 years since he has retired from the Congress, Del has continued to work tirelessly for his community. The renaming of this post office, in many ways, is a symbol—a great symbol—of the civic spirit Del stood for as a U.S. Representative and still stands for today.

So I extend my heartfelt congratulations to Del for this great honor. He has done so much for the Fifth District, for the State of Ohio, and for our Nation. I have the highest regard for the example Del has set as a leader and public servant. My wife Fran and I cherish his friendship, and we wish him and his wife Rosemary and their children Bob and Rose Ellen and their families all the best in their future.

Del Latta is a great man. I said that he has worked tirelessly for his constituents, and it is always fun to watch him do that. But there has been one thing for me that has been even more fun, and that is to watch Del Latta with his grandchildren and to hear Del Latta talk about his grandchildren because this is a man who is also a great family man; he has never lost sight of the importance of family.

So, Del Latta, congratulations. You are a man who has served our country well. You are a great family man. You are a good friend. We appreciate all you have done for our country.

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

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

The legislative clerk proceeded to call the roll.

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

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

Mr. FITZGERALD. Mr. President, I ask unanimous consent to speak as in morning business for up to 15 minutes.

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

Mr. FITZGERALD. I thank the Chair.

TRIBUTE TO SENATOR PAUL SIMON

Mr. FITZGERALD. Mr. President, it is with great sadness that I rise to report to my colleagues in the Senate the death of a former Member of this body, U.S. Senator Paul Simon from Illinois. Senator Simon died earlier today. He was 75 years old. This comes as a great shock to all of us who knew and loved Paul Simon.

Earlier today, I had written him a get well note and sent him some flowers. It was announced a couple of days ago that he was going into the hospital for heart bypass surgery and also to have a leaky heart valve replaced. Apparently something happened during the surgery—I don't know what—but Senator Simon, unfortunately, passed away, and we all send our love and our prayers to his wife Patty, his children, his grandchildren, and to all his colleagues at Southern Illinois University where he will be missed greatly.

Senator Simon's first wife, Jeanne, died a few years ago. I also had the privilege of knowing her. May God rest her soul as well.

Senator Simon was a nationally known figure, primarily from his having been a candidate for the Presidency in 1988. In Illinois, he was truly a giant for many decades—three or four decades or more. He served both in the State house of representatives and the Illinois State Senate, as well as in the U.S. Congress and then later in the U.S. Senate. He is thought to be the only person from Illinois to have served in both houses of the Illinois Legislature and then in both Houses of Congress.

He was also in the late sixties and early seventies the Lieutenant Governor from Illinois. On his last reelection race for the U.S. Senate, he won by over a million votes, with 65 percent. I believe he had the highest plurality of anybody running that year.

He was an extraordinary figure, extremely popular, and extremely well respected, especially for his character and integrity. Many people may have disagreed with Senator Simon's policy positions on a variety of issues, but no one ever questioned his ethics and integrity. In fact, those who served with him in the Senate, I am sure, remember his famous bow ties. Those bow ties almost became a symbol of ethics and integrity in the State of Illinois because of Senator Simon. He was a remarkable man.

He started in the early 1950s—maybe before that; maybe in the late forties—as a newspaper editor in southern Illinois. He was about 19 years of age when he was asked to take over a troubled newspaper in Troy, IL, in Madison County. He actually revived the newspaper by going after a corrupt gambling cabal in Madison County. He ultimately put together a string of some 13 newspapers that he sold in the 1960s, and then went from journalism into politics and government service; he never looked back.

He had numerous legislative accomplishments in the U.S. Senate, including the Direct Student Loan Program, the job training partnership amendments, and many other initiatives across a wide spectrum of issues. Of course, he was very accomplished in the Illinois Legislature as well.

Some people think they have done a lot when they have read a book. Senator Simon probably wrote as many books as most people have read. He is the author of at least 21 books, and maybe more than that. He had 55 honorary degrees. As I mentioned, he was a candidate for President in 1988.

One of the most astonishing things about Paul Simon was that his ethics and integrity were not just an act. I think a lot of the professional politicians maybe didn't always appreciate him in Chicago, for example. They maybe thought his bow tie and his constant efforts to maintain the highest standards in Illinois and the Federal Government were an act. But you could see after he retired from the Senate when he was offered, reportedly by foreign governments, to become a high paying lobbyist—I think one foreign government offered him over $600,000 a year to become their lobbyist, and he was offered a variety of lucrative positions. He turned all that down so he could return to Makanda, IL, down in the southern part of the State where he came from so he could teach at Southern Illinois University in Carbondale and be a professor. He turned down higher paying professorships elsewhere in the country. He wanted to come back home and be at Southern Illinois University.

He put together a wonderful public policy institute with some others there, including Mike Lawrence, who was the press secretary to our former Gov. Jim Edgar in Illinois.

I was in the area down by SIU this past summer. I had dinner with Mike Lawrence and he was telling me how hard it was to keep up with Paul Simon. Even at his age, he was keeping a remarkable schedule. So it came as a great surprise to hear of his passing today. It is a great loss. We will all miss him.

He was nothing but kind to me. Even though I was a member of the opposite party, Senator Simon last called me when I announced I would be retiring from the Senate. He was always courteous and kind in offering to help everyone he could.

I remembered from long ago reading a column that was written about Paul Simon, which I thought was a fabulous testament to this wonderful man. The column was written in the Chicago Tribune on February 28, 1997. It was by R. Bruce Dold, entitled ''In Praise of a Decent Former Politician.'' This column is written by a journalist who had covered Senator Simon for many years, including following him around on his election campaigns and seeing his interaction with people all over the State of Illinois. This reporter wrote about how he was amazed that Senator Simon would come into a small town and say hi to everybody, and he would actually know the names of their children and how their grandfather was doing.

Senator Simon had a genuine affection for people. He was a tireless worker. He held over 600 town meetings in his two terms in the Senate, which is a very tough pace to keep up with for any of us in the Senate. He was a remarkable man.

I ask unanimous consent that this commentary written by R. Bruce Dold be printed in the RECORD immediately following my remarks.

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

(See exhibit 1.)

Mr. FITZGERALD. I conclude by saying that Senator Paul Simon was a credit to the State of Illinois and a credit to the Senate, and we will miss him. God rest his soul and may God bless his widow and family.

EXHIBIT 1

[From the Chicago Tribune, Feb. 28, 1997]

IN PRAISE OF A DECENT FORMER POLITICIAN

(By R. Bruce Dold)

One of my best lessons in southern Illinois politics came with Paul Simon's 1984 campaign for the U.S. Senate, the one where he dusted Sen. Charles Percy and made amends for his one big political loss, the 1972 bid for governor.

Simon planned to hit about 13 towns in one day, moving from Vandalia to Cairo and over to Carbondale, with a brief stop at his Makanda home to show off his Lincoln book collection to the handful of reporters with him. He'd be meandering over a few hundred miles, which normally would require a helicopter. For Simon, all it required was Joe Bob Pierce.

Joe Bob is something of a Renaissance man—an electric power lineman with a Baptist divinity school degree who can drive like a bat out of hell, that last talent being the one Simon required that day.

So the trip went like this. We would drive to the Franklin county Courthouse public square, and Simon would give a little speech, and then he would do the real campaigning. This amounted to greeting each person in the crowd by her first name and inquiring about her children and her frail grandfather, and then moving on to the next soul with a hearty ''nice to see you.''

Then we would pile into Joe Bob's car and he would hit triple digit m.p.h. on Rt. 142 until we barreled into the parking lot of the Saline Valley Conservancy District, where Simon would do it all over again.

And I realized by the second stop that he actually knew all of these people, and the ages of their kids, and the health status of their grandfathers.

Simon wasn't supposed to win that election but he did, in part because he swept most of Southern Illinois.

He's back home now after ending an impressive career in politics. He's believed to be the only person who ever served in the Illinois and U.S. House and Senate.

On paper, his career makes no sense. Before politics, he was a newspaper editor who shook things up in a part of Illinois that liked things calm. He was too liberal for his congressional district, too liberal for this state, too liberal for Congress. He was a bigger-government advocate in a little-government era. Didn't matter. People thought he

cared about them. He won his last Senate race by almost 1 million votes.

A few Washington types, and a few well-known Chicago politicians, still believe it was an act, that Simon was just another pol who had perfected a gee-whiz persona and the public got snookered into buying it. And while I always liked Paul Simon, I was also suspicious enough of politics in general to keep alive the prospect that they might be right.

OK, now that he's retired, it's safe to say that they are wrong.

When Simon left the Senate and there was no electoral advantage to being pure, he still did the right thing.

He turned down offers to lobby in Washington—one offer was for $600,000 a year to work for foreign governments. I'm taking his word on this—there's that suspicion rising again. But in the years I've known him he hasn't given me reason not to take his word.

He also turned down several teaching offers at better-known schools around the country to take a job running the new Public Policy Institute at Southern Illinois University in Carbondale, near his home.

Nobody needs to hold a tag day for him, since he's drawing $120,000 a year from SIU. But they offered him $140,000 and he requested a $20,000 cut so he wouldn't be paid more than the chancellor. That's the kind of gesture that makes the political cynics snicker, and makes the rest of the world think Paul Simon is a very decent guy.

Now that Simon's back home and doesn't have to be concerned about his own elections, he could be more of a political broker in this state.

He proved he could transfer his credibility and popularity last year when Richard Durbin was a relatively unknown central Illinois congressman making his introductions to Chicagoans at the same time he was asking them to send him to the Senate. Nobody up here knew Richard Durbin from Richard Burton. But Simon's endorsement, repeated on television commercials, was gold. It gave Durbin instant credibility and carried him to the election.

So Simon could throw his weight around. He intends not to. Other than supporting Sen. Carol Moseley-Braun's re-election bid, he's planning to lay low in politics.

He could be a big factor in the Democratic primary for governor next year. Lots of people want to run. But it looks like Simon won't play the game. He told me this week he's been approached by several potential candidates, but doesn't plan to endorse anybody. He's happy teaching his government and non-fiction writing courses and doesn't want to taint his new institute with the smell of partisan politics.

''I anticipate I will be less involved in party activities than I was before,'' he said. ''I have to be reaching out to both political parties.''

For a political writer in Chicago, saying something kind about a politician is akin to volunteering to put a kick-me sign on your back. But here goes: the people were right all along, Paul Simon really is a very decent guy.

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

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

Mr. DEWINE. Mr. President, we have all just heard the sad news about our former colleague, Senator Simon, from the Senator from Illinois. There will be opportunities in the future for more formal comments from many Members of the Senate, but I thought this afternoon I would make a few brief comments about our colleague Paul Simon.

I had the opportunity to serve in the Senate with Paul, but I also had the opportunity for a few years to serve in the House of Representatives with Paul. What a treat it was to serve in both bodies with Paul. Shortly after I came to the House, I discovered that when Paul Simon came to the well of the House of Representatives, he was someone to come into the House Chamber and listen to because no matter what the topic, we could count on the fact that he was going to give a thoughtful speech. You might agree with him, you might not agree with him, but you could bet that this man of great integrity had thought through what he was going to say. You can bet that he truly believed what he was saying.

Members would listen to Paul Simon, whether it was in the House or Senate. Paul Simon was a man of great integrity. When he spoke, it was clear he was a man of great moral clarity in his comments and thoughts. There was great precision to those thoughts.

We all know that Paul Simon was first, in his career, maybe first and foremost, a writer. He started, as my colleague from Illinois has just said, at a newspaper. Some have labeled him as a crusading newspaper editor. That is how he got his start. He continued to write throughout his career, writing his columns back to his home State and writing books.

I was back home in Ohio at the house of my daughter and son-in-law this past weekend and I happened to look down and there was what I took to be one of Paul's newest books. I picked it up and read a few pages. There was Paul again, being very provocative, being very thoughtful. He made me think. That was Paul.

One of the books Paul wrote many, many years ago continues to be cited today. Anybody who reads a biography of Abraham Lincoln will find the work of Paul Simon in that book because, you see, Paul Simon wrote the definitive book about Abraham Lincoln's time in the Illinois Legislature. So whatever definitive biography you read of Abraham Lincoln, it will cite Paul Simon's book for that period of Abraham Lincoln's life.

Paul Simon was asked once why he wrote the book. He said he had discovered there just hadn't been a good book written on that period of Abraham Lincoln's life, so Paul Simon wrote it. He did the research, dug the information out, and wrote the book. It is still the definitive book.

Paul Simon was, more than anything else, a teacher. You could see that in his speeches on the Senate floor and the House floor before that. You could see that, really, in his columns, his writings. So I think it is fitting that at the end of his career, as Senator FITZGERALD said, he went home. He went home to southern Illinois. He created this great institute at southern Illinois, his home community. He brought in great speakers, talked about big topics, great topics that we have to deal with in our country. He headed that up, put it together, and dealt with those issues.

He ended his life as a teacher, what he really was throughout his entire career, beginning as a newspaper man: Paul Simon the teacher. So as he taught us in the Senate, as he taught us in the House of Representatives, he ended his life as a teacher to young people in his home of Carbondale, in southern Illinois. I think that is clearly the way Paul Simon wanted it. I think it is fitting that is how he ended his life.

This is a sad day for the Senate. It is a sad day, certainly, for Illinois, and for his country. But we can take joy in this very good man's life and what he has done for our country and what he ended his life doing for our young people.

I yield the floor.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

IMPROVED NUTRITION AND PHYSICAL ACTIVITY ACT

Mr. FRIST. Mr. President, I ask unanimous consent that the Senate now proceed to the consideration of Calendar No. 417, S. 1172.

The PRESIDING OFFICER. The clerk will report the bill by title.

The legislative clerk read as follows:

A bill (S. 1172) to establish grants to provide health services for improved nutrition, increased physical activity, obesity prevention, and for other purposes.

There being no objection, the Senate proceeded to consider the bill which had been reported from the Committee on Health, Education, Labor, and Pensions with an amendment in the nature of a substitute, as follows:

(Strike the part shown in black brackets and insert the part printed in italic.)

S. 1172

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

[SECTION 1. SHORT TITLE.

[This Act may be cited as the ''Improved Nutrition and Physical Activity Act'' or the ''IMPACT Act''.

[SEC. 2. FINDINGS.

[Congress makes the following findings:

[(1) An estimated 61 percent of adults and 13 percent of children and adolescents in the Nation are overweight or obese.

[(2) The prevalence of obesity and being overweight is increasing among all age groups. There are twice the number of overweight children and 3 times the number of overweight adolescents as there were 29 years ago.

[(3) An estimated 300,000 deaths a year are associated with being overweight or obese.

[(4) Obesity and being overweight are associated with an increased risk for heart disease (the leading cause of death), cancer (the second leading cause of death), diabetes (the 6th leading cause of death), and musculoskeletal disorders.

[(5) Individuals who are obese have a 50 to 100 percent increased risk of premature death.

[(6) The Healthy People 2010 goals identify obesity and being overweight as one of the Nation's leading health problems and include objectives of increasing the proportion of adults who are at a healthy weight, reducing the proportion of adults who are obese, and reducing the proportion of children and adolescents who are overweight or obese.

[(7) Another goal of Healthy People 2010 is to eliminate health disparities among different segments of the population. Obesity is a health problem that disproportionally impacts medically underserved populations.

[(8) The United States Surgeon General's report ''A Call To Action'' lists the treatment and prevention of obesity as a top national priority.

[(9) The estimated direct and indirect annual cost of obesity in the United States is $117,000,000,000 (exceeding the cost of tobacco-related illnesses) and appears to be rising dramatically. This cost can potentially escalate markedly as obesity rates continue to rise and the medical complications of obesity are emerging at even younger ages. Therefore, the total disease burden will most likely increase, as well as the attendant health-related costs.

[(10) Weight control programs should promote a healthy lifestyle including regular physical activity and healthy eating, as consistently discussed and identified in a variety of public and private consensus documents, including ''A Call To Action'' and other documents prepared by the Department of Health and Human Services and other agencies.

[(11) Eating preferences and habits are established in childhood.

[(12) Poor eating habits are a risk factor for the development of eating disorders and obesity.

[(13) Simply urging overweight individuals to be thin has not reduced the prevalence of obesity and may result in other problems including body dissatisfaction, low self-esteem, and eating disorders.

[(14) Effective interventions for promoting healthy eating behaviors should promote healthy lifestyle and not inadvertently promote unhealthy weight management techniques.

[(15) Binge Eating is associated with obesity, heart disease, gall bladder disease, and diabetes.

[(16) Anorexia Nervosa, an eating disorder from which 0.5 to 3.7 percent of American women will suffer in their lifetime, is associated with serious health consequences including heart failure, kidney failure, osteoporosis, and death. In fact, Anorexia Nervosa has the highest mortality rate of all psychiatric disorders, placing a young woman with Anorexia at 18 times the risk of death of other women her age.

[(17) Anorexia Nervosa and Bulimia Nervosa usually appears in adolescence.

[(18) Bulimia Nervosa, an eating disorder from which an estimated 1.1 to 4.2 percent of American women will suffer in their lifetime, is associated with cardiac, gastrointestinal, and dental problems, including irregular heartbeats, gastric ruptures, peptic ulcers, and tooth decay.

[(19) On the 1999 Youth Risk Behavior Survey, 7.5 percent of high school girls reported recent use of laxatives or vomiting to control their weight.

[(20) Binge Eating Disorder is characterized by frequent episodes of uncontrolled overeating, with an estimated 2 to 5 percent of Americans experiencing this disorder in a 6-month period.

[(21) Eating disorders are commonly associated with substantial psychological problems, including depression, substance abuse, and suicide.

[(22) Eating disorders of all types are more common in women than men.

[TITLE I—TRAINING GRANTS

[SEC. 101. GRANTS TO PROVIDE TRAINING FOR HEALTH PROFESSION STUDENTS.

[Section 747(c)(3) of title VII of the Public Health Service Act (42 U.S.C. 293k(c)(3)) is amended by striking ''and victims of domestic violence'' and inserting ''victims of domestic violence, individuals (including children) who are overweight or obese (as such terms are defined in section 399W(j)) and at risk for related serious and chronic medical conditions, and individuals who suffer from eating disorders''.

[SEC. 102. GRANTS TO PROVIDE TRAINING FOR HEALTH PROFESSIONALS.

[Section 399Z of the Public Health Service Act (42 U.S.C. 280h–3) is amended—

[(1) in subsection (b), by striking ''2005'' and inserting ''2007'';

[(2) by redesignating subsection (b) as subsection (c); and

[(3) by inserting after subsection (a) the following:

[''(b) GRANTS.—

[''(1) IN GENERAL.—The Secretary may award grants to eligible entities to train primary care physicians and other licensed or certified health professionals on how to identify, treat, and prevent obesity or eating disorders and aid individuals who are overweight, obese, or who suffer from eating disorders.

[''(2) APPLICATION.—An entity that desires a grant under this subsection shall submit an application at such time, in such manner, and containing such information as the Secretary may require, including a plan for the use of funds that may be awarded and an evaluation of the training that will be provided.

[''(3) USE OF FUNDS.—An entity that receives a grant under this subsection shall use the funds made available through such grant to—

[''(A) use evidence-based findings or recommendations that pertain to the prevention and treatment of obesity, being overweight, and eating disorders to conduct educational conferences, including Internet-based courses and teleconferences, on—

[''(i) how to treat or prevent obesity, being overweight, and eating disorders;

[''(ii) the link between obesity and being overweight and related serious and chronic medical conditions;

[''(iii) how to discuss varied strategies with patients from at-risk and diverse populations to promote positive behavior change and healthy lifestyles to avoid obesity, being overweight, and eating disorders;

[''(iv) how to identify overweight and obese patients and those who are at risk for obesity and being overweight or suffer from eating disorders and, therefore, at risk for related serious and chronic medical conditions; and

[''(v) how to conduct a comprehensive assessment of individual and familial health risk factors; and

[''(B) evaluate the effectiveness of the training provided by such entity in increasing knowledge and changing attitudes and behaviors of trainees.''.

[TITLE II—COMMUNITY-BASED SOLUTIONS TO INCREASE PHYSICAL ACTIVITY AND IMPROVE NUTRITION

[SEC. 201. GRANTS TO INCREASE PHYSICAL ACTIVITY AND IMPROVE NUTRITION.

[Part Q of title III of the Public Health Service Act (42 U.S.C. 280h et seq.) is amended by striking section 399W and inserting the following:

[''SEC. 399W. GRANTS TO INCREASE PHYSICAL ACTIVITY AND IMPROVE NUTRITION.

[''(a) ESTABLISHMENT.—

[''(1) IN GENERAL.—The Secretary, acting through the Director of the Centers for Disease Control and Prevention and in coordination with the Administrator of the Health Resources and Services Administration, the Director of the Indian Health Service, the Secretary of Education, the Secretary of Agriculture, the Secretary of the Interior, the Director of the National Institutes of Health, the Director of the Office of Women's Health, and the heads of other appropriate agencies, shall award competitive grants to eligible entities to plan and implement programs that promote healthy eating behaviors and physical activity to prevent eating disorders, obesity, being overweight, and related serious and chronic medical conditions. Such grants may be awarded to target at-risk populations including youth, adolescent girls, racial and ethnic minorities, and the underserved.

[''(2) TERM.—The Secretary shall award grants under this subsection for a period not to exceed 4 years.

[''(b) AWARD OF GRANTS.—An eligible entity desiring a grant under this section shall submit an application to the Secretary at such time, in such manner, and containing such information as the Secretary may require, including—

[''(1) a plan describing a comprehensive program of approaches to encourage healthy eating behaviors and healthy levels of physical activity;

[''(2) the manner in which the eligible entity will coordinate with appropriate State and local authorities, including—

[''(A) State and local educational agencies;

[''(B) departments of health;

[''(C) chronic disease directors;

[''(D) State directors of programs under section 17 of the Child Nutrition Act of 1966 (42 U.S.C. 1786);

[''(E) 5-a-day coordinators;

[''(F) governors' councils for physical activity and good nutrition; and

[''(G) State and local parks and recreation departments; and

[''(3) the manner in which the applicant will evaluate the effectiveness of the program carried out under this section.

[''(c) COORDINATION.—In awarding grants under this section, the Secretary shall ensure that the proposed programs are coordinated in substance and format with programs currently funded through other Federal agencies and operating within the community including the Physical Education Program (PEP) of the Department of Education.

[''(d) ELIGIBLE ENTITY.—In this section, the term 'eligible entity' means—

[''(1) a city, county, tribe, territory, or State;

[''(2) a State educational agency;

[''(3) a tribal educational agency;

[''(4) a local educational agency;

[''(5) a federally qualified health center (as defined in section 1861(aa)(4) of the Social Security Act (42 U.S.C. 1395x(aa)(4));

[''(6) a rural health clinic;

[''(7) a health department;

[''(8) an Indian Health Service hospital or clinic;

[''(9) an Indian tribal health facility;

[''(10) an urban Indian facility;

[''(11) any health care service provider;

[''(12) an accredited university or college; or

[''(13) any other entity determined appropriate by the Secretary.

[''(e) USE OF FUNDS.—An eligible entity that receives a grant under this section shall use the funds made available through the grant to—

[''(1) carry out community-based activities including—

[''(A) planning and implementing environmental changes that promote physical activity;

[''(B) forming partnerships and activities with businesses and other entities to increase physical activity levels and promote healthy eating behaviors at the workplace and while traveling to and from the workplace;

[''(C) forming partnerships with entities, including schools, faith-based entities, and other facilities providing recreational services, to establish programs that use their facilities for after school and weekend community activities;

[''(D) establishing incentives for retail food stores, farmer's markets, food coops, grocery stores, and other retail food outlets that offer nutritious foods to encourage such stores and outlets to locate in economically depressed areas;

[''(E) forming partnerships with senior centers and nursing homes to establish programs for older people to foster physical activity and healthy eating behaviors;

[''(F) forming partnerships with day care facilities to establish programs that promote healthy eating behaviors and physical activity; and

[''(G) providing community educational activities targeting good nutrition;

[''(2) carry out age-appropriate school-based activities including—

[''(A) developing and testing educational curricula and intervention programs designed to promote healthy eating behaviors and habits in youth, which may include—

[''(i) after hours physical activity programs;

[''(ii) increasing opportunities for students to make informed choices regarding healthy eating behaviors; and

[''(iii) science-based interventions with multiple components to prevent eating disorders including nutritional content, understanding and responding to hunger and satiety, positive body image development, positive self-esteem development, and learning life skills (such as stress management, communication skills, problem-solving and decisionmaking skills), as well as consideration of cultural and developmental issues, and the role of family, school, and community;

[''(B) providing education and training to educational professionals regarding a healthy lifestyle and a healthy school environment;

[''(C) planning and implementing a healthy lifestyle curriculum or program with an emphasis on healthy eating behaviors and physical activity; and

[''(D) planning and implementing healthy lifestyle classes or programs for parents or guardians, with an emphasis on healthy eating behaviors and physical activity;

[''(3) carry out activities through the local health care delivery systems including—

[''(A) promoting healthy eating behaviors and physical activity services to treat or prevent eating disorders, being overweight, and obesity;

[''(B) providing patient education and counseling to increase physical activity and promote healthy eating behaviors; and

[''(C) providing community education on good nutrition and physical activity to develop a better understanding of the relationship between diet, physical activity, and eating disorders, obesity, or being overweight; or

[''(4) other activities determined appropriate by the Secretary.

[''(f) MATCHING FUNDS.—In awarding grants under subsection (a), the Secretary may give priority to eligible entities who provide matching contributions. Such non-Federal contributions may be cash or in kind, fairly evaluated, including plant, equipment, or services.

[''(g) TECHNICAL ASSISTANCE.—The Secretary may set aside an amount not to exceed 10 percent of the total amount appropriated for a fiscal year under subsection (k) to permit the Director of the Centers for Disease Control and Prevention to provide grantees with technical support in the development, implementation, and evaluation of programs under this section and to disseminate information about effective strategies and interventions in preventing and treating obesity and eating disorders through the promotion of healthy eating behaviors and physical activity.

[''(h) LIMITATION ON ADMINISTRATIVE COSTS.—An eligible entity awarded a grant under this section may not use more than 10 percent of funds awarded under such grant for administrative expenses.

[''(i) REPORT.—Not later than 6 years after the date of enactment of the Improved Nutrition and Physical Activity Act, the Director of the Centers for Disease Control and Prevention shall review the results of the grants awarded under this section and other related research and identify programs that have demonstrated effectiveness in healthy eating behaviors and physical activity in youth.

[''(j) DEFINITIONS.—In this section:

[''(1) ANOREXIA NERVOSA.—The term 'Anorexia Nervosa' means an eating disorder characterized by self-starvation and excessive weight loss.

[''(2) BINGE EATING DISORDER.—The term 'binge eating disorder' means a disorder characterized by frequent episodes of uncontrolled eating.

[''(3) BULIMIA NERVOSA.—The term 'Bulimia Nervosa' means an eating disorder characterized by excessive food consumption, followed by inappropriate compensatory behaviors, such as self-induced vomiting, misuse of laxatives, fasting, or excessive exercise.

[''(4) EATING DISORDERS.—The term 'eating disorders' means disorders of eating, including Anorexia Nervosa, Bulimia Nervosa, and binge eating disorder.

[''(5) HEALTHY EATING BEHAVIORS.—The term 'healthy eating behaviors' means—

[''(A) eating in quantities adequate to meet, but not in excess of, daily energy needs;

[''(B) choosing foods to promote health and prevent disease;

[''(C) eating comfortably in social environments that promote healthy relationships with family, peers, and community; and

[''(D) eating in a manner to acknowledge internal signals of hunger and satiety.

[''(6) OBESE.—The term 'obese' means an adult with a Body Mass Index (BMI) of 30 kg/m^2 or greater.

[''(7) OVERWEIGHT.—The term 'overweight' means an adult with a Body Mass Index (BMI) of 25 to 29.9 kg/m^2 and a child or adolescent with a BMI at or above the 95th percentile on the revised Centers for Disease Control and Prevention growth charts or another appropriate childhood definition, as defined by the Secretary.

[''(8) YOUTH.—The term 'youth' means individuals not more than 18 years old.

[''(k) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section, $60,000,000 for fiscal year 2004 and such sums as may be necessary for each of fiscal years 2005 through 2008. Of the funds appropriated pursuant to this subsection, the following amounts shall be set aside for activities related to eating disorders:

[''(1) $5,000,000 for fiscal year 2004.

[''(2) $5,500,000 for fiscal year 2005.

[''(3) $6,000,000 for fiscal year 2006.

[''(4) $6,500,000 for fiscal year 2007.

[''(5) $1,000,000 for fiscal year 2008.''

[SEC. 202. NATIONAL CENTER FOR HEALTH STATISTICS.

[Section 306 of the Public Health Service Act (42 U.S.C. 242k) is amended by striking subsection (n) and inserting the following:

[''(n)(1) The Secretary, acting through the Center, may provide for the—

[''(A) collection of data for determining the fitness levels and energy expenditure of children and youth; and

[''(B) analysis of data collected as part of the National Health and Nutrition Examination Survey and other data sources.

[''(2) In carrying out paragraph (1), the Secretary, acting through the Center, may make grants to States, public entities, and nonprofit entities.

[''(3) The Secretary, acting through the Center, may provide technical assistance, standards, and methodologies to grantees supported by this subsection in order to maximize the data quality and comparability with other studies.''.

[SEC. 203. STUDY OF THE FOOD SUPPLEMENT AND NUTRITION PROGRAMS OF THE DEPARTMENT OF AGRICULTURE.

[(a) IN GENERAL.—The Secretary of Agriculture shall request that the Institute of Medicine conduct, or contract with another entity to conduct, a study on the food and nutrition assistance programs run by the Department of Agriculture.

[(b) CONTENT.—Such study shall—

[(1) investigate whether the nutrition programs and nutrition recommendations are based on the latest scientific evidence;

[(2) investigate whether the food assistance programs contribute to either preventing or enhancing obesity and being overweight in children, adolescents, and adults;

[(3) investigate whether the food assistance programs can be improved or altered to contribute to the prevention of obesity and becoming overweight; and

[(4) identify obstacles that prevent or hinder the programs from achieving their objectives.

[(c) REPORT.—Not later than 2 years after the date of enactment of this Act, the Secretary of Agriculture shall submit to the appropriate committees of Congress a report containing the results of the Institute of Medicine study authorized under this section.

[(d) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this section $750,000 for fiscal years 2003 and 2004.

[SEC. 204. HEALTH DISPARITIES REPORT.

[Not later than 18 months after the date of enactment of this Act, and annually thereafter, the Director of the Agency for Healthcare Research and Quality shall review all research that results from the activities outlined in this Act and determine if particular information may be important to the report on health disparities required by section 903(c)(3) of the Public Health Service Act (42 U.S.C. 299a–1(c)(3)).

[SEC. 205. PREVENTIVE HEALTH SERVICES BLOCK GRANT.

[Section 1904(a)(1) of the Public Health Service Act (42 U.S.C. 300w–3(a)(1)) is amended by adding at the end the following:

[''(H) Activities and community education programs designed to address and prevent overweight, obesity, and eating disorders through effective programs to promote healthy eating, and exercise habits and behaviors.''.

[SEC. 206. REPORT ON OBESITY RESEARCH.

[(a) IN GENERAL.—Not later than 1 year after the date of enactment of this Act, the Secretary of Health and Human Services shall submit to the Committee on Health, Education, Labor, and Pensions of the Senate and the Committee on Energy and Commerce of the House of Representatives a report on research conducted on causes and health implications of obesity and being overweight.

[(b) CONTENT.—The report described in subsection (a) shall contain—

[(1) descriptions on the status of relevant, current, ongoing research being conducted in the Department of Health and Human Services including research at the National Institutes of Health, the Centers for Disease Control and Prevention, the Agency for Healthcare Research and Quality, the Health Resources and Services Administration, and other offices and agencies;

[(2) information about what these studies have shown regarding the causes of, prevention of, and treatment of, overweight and obesity; and

[(3) recommendations on further research that is needed, including research among diverse populations, the department's plan for conducting such research, and how current knowledge can be disseminated.

[SEC. 207. REPORT ON A NATIONAL CAMPAIGN TO CHANGE CHILDREN'S HEALTH BEHAVIORS AND REDUCE OBESITY.

[Section 399Y of the Public Health Service Act (42 U.S.C. 280h–2) is amended—

[(1) by redesignating subsection (b) as subsection (c); and

[(2) by inserting after subsection (a) the following:

[''(b) REPORT.—The Secretary shall evaluate the effectiveness of the campaign described in subsection (a) in changing children's behaviors and reducing obesity and shall report such results to the Committee on Health, Education, Labor, and Pensions of the Senate and the Committee on Energy and Commerce of the House of Representatives.''.]

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Improved Nutrition and Physical Activity Act'' or the ''IMPACT Act''.

SEC. 2. FINDINGS.

Congress makes the following findings:

(1) An estimated 61 percent of adults and 13 percent of children and adolescents in the Nation are overweight or obese.

(2) The prevalence of obesity and being overweight is increasing among all age groups. There are twice the number of overweight children and 3 times the number of overweight adolescents as there were 29 years ago.

(3) An estimated 300,000 deaths a year are associated with being overweight or obese.

(4) Obesity and being overweight are associated with an increased risk for heart disease (the leading cause of death), cancer (the second leading cause of death), diabetes (the 6th leading cause of death), and musculoskeletal disorders.

(5) Individuals who are obese have a 50 to 100 percent increased risk of premature death.

(6) The Healthy People 2010 goals identify obesity and being overweight as one of the Nation's leading health problems and include objectives of increasing the proportion of adults who are at a healthy weight, reducing the proportion of adults who are obese, and reducing the proportion of children and adolescents who are overweight or obese.

(7) Another goal of Healthy People 2010 is to eliminate health disparities among different segments of the population. Obesity is a health problem that disproportionally impacts medically underserved populations.

(8) The United States Surgeon General's report ''A Call To Action'' lists the treatment and prevention of obesity as a top national priority.

(9) The estimated direct and indirect annual cost of obesity in the United States is $117,000,000,000 (exceeding the cost of tobacco-related illnesses) and appears to be rising dramatically. This cost can potentially escalate markedly as obesity rates continue to rise and the medical complications of obesity are emerging at even younger ages. Therefore, the total disease burden will most likely increase, as well as the attendant health-related costs.

(10) Weight control programs should promote a healthy lifestyle including regular physical activity and healthy eating, as consistently discussed and identified in a variety of public and private consensus documents, including ''A Call To Action'' and other documents prepared by the Department of Health and Human Services and other agencies.

(11) Eating preferences and habits are established in childhood.

(12) Poor eating habits are a risk factor for the development of eating disorders and obesity.

(13) Simply urging overweight individuals to be thin has not reduced the prevalence of obesity and may result in other problems including body dissatisfaction, low self-esteem, and eating disorders.

(14) Effective interventions for promoting healthy eating behaviors should promote healthy lifestyle and not inadvertently promote unhealthy weight management techniques.

(15) Binge Eating is associated with obesity, heart disease, gall bladder disease, and diabetes.

(16) Anorexia Nervosa, an eating disorder from which 0.5 to 3.7 percent of American women will suffer in their lifetime, is associated with serious health consequences including heart failure, kidney failure, osteoporosis, and death. In fact, Anorexia Nervosa has the highest mortality rate of all psychiatric disorders, placing a young woman with Anorexia Nervosa at 18 times the risk of death of other women her age.

(17) Anorexia Nervosa and Bulimia Nervosa usually appears in adolescence.

(18) Bulimia Nervosa, an eating disorder from which an estimated 1.1 to 4.2 percent of American women will suffer in their lifetime, is associated with cardiac, gastrointestinal, and dental problems, including irregular heartbeats, gastric ruptures, peptic ulcers, and tooth decay.

(19) On the 1999 Youth Risk Behavior Survey, 7.5 percent of high school girls reported recent use of laxatives or vomiting to control their weight.

(20) Binge Eating Disorder is characterized by frequent episodes of uncontrolled overeating, with an estimated 2 to 5 percent of Americans experiencing this disorder in a 6-month period.

(21) Eating disorders are commonly associated with substantial psychological problems, including depression, substance abuse, and suicide.

(22) Eating disorders of all types are more common in women than men.

TITLE I—TRAINING GRANTS

SEC. 101. GRANTS TO PROVIDE TRAINING FOR HEALTH PROFESSION STUDENTS.

Section 747(c)(3) of title VII of the Public Health Service Act (42 U.S.C. 293k(c)(3)) is amended by striking ''and victims of domestic violence'' and inserting ''victims of domestic violence, individuals (including children) who are overweight or obese (as such terms are defined in section 399W(j)) and at risk for related serious and chronic medical conditions, and individuals who suffer from eating disorders''.

SEC. 102. GRANTS TO PROVIDE TRAINING FOR HEALTH PROFESSIONALS.

Section 399Z of the Public Health Service Act (42 U.S.C. 280h–3) is amended—

(1) in subsection (b), by striking ''2005'' and inserting ''2007'';

(2) by redesignating subsection (b) as subsection (c); and

(3) by inserting after subsection (a) the following:

''(b) GRANTS.—

''(1) IN GENERAL.—The Secretary may award grants to eligible entities to train primary care physicians and other licensed or certified health professionals on how to identify, treat, and prevent obesity or eating disorders and aid individuals who are overweight, obese, or who suffer from eating disorders.

''(2) APPLICATION.—An entity that desires a grant under this subsection shall submit an application at such time, in such manner, and containing such information as the Secretary may require, including a plan for the use of funds that may be awarded and an evaluation of the training that will be provided.

''(3) USE OF FUNDS.—An entity that receives a grant under this subsection shall use the funds made available through such grant to—

''(A) use evidence-based findings or recommendations that pertain to the prevention and treatment of obesity, being overweight, and eating disorders to conduct educational conferences, including Internet-based courses and teleconferences, on—

''(i) how to treat or prevent obesity, being overweight, and eating disorders;

''(ii) the link between obesity and being overweight and related serious and chronic medical conditions;

''(iii) how to discuss varied strategies with patients from at-risk and diverse populations to promote positive behavior change and healthy lifestyles to avoid obesity, being overweight, and eating disorders;

''(iv) how to identify overweight and obese patients and those who are at risk for obesity and being overweight or suffer from eating disorders and, therefore, at risk for related serious and chronic medical conditions;

''(v) how to conduct a comprehensive assessment of individual and familial health risk factors; and

''(B) evaluate the effectiveness of the training provided by such entity in increasing knowledge and changing attitudes and behaviors of trainees.''.

TITLE II—COMMUNITY-BASED SOLUTIONS TO INCREASE PHYSICAL ACTIVITY AND IMPROVE NUTRITION

SEC. 201. GRANTS TO INCREASE PHYSICAL ACTIVITY AND IMPROVE NUTRITION.

Part Q of title III of the Public Health Service Act (42 U.S.C. 280h et seq.) is amended by striking section 399W and inserting the following:

''SEC. 399W. GRANTS TO INCREASE PHYSICAL ACTIVITY AND IMPROVE NUTRITION.

''(a) ESTABLISHMENT.—

''(1) IN GENERAL.—The Secretary, acting through the Director of the Centers for Disease Control and Prevention and in coordination with the Administrator of the Health Resources and Services Administration, the Director of the Indian Health Service, the Secretary of Education, the Secretary of Agriculture, the Secretary of the Interior, the Director of the National Institutes of Health, the Director of the Office of Women's Health, and the heads of other appropriate agencies, shall award competitive grants to eligible entities to plan and implement programs that promote healthy eating behaviors and physical activity to prevent eating disorders, obesity, being overweight, and related serious and chronic medical conditions. Such grants may be awarded to target at-risk populations including youth, adolescent girls,

health disparity populations (as defined in section 485E(d)), and the underserved.

''(2) TERM.—The Secretary shall award grants under this subsection for a period not to exceed 4 years.

''(b) AWARD OF GRANTS.—An eligible entity desiring a grant under this section shall submit an application to the Secretary at such time, in such manner, and containing such information as the Secretary may require, including—

''(1) a plan describing a comprehensive program of approaches to encourage healthy eating behaviors and healthy levels of physical activity;

''(2) the manner in which the eligible entity will coordinate with appropriate State and local authorities, including—

''(A) State and local educational agencies;

''(B) departments of health;

''(C) chronic disease directors;

''(D) State directors of programs under section 17 of the Child Nutrition Act of 1966 (42 U.S.C. 1786);

''(E) 5-a-day coordinators;

''(F) Governors' councils for physical activity and good nutrition;

''(G) State and local parks and recreation departments; and

''(H) State and local departments of transportation and city planning; and

''(3) the manner in which the applicant will evaluate the effectiveness of the program carried out under this section.

''(c) COORDINATION.—In awarding grants under this section, the Secretary shall ensure that the proposed programs are coordinated in substance and format with programs currently funded through other Federal agencies and operating within the community including the Physical Education Program (PEP) of the Department of Education.

''(d) ELIGIBLE ENTITY.—In this section, the term 'eligible entity' means—

''(1) a city, county, tribe, territory, or State;

''(2) a State educational agency;

''(3) a tribal educational agency;

''(4) a local educational agency;

''(5) a federally qualified health center (as defined in section 1861(aa)(4) of the Social Security Act (42 U.S.C. 1395x(aa)(4));

''(6) a rural health clinic;

''(7) a health department;

''(8) an Indian Health Service hospital or clinic;

''(9) an Indian tribal health facility;

''(10) an urban Indian facility;

''(11) any health provider;

''(12) an accredited university or college;

''(13) a community-based organization;

''(14) a local city planning agency; or

''(15) any other entity determined appropriate by the Secretary.

''(e) USE OF FUNDS.—An eligible entity that receives a grant under this section shall use the funds made available through the grant to—

''(1) carry out community-based activities including—

''(A) city planning, transportation initiatives, and environmental changes that help promote physical activity, such as increasing the use of walking or bicycling as a mode of transportation;

''(B) forming partnerships and activities with businesses and other entities to increase physical activity levels and promote healthy eating behaviors at the workplace and while traveling to and from the workplace;

''(C) forming partnerships with entities, including schools, faith-based entities, and other facilities providing recreational services, to establish programs that use their facilities for after school and weekend community activities;

''(D) establishing incentives for retail food stores, farmer's markets, food co-ops, grocery stores, and other retail food outlets that offer nutritious foods to encourage such stores and outlets to locate in economically depressed areas;

''(E) forming partnerships with senior centers and nursing homes to establish programs for older people to foster physical activity and healthy eating behaviors;

''(F) forming partnerships with daycare facilities to establish programs that promote healthy eating behaviors and physical activity; and

''(G) providing community educational activities targeting good nutrition;

''(2) carry out age-appropriate school-based activities including—

''(A) developing and testing educational curricula and intervention programs designed to promote healthy eating behaviors and habits in youth, which may include—

''(i) after hours physical activity programs;

''(ii) increasing opportunities for students to make informed choices regarding healthy eating behaviors; and

''(iii) science-based interventions with multiple components to prevent eating disorders including nutritional content, understanding and responding to hunger and satiety, positive body image development, positive self-esteem development, and learning life skills (such as stress management, communication skills, problem-solving and decisionmaking skills), as well as consideration of cultural and developmental issues, and the role of family, school, and community;

''(B) providing education and training to educational professionals regarding a healthy lifestyle and a healthy school environment;

''(C) planning and implementing a healthy lifestyle curriculum or program with an emphasis on healthy eating behaviors and physical activity; and

''(D) planning and implementing healthy lifestyle classes or programs for parents or guardians, with an emphasis on healthy eating behaviors and physical activity;

''(3) carry out activities through the local health care delivery systems including—

''(A) promoting healthy eating behaviors and physical activity services to treat or prevent eating disorders, being overweight, and obesity;

''(B) providing patient education and counseling to increase physical activity and promote healthy eating behaviors; and

''(C) providing community education on good nutrition and physical activity to develop a better understanding of the relationship between diet, physical activity, and eating disorders, obesity, or being overweight; or

''(4) other activities determined appropriate by the Secretary.

''(f) MATCHING FUNDS.—In awarding grants under subsection (a), the Secretary may give priority to eligible entities who provide matching contributions. Such non-Federal contributions may be cash or in kind, fairly evaluated, including plant, equipment, or services.

''(g) TECHNICAL ASSISTANCE.—The Secretary may set aside an amount not to exceed 10 percent of the total amount appropriated for a fiscal year under subsection (k) to permit the Director of the Centers for Disease Control and Prevention to provide grantees with technical support in the development, implementation, and evaluation of programs under this section and to disseminate information about effective strategies and interventions in preventing and treating obesity and eating disorders through the promotion of healthy eating behaviors and physical activity.

''(h) LIMITATION ON ADMINISTRATIVE COSTS.—An eligible entity awarded a grant under this section may not use more than 10 percent of funds awarded under such grant for administrative expenses.

''(i) REPORT.—Not later than 6 years after the date of enactment of the Improved Nutrition and Physical Activity Act, the Director of the Centers for Disease Control and Prevention shall review the results of the grants awarded under this section and other related research and identify programs that have demonstrated effectiveness in healthy eating behaviors and physical activity in youth.

''(j) DEFINITIONS.—In this section:

''(1) ANOREXIA NERVOSA.—The term 'Anorexia Nervosa' means an eating disorder characterized by self-starvation and excessive weight loss.

''(2) BINGE EATING DISORDER.—The term 'binge eating disorder' means a disorder characterized by frequent episodes of uncontrolled eating.

''(3) BULIMIA NERVOSA.—The term 'Bulimia Nervosa' means an eating disorder characterized by excessive food consumption, followed by inappropriate compensatory behaviors, such as self-induced vomiting, misuse of laxatives, fasting, or excessive exercise.

''(4) EATING DISORDERS.—The term 'eating disorders' means disorders of eating, including Anorexia Nervosa, Bulimia Nervosa, and binge eating disorder.

''(5) HEALTHY EATING BEHAVIORS.—The term 'healthy eating behaviors' means—

''(A) eating in quantities adequate to meet, but not in excess of, daily energy needs;

''(B) choosing foods to promote health and prevent disease;

''(C) eating comfortably in social environments that promote healthy relationships with family, peers, and community; and

''(D) eating in a manner to acknowledge internal signals of hunger and satiety.

''(6) OBESE.—The term 'obese' means an adult with a Body Mass Index (BMI) of 30 kg/m2 or greater.

''(7) OVERWEIGHT.—The term 'overweight' means an adult with a Body Mass Index (BMI) of 25 to 29.9 kg/m2 and a child or adolescent with a BMI at or above the 95th percentile on the revised Centers for Disease Control and Prevention growth charts or another appropriate childhood definition, as defined by the Secretary.

''(8) YOUTH.—The term 'youth' means individuals not more than 18 years old.

''(k) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section, $60,000,000 for fiscal year 2004 and such sums as may be necessary for each of fiscal years 2005 through 2008. Of the funds appropriated pursuant to this subsection, the following amounts shall be set aside for activities related to eating disorders:

''(1) $5,000,000 for fiscal year 2004.

''(2) $5,500,000 for fiscal year 2005.

''(3) $6,000,000 for fiscal year 2006.

''(4) $6,500,000 for fiscal year 2007.

''(5) $1,000,000 for fiscal year 2008.''.

SEC. 202. NATIONAL CENTER FOR HEALTH STATISTICS.

Section 306 of the Public Health Service Act (42 U.S.C. 242k) is amended—

(1) in subsection (m)(4)(B), by striking ''subsection (n)'' each place it appears and inserting ''subsection (o)'';

(2) by redesignating subsection (n) as subsection (o); and

(3) by inserting after subsection (m) the following:

''(n)(1) The Secretary, acting through the Center, may provide for the—

''(A) collection of data for determining the fitness levels and energy expenditure of children and youth; and

''(B) analysis of data collected as part of the National Health and Nutrition Examination Survey and other data sources.

''(2) In carrying out paragraph (1), the Secretary, acting through the Center, may make grants to States, public entities, and nonprofit entities.

''(3) The Secretary, acting through the Center, may provide technical assistance, standards, and methodologies to grantees supported by this subsection in order to maximize the data quality and comparability with other studies.''.

SEC. 203. HEALTH DISPARITIES REPORT.

Not later than 18 months after the date of enactment of this Act, and annually thereafter, the Director of the Agency for Healthcare Research and Quality shall review all research

that results from the activities outlined in this Act and determine if particular information may be important to the report on health disparities required by section 903(c)(3) of the Public Health Service Act (42 U.S.C. 299a–1(c)(3)).

SEC. 204. PREVENTIVE HEALTH SERVICES BLOCK GRANT.

Section 1904(a)(1) of the Public Health Service Act (42 U.S.C. 300w–3(a)(1)) is amended by adding at the end the following:

''(H) Activities and community education programs designed to address and prevent overweight, obesity, and eating disorders through effective programs to promote healthy eating, and exercise habits and behaviors.''.

SEC. 205. REPORT ON OBESITY RESEARCH.

(a) IN GENERAL.—Not later than 1 year after the date of enactment of this Act, the Secretary of Health and Human Services shall submit to the Committee on Health, Education, Labor, and Pensions of the Senate and the Committee on Energy and Commerce of the House of Representatives a report on research conducted on causes and health implications of obesity and being overweight.

(b) CONTENT.—The report described in subsection (a) shall contain—

(1) descriptions on the status of relevant, current, ongoing research being conducted in the Department of Health and Human Services including research at the National Institutes of Health, the Centers for Disease Control and Prevention, the Agency for Healthcare Research and Quality, the Health Resources and Services Administration, and other offices and agencies;

(2) information about what these studies have shown regarding the causes of, prevention of, and treatment of, overweight and obesity; and

(3) recommendations on further research that is needed, including research among diverse populations, the department's plan for conducting such research, and how current knowledge can be disseminated.

SEC. 206. REPORT ON A NATIONAL CAMPAIGN TO CHANGE CHILDREN'S HEALTH BEHAVIORS AND REDUCE OBESITY.

Section 399Y of the Public Health Service Act (42 U.S.C. 280h–2) is amended—

(1) by redesignating subsection (b) as subsection (c); and

(2) by inserting after subsection (a) the following:

''(b) REPORT.—The Secretary shall evaluate the effectiveness of the campaign described in subsection (a) in changing children's behaviors and reducing obesity and shall report such results to the Committee on Health, Education, Labor, and Pensions of the Senate and the Committee on Energy and Commerce of the House of Representatives.''.

Mr. HARKIN. Mr. President, I wish to engage in a colloquy with the distinguished majority leader, the Senator from Tennessee, Mr. FRIST. From time to time, Congress is confronted with a public health crisis of such magnitude that we have no choice but to act. For a number of reasons, including the changing physical environment, eating and physical activity habits, obesity has now emerged as a serious new public health threat. More than 65 percent of American adults and 15 percent of children are obese or overweight. These figures double the levels during the 1980s for adults and triple the levels for children. Obesity now contributes to an estimated 300,000 deaths annually. We also know that obesity contributes to diabetes, high blood pressure, high cholesterol, cancers and heart disease. The economic impact also is alarming. The Surgeon General reports that obesity costs the Nation over $117 billion directly and indirectly. These tends will continue if we do not develop a comprehensive strategy to prevent and treat this condition.

I commend Senator FRIST and others for introducing the Improved Nutrition and Physical Activity Act to begin to tackle this challenge. Senator FRIST as a physician certainly understands the impact of rising obesity rates. I commend his leadership on this issue. I believe that he and I agree that this IMPACT bill is an important step forward, but that more may need to be done to prevent and treat obesity. In view of the continuing and growing public health threat, I wonder if my friend and colleague would agree with me now that the Health, Education, Labor and Pensions Committee, as the committee of jurisdiction in this policy area, should devote further attention to this problem next year. I wonder whether he, as a fellow member of that HELP Committee, would agree with me now to urge chairman and ranking member of that committee to hold a hearing early in the next session of this Congress for that purpose.

Mr. FRIST. I thank my colleague for his kind remarks. As he knows, I believe this issue of obesity is one of the largest unaddressed public health issues we face today, and I am pleased by the action we are taking today. I agree that it is critical that we continue to direct our attention to this issue, and it is my hope that the HELP Committee will continue to examine the issue, including by holding a hearing next year.

Mr. HARKIN. I appreciate the attention of the majority leader to this subject. I commend his work and congratulate him on passage of this bill. I look forward to sending a joint letter to the HELP Committee, requesting a hearing, and I look forward to working with the Senator from Tennessee and others to build on this important start in combating harmful obesity.

Mr. FRIST. Mr. President, I ask unanimous consent that the committee substitute amendment be agreed to, the bill, as amended, be read a third time and passed, the motion to reconsider be laid upon the table, and that any statements relating to the bill be printed in the RECORD.

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

The committee amendment in the nature of a substitute was agreed to.

The bill (S. 1172), as amended, was read the third time and passed.

Mr. FRIST. Mr. President, this bill we just passed does exactly as stated. It establishes grants to address health services for nutrition, for increased physical activity, and for obesity prevention.

It is late in the day, and a little bit later we will bring this session to a close. I am delighted personally, as a physician and as a Senator, that this body came forward to pass this important piece of legislation. I draw the attention of my colleagues to last week's edition of Newsweek magazine. It features a special section on the top 10 health stories of 2003. Weighing in as No. 1 in the Newsweek story in the judgment of its editor is the obesity epidemic in America. That comes before depression, it comes before cancer, and it comes before even the SARS virus.

The magazine reports that more than 65 percent of Americans are overweight or obese and rates of obesity-related illnesses are skyrocketing. Fifteen percent of America's children are seriously overweight, triple the number in 1970. It is an epidemic that is getting worse day by day, week by week, month by month, and year by year.

As a physician and as a Senator, this particular issue is one about which I care passionately. I have spoken to this issue frequently in the Senate and I return tonight to do so for a few moments. I applaud the media outlets because they have done a very good job in highlighting and spotlighting this new epidemic. They are taking this obesity threat seriously and helping to communicate that around the United States of America.

The message is simple, that obesity, which is growing day by day, is debilitating. It is effectively debilitating millions of Americans. Indeed, it has reached epidemic proportions in all ages but in particular in children.

Historically, obesity was considered just another lifestyle choice. It was a tolerable consequence of eating food, eating good food, and eating lots of food. It was a consequence of driving instead of walking. But now we know obesity literally causes heart disease. Heart disease is the No. 1 killer in Americans. Now we know that obesity causes diabetes, causes cancer, contributes to stroke. Indeed, a whopping 300,000 deaths a year can be linked directly to fat. And it is spreading. It is spreading in children. The percentage of kids age 6 to 19 who are overweight has not just doubled, not just tripled but almost quadrupled since the 1960s.

Nationwide, type 2 diabetes, which is the kind associated with being overweight, being obese, has skyrocketed. The Centers for Disease Control and Prevention estimates that one in three Americans born today—they studied the year 2000—will develop diabetes in their lifetime. It is the type of diabetes that can be prevented and it can be treated.

With African-American children and you look at Hispanic children, that number jumps to nearly half; one out of two African American and Hispanic babies born this year or last year will develop diabetes. As adults, we know it is hard to battle being overweight. But imagine, for a 10-year-old child, the challenge to both prevent and to treat this epidemic.

Diabetes leads to a whole host of chronic illnesses. It is the leading cause of amputations in our society today. It is the leading cause of blindness in our society today. It is the

leading cause of heart disease and kidney disease in our society today.

With regard to children, teachers can tell the story. Teachers have the opportunity to see children in classrooms on a regular basis. They say they see kids out of breath simply walking up the stairs in school. They tell us about kids who, when they get outside of the school and go to the schoolyard, are out of breath or, they come back exhausted from a simple field trip.

Activities that we associate with exercise such as kick ball, jumping rope, climbing trees, for many kids today these are grueling exercises, grueling activities that are to be avoided at all cost because of their feeling of overexertion and being out of breath. Twenty-five percent of our Nation's children say they do not participate in any vigorous activity. That is one in four. Obesity is robbing them not only of enjoying the normal traditional childhood pastimes but it also is literally robbing them of their childhood years. By that I mean that obesity is associated with the early onset of puberty among girls. According to a study from the University of North Carolina, 48 percent of African-American girls begin puberty by age 8, over a quarter by age 7.

Indeed, this is a national health crisis. It is harming our children in ways we can readily observe. It is also harming our children in ways we do not so readily observe that will not become apparent until later in life. Yes, you observe the obesity but you do not see the side effects of the obesity until much later. Those side effects, as I mentioned before, are heart disease, amputation, blindness, a debilitating disease that condemns them to more illness, condemns them to a shorter life.

Again, this is a new phenomena. If we look at the history of medicine in this country, back a few hundred years, we are going along like this and in the 1960s or 1970s we have hit epidemic proportions. The reason I talk about it in the Senate and the reason why the bill just passed, the IMPACT Act, is so important is because this trend can be reversed. If we reverse it, we also reverse heart disease, lung disease, stroke, various types of cancer. That is what this body should be about. That is what this body is about and we demonstrated it by passing this so-called IMPACT Act that looks at nutrition, looks at physical activity, that focuses on young people. We are taking action; we are offering solutions. We cannot solve it all with this particular bill, but we show we are addressing identified problems; we are reversing problems that are apparent in our society.

In this session, the Committee on Health, Education, Labor, and Pensions unanimously approved the IMPACT Act, which we just passed in the Senate, the Improved Nutrition and Physical Activity Act. It was introduced earlier this year by myself with Senators BINGAMAN, DODD, and others. This IMPACT Act uses a multifaceted approach that emphasizes youth education to jump-start healthy habits early. It funds demonstration projects to find innovative ways, creative ways, to improve eating and exercise. In addition—and this is critically important—it includes rigorous evaluation so we can learn what is best.

We see many different proposals. We cannot turn on television without seeing the latest fad, the latest diet or the latest cure. It is a huge industry. What we in the Government can do and should be doing is evaluating what works best in terms of what we implement through this program. This bill does not attempt to control what Americans eat or what Americans do not eat. This bill does not outlaw bad foods. It does not attempt to replicate in any way that $1 billion diet and fitness industry. It does have a modest pricetag and that reflects the appropriate role of the Federal Government.

Working with the chairman of the HELP Committee, Senator JUDD GREGG, and Senator DODD, Senator BINGAMAN, and others, I am delighted—I am delighted—that we have, as authors, as sponsors, just seen this bill pass by unanimous consent.

I do hope the House of Representatives will join us early next year in sending this legislation to the President of the United States for his signature.

Again, this is not ''the'' solution. There is no single solution to this growing epidemic of obesity, but there are solutions. This epidemic can be reversed, and the start is awareness and then action. That is why, indeed, I am speaking at this fairly late hour on this particular issue, because we have just demonstrated, through action, that this body will work toward solutions, and to also state the importance of the awareness, especially awareness among children. And that is where this IMPACT bill will have a direct impact.

We know the consequences of obesity. We can and we should keep our kids safe by helping to keep them fit. Tonight, in this body, we demonstrated the start.

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

TRIBUTE TO SENATOR PAUL SIMON

Mr. DASCHLE. Mr. President, I think it is fitting that the distinguished Senator from Illinois is in the chair. I know Senator FRIST either has or intends to say something about the tragic news we just received this afternoon.

I had the privilege, the honor, of working with Paul Simon for 12 years. He brought a decency, a sense of humor, to his life and to his work that I think has never been matched. True to his roots as an investigative journalist, he had a clear eye for injustice and an untiring devotion to using power to improve the lives of Americans.

At the same time, he recognized that in order to maintain citizens' support for Government, we needed to preserve their faith in the political process.

Paul Simon was among the more vocal and effective advocates of campaign finance reform, and his leadership helped clear the way for the McCain-Feingold bill, passed 5 years after his departure.

Even after his retirement, Paul Simon remained committed to raising citizens' understanding of and faith in Government and politics through his writings and his work to begin Southern Illinois University's Public Policy Institute.

Anyone who knew or worked with Paul will miss his probing intellect, his self-deprecating wit, his integrity, and his leadership. I will never forget one of the last days that Senator Simon served, all of us surprised him during a vote by coming to the floor wearing bow ties. I will never forget the look on his face. We tried to replicate Paul Simon's look, but we could never replicate his soul, his character, his personality, his drive, his intellect, his prodigious writing as the author of, I know, more than a dozen books.

Paul Simon was a friend. Paul Simon was a giant on whom we depended for the guidance, the leadership, and the courage that this Senate has come to expect of people as capable as he was when he served. We will miss him dearly.

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

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

Mr. FRIST. Mr. President, I rise to pay tribute and respect to Senator Paul Simon who, as we know, died earlier today following surgery at the age of 75. On behalf of the Senate, I do extend my deepest condolences to the Simon family. He was a wonderful man, a wonderful Senator, always thoughtful, always plain spoken, and a man of impeccable integrity.

Among his many accomplishments, Senator Simon was the chief Democratic sponsor of the balanced budget amendment. In 1990, his margin of victory over the challenger was the highest of any contested candidate in the Nation for Senator or Governor.

He authored 15 books. He received 39 honorary degrees. It was just a few

weeks ago that he came by my office, as he went by many Senators' offices, not stopping, not resting at all, but arguing for, making the case for a wonderfully innovative program that helps expand and express the understanding of Americans, of college students, of people just out of college for events around the world, to give people the opportunity to serve overseas for a period of time and then to come back and share that knowledge and experience.

The fact that he came by the office—and it seems like yesterday; it was several weeks ago now—and he had his flip charts. One by one, in that sort of scholarly, serious, academic way, expressing the truth, what he knew would work in a creative and innovative way impressed me. Indeed, it should be the goal of all of us, once we leave this body, to continue the process, participating as actively as he demonstrated several weeks ago.

He was a champion of the people and, indeed, a credit to the United States of America. To his family, to his friends, to his loved ones, our condolences go out to them over the coming days.

THE FIRST ANNUAL CONGRESSIONAL CONFERENCE ON CIVIC EDUCATION

Mr. DASCHLE. There is a great, possibly prophetic, story from the end of the Constitutional Convention in 1789. For weeks, delegates to the convention had labored in the Philadelphia heat to draft a Constitution. Every day, crowds waited outside Independence Hall for any news of their progress. Finally, a draft was agreed upon. As Benjamin Franklin emerged from the hall, a woman asked, ''Dr Franklin, what have you given us: A monarchy? Or a republic?'' Franklin famously replied, ''A republic—if you can keep it.''

Some of our founders would, no doubt, be surprised that we have indeed managed to keep this republic they dared to imagine and create more than 200 years ago.

What has enabled the United States to become the world's oldest surviving democracy is more than luck. It is more, even, than divine providence. It is also the result of deliberate work and effort by generations of Americans to understand and protect the principles on which our nation was founded, and to pass those lessons on, undiminished, to future generations.

That is the heart of what we mean by ''civic education.''

I know the majority leader shares my belief that Congress has an important role to play in ensuring that civic education in America remains strong and vital and that it reaches all Americans. For that reason, it was an honor for both of us, along with many of our colleagues, to attend the First Annual Congressional Conference on Civic Education from September 20th to the 22nd of this year, in Washington, D.C.

The conference brought together education and civic leaders and others from all 50 States and the District of Columbia and gave them an opportunity to compare notes about what is happening in their States to strengthen civic education. Each State team also adopted a State action plan, which they will implement before the Second Annual Conference, which will be held in December 2004, also in Washington. I have the South Dakota State action plan, which I ask unanimous consent to have printed in the RECORD.

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

CIVIC EDUCATION PLAN FOR THE STATE OF SOUTH DAKOTA

Members of the South Dakota delegation, who attended the First Annual Conference On Civic Education in Washington D.C. in September 2003, have devised a plan for analyzing and improving civic education in the state. The South Dakota delegation comprised of Glenna Fouberg. President of the South Dakota State Board of Education, Representative Gerry Lange, Jack Lyons, Chair of the South Dakota Humanities Council, Bob Sutton, Executive Director of the South Dakota Community Foundation, and Senator Drue Vitter have planned a conference entitled ''Dialogue On Civic Education in South Dakota.'' This event will take place in the capital building in Pierre on November 10, 2003.

A variety of state educators and state administrators have been invited to attend the conference that will focus on a historic overview of civic education, the current status of civic education, state certification requirements and teacher preparation, and successful programs. Members of the S.D. delegation will act as panelists for the event. Plenty of time will be allowed for observations and questions from those attending the conference.

The S.D. delegation has tentative plans for a follow-up conference to be held in the state in either the spring or summer. This event probably would be held in the Eastern part of the state.

The South Dakota delegation hopes to convey to its conference attendees the enthusiasm that they encountered at the Washington conference for improving and revitalizing civic education in the nation and the state.

Mr. FRIST. I was very pleased to join the distinguished Senator from South Dakota, Senator DASCHLE, and our leadership colleagues in the House of Representatives in hosting Congress's first Civic Education conference.

On behalf of the entire Senate, I want to recognize and thank the cosponsors of the first conference, the Alliance for Democracy and its members: the Center for Civic Education, the Center on the Congress at Indiana University and the National Conference of State Legislatures.

It is my understanding that there will be a total of five Congressional Conferences on Civic Education. These conferences will enable us to give civic education and civic participation the sustained, national attention they deserve but have not always gotten.

It is our hope to explore, at these annual conferences, the critical role civic education plays in promoting civic participation—which is really the lifeblood of any democracy.

We also want to find new and better ways to work with schools and with education leaders to create first-rate citizenship education programs in our nation's schools. I know this is an interest that the Senator from South Dakota shares.

I think this first conference provided an excellent start on that goal. I ask unanimous consent to have the State action plan for my State of Tennessee printed in the RECORD.

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

CIVIC EDUCATION PLAN FOR THE STATE OF TENNESSEE

''Civic education should be a central purpose of education essential to the well-being of representative democracy.''

''Civic education should be seen as a core subject. Well-defined state standards and curricular requirements are necessary to ensure civic education is taught effectively at each grade level.''

''Policies that support 'Quality teacher education and professional development' are important to insure effective classroom instruction and raise student achievement.''

''Classroom programs that foster an understanding of fundamental constitutional principles through . . . service learning, discussion of current events, or simulations . . . are essential to civic education.''

Mr. FRIST. With these four principles in mind, the Tennessee delegation has made the following Tennessee State Action Plan:

Reconvene in Tennessee to discuss further plans, an early December meeting is planned to include the entire delegation.

A follow-up meeting will include each delegate bringing ''to the table'' persons of influence that will help deliver our mission reviving ''Civics in the Classroom.''

Janis Kyser and Rep. Joe Towns will attend a Youth For Justice meeting to help with organizing a 501c3 organization to serve as a statewide clearing house for LRE services; Conduct an intensive state-wide LRE survey to determine what is happening, what needs to happen and where are the gaps in service; Plan and conduct a Statewide LRE conference.

Tennessee Delegation: Ms. Janis Kyser, State Facilitator; Senator Randy McNally, Tennessee State Senate; Representative Beth Harwell, Tennessee House of Representatives; Representative Joe Towns, Jr., Tennessee House of Representatives; Mr. Richard Ray, Chairman State School Board; Mr. Bruce Opie, Legislative Liaison, Tennessee Department of Education; Dr. Ashley Smith Jr., President Tennessee Middle School Association.

Mr. DASCHLE. I share the Majority Leader's belief that schools are critical in this effort. We must do a better job of educating our children to be the productive and involved citizens that our democracy, our country, needs.

Mr. FRIST. The Senator from South Dakota is correct. There are other important partners as well.

Democracy isn't something that just happens to us. It's something each of us must actively create. Citizenship gives us rights, but it also gives us responsibilities. Each of us has a responsibility to understand the great principles on which our great country was

founded. Each of us has a responsibility to participate in the process of self-government.

It is an essential balance: rights and responsibilities. When we neglect either side of that equation, our democracy is in trouble.

Mr. DASCHLE. I agree with the Senator from Tennessee. It's not enough for the principles of our democracy to be known by only a few. That's not American democracy. In order to have a strong, vibrant democracy, everyone has to participate. Everyone has to know the history and the rules. We all need to learn not just names and dates, but the process of democracy. We also need to develop new and better ways to keep adults informed and involved in the civic life of their communities and of our nation.

Our nation faces grave, new challenges today. The very real threat of terrorism is forcing us to examine the balance between liberty and security. How do ''we the people'' respond to terrorism? How do ''we the people'' operate in an increasingly global world? In a world in which we are inundated with information of all kinds, how do we assure that people get the information they need to make informed decisions about our democracy and our future? These are the kinds of questions that future Congressional Conferences on Civic Education can explore.

Mr. FRIST. My friend is correct. The challenges and questions our nation faces today are different than those faced by our founders. But they are, in many ways, just as profound.

The great principles of democracy are what unify us as a people and bind us together as a nation. They are what gives us the strength to face the challenges of a complex world as one people. And, as my friend noted, they are what has made it possible for us to preserve the miracle of Philadelphia and keep our republic for more than two centuries.

I look forward to working with the distinguished democratic leader and with our colleagues in the House leadership to prepare for next year's conference. I also look forward to working with my fellow Tennesseans to see that our State produces an outstanding State action plan before that conference.

Mr. DASCHLE. I ask unanimous consent to have printed in the RECORD the Conference Statement and join the majority leader in encouraging all of our colleagues to lend their support to this Congressionally-sponsored effort to dramatically improve civic education and civic participation in America.

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

CONFERENCE STATEMENT—FIRST ANNUAL CONGRESSIONAL CONFERENCE ON CIVIC EDUCATION

The participants at the First Annual Congressional Conference on Civic Education acknowledge that there is an urgent need to address the low level of civic engagement in America. We recognize that:

Civic knowledge and engagement are essential to maintaining our representative democracy. While many institutions help to develop Americans' civic knowledge, skills, and dispositions, schools must have the capacity to prepare students for engaged citizenship. Civic education should be a central purpose of education essential to the well-being of representative democracy.

Civic education should be seen as a core subject. Well-defined state standards and curricular requirements are necessary to ensure that civic education is taught effectively at each grade level from kindergarten through 12th grade. Strengthening the civic mission of schools must be a shared responsibility of the public and private sectors at the community, local, state, and national levels.

Policies that support quality teacher education and professional development are important to ensure effective classroom instruction and raise student achievement.

Well-designed classroom programs that foster an understanding of fundamental constitutional principles through methods such as service learning, discussion of current events, or simulations of democratic processes and procedures are essential to civic education.

In recognition of these findings, we resolve to take action to reaffirm the historic civic mission of our schools.

Adopted by the Delegates to the First Congressional Conference on Civic Education, September 22, 2003, in Washington, D.C.

LOCAL LAW ENFORCEMENT ACT OF 2003

Mr. SMITH. Mr. President, I wish to speak about the need for hate crimes legislation. On May 1, 2003, Senator KENNEDY and I introduced the Local Law Enforcement Enhancement Act, a bill that would add new categories to current hate crimes law, sending a signal that violence of any kind is unacceptable in our society.

On November 11, 2003, a religious fundamentalist was arrested as a suspect in an alleged plot to bomb abortion clinics and gay bars throughout the eastern United States. On the day of his arrest, the suspect had purchased gasoline cans, flares, propane tanks and starter fluids, in addition to pistols and silencers. Thankfully, the suspect was arrested before he was able to commit multiple crimes of hate.

I believe that Government's first duty is to defend its citizens, to defend them against the harms that come out of hate. The Local Law Enforcement Enhancement Act is a symbol that can become substance. I believe that by passing this legislation and changing current law, we can change hearts and minds as well.

Mr. DODD. Mr. President, I rise today to briefly discuss legislation to reform the rules governing class litigation. In October of this year, the majority leader sought to proceed to the Class Action Fairness Act, S. 1751.

I joined forty of my colleagues in opposing the motion to proceed. I said at the time that while I supported some reform of class action procedures, I could not support S. 1751 in its current form. I also expressed concern about whether there would be any meaningful opportunity for interested Senators to negotiate changes to the bill in a bipartisan fashion.

Subsequent to the vote in October, I joined with three of my colleagues in sending a letter to the majority leader on November 14, 2003. In that letter, we reiterated our interest in class action reform and we outlined several areas where we believed revisions to S. 1751 were in order.

In November, Senators LANDRIEU, SCHUMER and I entered into discussions with Senators FRIST, HATCH, GRASSLEY, KOHL, and CARPER. Those discussions have resulted in a compromise agreed to by our eight offices that I believe significantly improves upon S. 1751. I also ask unanimous consent that a summary of the compromise produced by my office be printed in the RECORD.

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

(See exhibit 1.)

Mr. DODD. Lastly, Mr. President, I want to point out that in my view this is a delicate compromise, which addresses the shortcomings of current class action practice while at the same time protecting the right of citizens to join with fellow citizens to seek the redress of grievances in the courts of our Nation. As I and my colleagues said in our letter of November 14th, it is ''critical'' that this agreement ''be honored as the bill moves forward—both in and beyond the Senate.''

EXHIBIT 1

SUMMARY OF CHANGES TO S. 1751 AS AGREED TO BY SENATORS FRIST, GRASSLEY, HATCH, KOHL, CARPER, DODD, LANDRIEU, AND SCHUMER

The Compromise Improves Coupon Settlement Procedures

S. 1751 would have continued to allow coupon settlements even though only a small percentage of coupons are actually redeemed by class members in many cases.

The compromise proposal requires that attorneys fees be based either on (a) the proportionate value of coupons actually redeemed by class members or (b) the hours actually billed in prosecuting the class action. The compromise proposal also adds a provision permitting federal courts to require that settlement agreements provide for charitable distribution of unclaimed coupon values.

The Compromise Eliminates the So-Called Bounty Prohibition in S. 1751

S. 1751 would have prevented civil rights and consumer plaintiffs from being compensated for the particular hardships they endure as a result of initiating and pursuing litigation.

The compromise deletes the so-called ''bounty provision'' in S. 1751, thereby allowing plaintiffs to receive special relief for enduring special hardships as class members.

The Compromise Eliminates the potential for Notification Burden and Confusion

S. 1751 would have created a complicated set of unnecessarily burdensome notice requirements for notice to potential class members. The compromise eliminates this unnecessary burden and preserves current federal law related to class notification.

The Compromise Provides for Greater Judicial Discretion

S. 1751 included several factors to be considered by district courts in deciding whether to exercise jurisdiction over class action

in which between one-third and two-thirds of the proposed class members and all primary defendants are citizens of the same state.

The compromise provides for broader discretion by authorizing federal courts to consider any ''distinct'' nexus between (a) the forum where the action was brought and (b) the class members, the alleged harm, or the defendants. The proposal also limits a court's authority to base federal jurisdiction on the existence of similar class actions filed in other states by disallowing consideration of other cases that are more than three years old.

The Compromise Expands the Local Class Action Exception

S. 1751 established an exception to prevent removal of a class action to federal court when 2/3 of the plaintiffs are from the state where the action was brought and the ''primary defendants'' are also from that state (the Feinstein formula). The compromise retains the Feinstein formula and creates a second exception that allows cases to remain in state court if: (1) more than 2/3 of class members are citizens of the forum state; (2) there is at least one in-state defendant from whom significant relief is sought and who contributed significantly to the alleged harm; (3) the principal injuries happened within the state where the action was filed; and (4) no other class action asserting the same or similar factual allegations against any of the defendants on behalf of the same or other persons has been filed during the preceding three years.

The Compromise Creates a Bright Line for Determining Class Composition

S. 1751 was silent on when class composition could be measured and arguably would have allowed class composition to be challenged at any time during the life of the case. The compromise clarifies that citizenship of proposed class members is to be determined on the date plaintiffs filed the original complaint, or if there is no federal jurisdiction over the first complaint, when plaintiffs serve an amended complaint or other paper indicating the existence of federal jurisdiction.

The Compromise Eliminates the ''Merry-Go-Round'' Problem

S. 1751 would have required federal courts to dismiss class actions if the court determined that the case did not meet Rule 23 requirements. The compromise eliminates the dismissal requirement, giving federal courts discretion to handle Rule 23-ineligible cases appropriately. Potentially meritorious suits will thus not be automatically dismissed simply because they fail to comply with the class certification requirements of Rule 23.

The Compromise Improve Treatment of Mass Actions

S. 1751 would have treated all mass actions involving over 100 claimants as if they were class actions. The compromise makes several changes to treat mass actions more like individual cases than like class actions when appropriate.

The compromise changes the jurisdictional amount requirement. Federal jurisdiction shall only exist over those persons whose claims satisfy the normal diversity jurisdictional amount requirement for individual actions under current law (presently $75,000).

The compromise expands the ''single sudden accident'' exception so that federal jurisdiction shall not exist over mass actions in which all claims arise from any ''event or occurrence'' that happened in the state where the action was filed and that allegedly resulted in injuries in that state or in a contiguous state. The proposal also added a provision clarifying that there is no federal jurisdiction under the mass action provision for claims that have been consolidated solely for pretrial purposes.

The Compromise Eliminates the Potential for Abusive Plaintiff Class Removals

S. 1751 would have changed current law by allowing any plaintiff class member to remove a case to federal court even if all other class members wanted the case to remain in state court. The compromise retains current law—allowing individual plaintiffs to opt out of class actions, but not allowing them to force entire classes into federal court.

The Compromise Eliminates the Potential for Abusive Appeals of Remand Orders

S. 1751 would have allowed defendants to seek unlimited appellate review of federal court orders remanding cases to state courts. If a defendant requested an appeal, the federal courts would have been required to hear the appeal and the appeals could have taken months or even years to complete.

The compromise makes two improvements: (1) grants the federal courts discretion to refuse to hear an appeal if the appeal is not in the interest of justice; (2) Establishes tight deadlines for completion of any appeals so that no case can be delayed more than 77 days, unless all parties agree to a longer period.

The Compromise Preserves the Rulemaking Authority of Supreme Court and Judicial Conference

The compromise clarifies that nothing in the bill restricts the authority of the Judicial Conference and Supreme Court to implement new rules relating to class actions.

The Compromise is Not Retroactive

Unlike the House Bill, the compromise will not retroactively change the rules governing jurisdiction over class actions.

HONORING OUR ARMED FORCES

TRIBUTE TO SPECIALIST AARON J. SISSEL

Mr. GRASSLEY. Mr. President, I rise today to pay tribute to a fellow Iowan and a great patriot, Iowa National Guard Specialist Aaron J. ''George'' Sissel. Specialist Sissel gave his life in service to his country on November 29, 2003 in support of Operation Iraqi Freedom when the convoy in which he was traveling came under enemy fire. This brave young man was only 22 years old at the time of his death.

I ask my colleagues in the Senate, my fellow Iowans, and all Americans to join me today in paying tribute to Specialist Sissel for his dedication to the cause of freedom and for his sacrifice in defense of the liberties we all so dearly prize. He selflessly served his Nation, sacrificing his life for the great principles that underpin both our way of life and the hopes and dreams of all humankind—the principles of liberty, justice, and equality. In a statement released following his death, Specialist Sissel's family offered the following words about their son and brother: ''Aaron 'George' died doing what he loved and believed in. We are very proud of him.''

We can all be very proud of men like Specialist Sissel. Our Nation's history is distinguished by the presence of extraordinary men and women willing to risk their lives in defense of our country, but also by families who sacrifice those they love for the sake of the great principles of American life. While we share the pride felt by Specialist Sissel's family, we also share their grief. My deepest sympathy goes out to the members of Specialist Sissel's family, to his friends, and to all those who have been touched by his untimely passing. May his mother, Jo, his father and stepmother, Kirk and Cindy, his sister, Shanna, and his fiancee, Kari Prellwitz, be comforted with the knowledge that they are in the thoughts and prayers of many Americans, and that they have the eternal gratitude of an entire nation.

Specialist Sissel did not die in vain; rather, he died in defense of the Nation he loved and the principles in which he believed. Indeed, Specialist Aaron J. ''George'' Sissel has entered the ranks of our Nation's greatest patriots, and his courage, his dedication, and his sacrifice are all testaments to his status as a true American hero.

SP4 DAVID J. GOLDBERG, U.S. ARMY

Mr. HATCH. Mr. President, my heart is heavy. Utah has once again given one of her sons to the cause of liberty.

Any loss of our fine young men or women is a tragedy. However, I believe this is particularly so with the loss of SP4 David J. Goldberg. He was a fine young man, loved dearly by his parents and wife. Though of a young age, he had already accepted the responsibilities of a man and had volunteered to serve his Nation during a time of war. This sense of responsibility, especially to his fellow soldiers, was one of the defining characteristics of his life. I have learned from the many who knew him and loved him that the specialist was always there for his fellow soldiers, frequently volunteering for extra assignments when others were not available. He will be greatly missed.

And so, another name has been added to Utah's List of Honor: SP4 David J. Goldberg. He joins an illustrious list that includes CPT Nathan S. Dalley, West Point graduate and a member of the Army's 1st Armored Division, SSG James W. Cawley, U.S. Marine Corps Reserve; SSG Nino D. Livaudais of the Army's Ranger Regiment; Randall S. Rehn, of the Army's 3rd Infantry Division; SGT Mason D. Whetstone of the U.S. Army and former Special Forces soldier Brett Thorpe.

Their names and the service they performed is something that I shall never forget. I shall always honor them and their families.

CPT NATHAN S. DALLEY, U.S. ARMY

Mr. President, on November 17, God called home one of our best and brightest, CPT Nathan S. Dalley. At the young age of 27, Captain Dalley entered the hallowed list of those sons and daughters of Utah who have given their lives for their country.

Captain Dalley epitomized what a soldier should be: a born leader, mindful of his responsibilities, and eager to help and encourage others. He was exceptional in many ways, yet a decent man that treated everyone with respect. You see, I had the honor of

knowing Captain Dalley. I was proud to nominate him to the United States Naval Academy; however, he decided to pursue his career in public service with the Army and attended West Point. It should also be noted that he was also accepted to the Air Force Academy; remarkable achievements by any standard.

While preparing these remarks, I went through my files and found these words from this young man's Advanced Placement History teacher, who wrote a nomination recommendation:

As impressive as [Nathan Dalley's] academic qualities are, I find his personal qualities to be even more impressive . . . His kindness and friendliness to everyone set him apart in the classroom, and in the larger school setting. In my class he was a remarkably effective cooperative learner and peer tutor. Nate understands that his contributions to the community as a whole are as important as his personal academic success, and I have every confidence that he will be successful in his future pursuits.

Captain Dalley not only met these high expectations, but exceeded them.

To his mother, his sisters and his fiancee, I would like to say that, although I have no words to minimize your grief, I hope there is some comfort in knowing that all who knew your son respected him and knew him to be a good friend.

I will never forget Nathan Dalley or the others from Utah's list of honor. Their sacrifice will make a difference, their will be freedom in Iraq, and those who would destroy liberty will be brought to justice. So today we add CPT Nathan S. Dalley to this illustrious list that includes SSG James W. Cawley, United States Marine Corps Reserve; SSG Nino D. Livaudais of the Army's Ranger Regiment; Randall S. Rehn, of the Army's 3rd Infantry Division; SGT Mason D. Whetstone of the United States Army; SP4 David J. Goldberg of the Utah-based 395th Finance Battalion, Army Reserve and former Special Forces soldier Brett Thorpe.

We will honor them always and stand fast behind their families.

PATENT CHALLENGE PROVISIONS OF THE MEDICARE REFORM BILL

Mr. HATCH. Mr. President, I rise to make a few comments about the historic Medicare legislation that President Bush signed into law yesterday.

I will center my remarks today on the provisions of the bill that amend the Drug Price Competition and Patent Term Restoration Act of 1984. I am a coauthor of the 1984 law and it is of particular interest to me. This law, often referred to as the Waxman-Hatch Act or Hatch Waxman, is of great importance to my fellow Utahns and the rest of the American public as it saves an estimated $8 to $10 billion for consumers each year.

Over the past 2 years, the Senate has spent considerable time and effort debating refinements to the 1984 law designed to close some loopholes that emerged and were exploited. While I would have preferred a more comprehensive reexamination of the statute with the goal of assessing how the law might be changed to facilitate new biomedical research and how best to disseminate the fruits of this research to the public in a quick and fair fashion, the amendments made to Hatch-Waxman made under the leadership of Senators GREGG, SCHUMER, MCCAIN, KENNEDY, COLLINS, and EDWARDS are very significant.

It has been my position for some time that once the Congress adopts and the President signs, as he did yesterday, Medicare reform legislation that includes a prescription drug benefit, pressure will grow on Congress and the Food and Drug Administration to find new ways to bring new biotechnology products to the public when the patents expire. The Center for Medicare and Medicaid Services will be compelled to look for ways to economize on the purchase of drugs and it seems likely to me that the Department of Health and Human Services will have to explore regulatory measures that can produce saving. The Commissioner of Food and Drugs, Dr. Mark McClellan, has indicated a willingness to examine this issue. Few, if any, of my colleagues in Congress have to date joined in the discussion surrounding whether and, if so, how to create a fast track approval system for biologic products, but I believe the bill signed into law yesterday will encourage this debate. I welcome this debate and recognize that very important public health matters are at its heart. As well, retaining America's worldwide leadership in biomedical research is at stake whenever we consider legislation that affects pharmaceutical related intellectual property.

We must proceed carefully but we must proceed. Critical to the success of this debate is a need to observe the principle of balance contained in the original 1984 law so that both research based firms and generic firms receive new incentives that will allow them to continue to produce and distribute the products that the American public deserves.

As more and more biological products come to the market, the pressures on the Federal Government, State governments, private insurers, and private citizens to pay for these products will result in considerable pressure to create a fast track FDA approval system for off-patent biological products. Such a mechanism was not discussed in the 1984 negotiations that resulted in Hatch-Waxman largely because the biotechnology was still in its infancy. This is not the case today. Few, if any, of my colleagues in Congress have to date joined the discussion surrounding creating a fast track approval for off-patent follow-on biologic products, but I believe the new law signed yesterday will encourage this debate.

As part of an appraisal of the laws relating to the development and approval of pharmaceutical products, I would also hope that my colleagues and the public will examine the full complement of incentives that Senator LIEBERMAN and I have included in our bi-partisan bioterrorism bill, S. 666. These incentives, which include day-to-day patent term restoration and a harmonization of the marketing exclusivity period to the 10-year term employed by the EU and Japan, will be helpful for the development of countermeasures to bioterrorist attacks and they should also be carefully considered with respect to developing new vaccines, diagnostics, and preventive and therapeutic agents for a host of other diseases and conditions.

With respect to the patent challenge provisions of the Medicare bill, I want especially to commend the efforts of Senator GREGG, Chairman of the HELP Committee and the Majority Leader, Senator FRIST, for working so hard to improve this legislation. There can be no doubt that the bill the President signed yesterday is a big improvement compared with the McCain-Schumer bill of last year, S. 812, that passed the Senate.

I must also commend my colleagues in the House including, Commerce Committee Chairman BILLY TAUZIN, Commerce Committee Ranking Democrat JOHN DINGELL, and my colleagues from the House Judiciary Committee, Chairman JIM SENSENBRENNER and Ranking Democrat JOHN CONYERS, and Intellectual Property Subcommittee Chairman LAMAR SMITH for their help in vastly improving the Gregg-Schumer-Kennedy amendments that passed the Senate by a 94–1 vote this summer.

As the sole dissenter in the Senate, I am pleased the conferees were able to work in a bipartisan, bicameral spirit to correct the constitutional flaw in the Senate-passed bill. I commend the Department of Justice for its work that helped dislodge the unconstitutional ''actual controversy'' language from the declaratory judgment provision of the bill.

I am also pleased that the conferees decided to reject the provision of the Senate bill that would have resulted in the so-called parking of exclusivity in cases in which a generic challenger could show that the patents held by a pioneer drug firm were not infringed or were invalid. In order to give an incentive for vigorous patent challenges, the 1984 law granted a 180-day head start over other generic drug firms when the pioneer firm's patents failed or were simply not infringed. As I will explain in some detail, I think there may be a way to improve this language further and to save consumers a considerable sum of money in the process.

The 180-day marketing exclusivity rules were first enacted as part of the Waxman-Hatch Act. The policy behind these provisions is to benefit the public by creating an atmosphere that ensure vigorous challenges of the patents held by innovator drug firms.

The intent of this section of the 1984 law was to award the 180-day head start

to the first successful challenger of a pioneer firm's patents. Unfortunately, we drafters of the statute employed language that has been interpreted by the courts to grant the 180-days of exclusivity to the first generic drug applicant to file an application with the FDA that challenges the patents.

I must say that in most cases the first filer and first successful applicant was the same applicant. But I believe that the line of court decisions that include the Mova and Granutec cases has resulted in the establishment of a first filer regime that is not without unintended consequences and perverse incentives. The mismatch between the rights accorded to the first applicants and first successful challenger contributed to an atmosphere in which anticompetitive agreements were entered into between certain pioneer and generic drug firms.

I am pleased that the Medicare reform bill signed into law yesterday contained Senator LEAHY's Drug Competition Act, which is designed to increase enforcement of longstanding provisions of antitrust law that prevent anti-consumer agreements. The 2002 FTC study, ''Generic Drug Entry Prior to Patent Expiration,'' catalogs the agency's actions in this arena including such cases as those involving Hoescht and Andryx and Abbott and Geneva.

I am also pleased that the Senate language prevailed on Senator LEAHY's Drug Competition Act so that potentially anticompetitive agreements between research-based and generic drug firms will be reported to both the Department of Justice and the Federal Trade Commission. I worked extensively with Senator LEAHY on his bill in the 107th Congress and took the lead, with his cosponsor, Senator GRASSLEY, in convincing the House conferees of the wisdom of the Senate's dual reporting requirement.

So, the conferees made a number of important improvements to provisions of the legislation affecting challenges to drug patents. At our August 1, 2003, Judiciary Committee hearing, both the FDA and FTC expressed reservations about some elements of the Senate bill's rules pertaining to the 180-day marketing provision. The Administration, correctly in my view, took exception to the provisions in the Senate bill that would have allowed a sue now/use the exclusivity later—and perhaps years later at that—policy on marketing exclusivity.

At the August 1st hearing, Mr. Robert Armitage, General Counsel of the Eli Lilly Company, presented compelling testimony on the matter of ''parking'' or delaying, the use of the 180-day exclusivity until the basic patents expire. The question confronting policymakers centered on the wisdom of retaining the Gregg-Schumer-Kennedy provision that would have encouraged very early lawsuits by those with, for examples, noninfringing formulations of the pioneer product, in order to gain the potentially very lucrative 180-days of exclusivity down the road.

I welcome and expect that day will come when Congress will reexamine the whole rationale and operation of the 180-day marketing exclusivity provisions. The day will come when the Congress will be forced to confront the incongruity in the statute, pointed out by my friend and skilled patent-challenging lawyer and philanthropist, Al Engelberg, is awarding 180 days both for a successful invalidity challenge and an non-infringement action. The former, a finding of invalidity, accrues to all generic firms while the latter benefits only the specific non-infringer. This is a distinction with a difference in a sector of the economy where a whole cottage industry has grown up fueled in large part by non-infringement suits to non-basic patents. It is less than clear that the public benefits as much as it can or should under the present system which is left largely in place by the new bill language. This issues deserves further discussion.

Nevertheless, I am pleased that the Senate language that allowed long-term parking of exclusivity was modified in an important way by the conferees. I want to commend the FDA and especially the Chief Counsel for Food and Drugs, Mr. Dan Troy, and the soon-to-be betrothed Associate Commissioner for Legislative Affairs, Mr. Amit Sachdev, for their contributions in this area.

Having now commended the administration for helping to improve materially the Senate version of the 180-day provisions, I must also unfortunately report to my colleagues in the Senate and to the American public that we have not accomplished as much as possible with respect to the 180-day provisions.

First off, I continue to believe that it is both unfair and ill-advised to retain the bill language that does not reward a non-first-filer to gain the 180-days marketing exclusivity in the case, which will admittedly be rare, in which the subsequent filer prevails on a patent invalidity challenge. I am told that conferee staff first thought that the provision as drafted, and now signed into law, would result in a subsequent filer's successful invalidity challenge forfeiting the first filer's 180 days of marketing exclusivity. Although the successful challenger does not get the 180-day head start, at least under this reading, the subsequent successful challenger is not penalized with respect to market entry. Upon further scrutiny of the statutory language, it is my understanding that in such circumstances the language may actually work to grant the 180-days of marketing exclusivity to the first filer, so that the successful subsequent challenger not only does not get the 180-day benefit, but actually receives a 180-day penalty for invalidating the patent.

If this is the correct way to read the statute, the law should be changed.

I am told that the staff of any conferee nor the FDA strongly defended this policy. Unfortunately, nor was there agreement to change the language to at least clarify that the subsequent challenger's success was at least a forfeiture event or, preferable from my perspective, would result in the granting of the 180-days to the successful challenger in a patent invalidity challenge rather than benefitting the fastest paper shuffler.

This is bad policy.

Finally, I must unfortunately report to my colleagues that the new statute retains the Gregg-Schumer-Kennedy provision that may cost the Federal government, according to the CONGRESSIONAL BUDGET OFFICE, $700 million over the next 10 years. Moreover, it is my understanding that the total cost of this provision to consumers over the next 10 years could exceed $3 billion.

At issue are the sections of the bill that essentially give the first filer an exclusive right to the potential 180-day marketing exclusivity until its case is decided at the appellate court level. The question arises of what happens if a subsequent filer is not sued by the pioneer firm and is ready, willing and able to go to market but for waiting for the disposition of the first filer's challenge in the appellate court? If the first filer prevails in the appellate court, it will receive the 180-days of exclusive marketing even though one or more subsequent filers were ready, willing, and able to go to the market long before the first filer's challenge was resolved.

I would also note the FTC study documents that when the first filer wins in the district court, they almost always prevail on appeal. The FTC opposed reinstating the earlier policy of the appellate court trigger because it believes that, on average, consumers will lose out while generic firms get an extra measure of certainty.

In any event, subsequent to the Judiciary Committee hearing in August and throughout the fall as the conference committee met, I was involved in participating and facilitating discussions designed to craft language to close this new loophole sanctioned by the Gregg-Schumer-Kennedy language as well as to make a few other clarifications to the parking language. Specifically, I preferred statutory language that would automatically convert unsuccessful Paragraph IV invalidity/noninfringement challenges to standard Paragraph III—''the patents expire on''—applications. FDA believes it can accomplish this by rule or guideline, but the courts have not been kind to FDA rulemaking with respect to Hatch-Waxman in recent years.

While I am mindful that the forces behind the first filer system of challenge have won the day in this legislation, I think in the circumstance when the subsequent challenger has not been sued, and may have even been issued a covenant not to be sued by the pioneer firm, that the first filer should at least forfeit its 180 days if it is not prepared to go to market in the 75-day grace period the new provision creates. This is

good for the consumer and sound policy since the rationale behind the 180-day provision is to create an incentive for challenges to the pioneer's patents, not to create an entitlement to the first applicant to file a patent challenge with the FDA in the Parklawn Building. It seems to me that the first time that a blockbuster product is kept off the market, perhaps for over a year, due to the application of this new law and there is a second generic ready, able and willing to go to market, there will be a great public clamor, as there should be.

At one point, I thought I was close to agreeing to language with Senator KENNEDY and others to close this new loophole. Unfortunately, we did not reach agreement and since this was a part of the legislation in which the Senate and House language was virtually identical, it is understandable the conferees concentrated their efforts on those many provisions in which there were substantial differences. On the very last days before the conference report was completed, Senator SCHUMER and I also came close to closing this newly created loophole, but time ran out on this effort.

Let me just say I am mindful that the politics and financial interests with respect to this issue among those in both the research-based firms and generic drug companies are a very sensitive matter. I also recognize it will be exceedingly difficult to reopen these provisions now that the President has signed the bill into law. Nevertheless, I think we got this aspect wrong and we should try to fix it. I pledge to continue to work with Senator GREGG, MCCAIN, SCHUMER, KENNEDY as well as Representatives TAUZIN, DINGELL, SENSENBRENNER, SMITH, and CONYERS and other interested members of Congress and other affected parties to fix this problem before consumers have to pay for this ill-advised policy.

In the interest of moving this issue along in a constructive fashion, I have developed a discussion draft that emerged out of my discussions with Senator KENNEDY and others that addresses these issues. Frankly, much of this draft reflects refinements to a draft that Senator KENNEDY prepared in part as a response to a draft prepared largely by several private sector parties earlier this year that I submitted to the Medicare conferees for their consideration. It is my understanding that the administration does not oppose this language but, unfortunately, neither did it support this approach due, in some measure, to the fact that it was not anxious to open new issues in the already complex Medicare conference.

Although they both opposed the underlying Medicare reform bill, I commend my colleagues, Senators KENNEDY and SCHUMER for their interest in improving this particular aspect of the legislation.

In closing, let me say again that Senators GREGG, KENNEDY, SCHUMER, MCCAIN, and FRIST have worked hard to improve the patent challenge provisions of current law and all deserve our thanks.

I am very proud of the Drug Price Competition and Patent Term Restoration Act, which has done so much to help consumers have access to more affordable medications.

The underpinning of this great consumer measure is a very complex, legal framework. Any changes to the law must be carefully scrutinized to assure they achieve their intended effect.

I plan to monitor very carefully the implementation of the first, substantial Waxman-Hatch amendments in almost two decades and intend to work with my colleagues to make certain they achieve their intended purpose.

I welcome the views of any interested parties who wish to comment on this discussion draft, as well as other implementation issues that the Congress should consider.

At the same time, I think there are broader issues here it behooves the Congress to consider. These include the issue of follow-on biologics as well as whether the law today contains the appropriate incentives, including intellectual property incentives, for pharmaceutical research and development in light of the fact that science appears to be moving away from an era of large patient population, small-molecule medicine to small patient-population, large biological molecule therapies.

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

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

S. 812

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

SECTION 1. FORFEITURE OF 180-DAY EXCLUSIVITY PERIOD.

(a) MAINTENANCE OF CERTIFICATION THAT PATENT IS INVALID OR WILL NOT BE INFRINGED.—Section 505(j)(2) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(j)(2)) (as amended by section 1101(a)(1)(B) of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003) is amended by adding at the end the following:

''(E) MAINTENANCE OF CERTIFICATION THAT PATENT IS INVALID OR WILL NOT BE INFRINGED.—An applicant shall not be permitted to maintain a certification under subparagraph (A)(vii)(IV) with respect to a patent as of the date on which any of the following occurs:

''(i) The Secretary notifies the applicant that the Secretary has granted and made effective a request by the holder of the application approved under subsection (b) to withdraw the patent that is the subject of the certification or the information with respect to the patent is otherwise no longer contained in the application approved under subsection (b), except that no request to withdraw the patent, if based on a court decision or court judgment with respect to the patent, shall be made effective for at least 75 days after the court decision or court judgment and shall not be made effective during the 180-day exclusivity period of the applicant if the exclusivity period commences during the 75-day period.

''(ii) The patent that is the subject of the certification expires.

''(iii) A court enters a final decision from which no appeal (other than a petition to the Supreme Court for a writ of certiorari) has been or can be taken that the patent that is the subject of the certification is infringed by the product at issue in the application submitted by the applicant, or a court signs a settlement order or consent decree that enters a final judgment and includes a finding that the patent that is the subject of the certification is infringed by the product at issue in the application submitted by the applicant and, in addition, the patent that is the subject of the certification is not found to be invalid or unenforceable in the final decision or the final judgment.''.

(b) FAILURE TO MARKET.—Section 505(j)(5) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(j)(5)) (as amended by section 1102(a)(1) of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003) is amended

(1) in subparagraph (B)(iv)—

(A) in subclause (I), by inserting after ''certification,'' the following: ''is thereafter permitted to maintain such a certification, and has thereafter maintained such a certification with respect to a patent for which such a certification was submitted by the first applicant on the first applicant date,''; and

(B) in subclause (II)—

(i) by redesignating items (cc) and (dd) as items (dd) and (ee), respectively; and

(ii) by striking item (bb) and inserting the following:

''(bb) FIRST APPLICANT.—The term 'first applicant' means an applicant that submits on the first applicant date a substantially complete application for approval of the drug that contains the certification described in paragraph (2)(A)(vii)(IV) with respect to a patent for which information was filed under subsection (b) or (c) and is thereafter permitted to maintain and has thereafter maintained the certification described in paragraph (2)(A)(vii)(IV) with respect to the patent.

''(cc) FIRST APPLICANT DATE.—The term 'first applicant date' means the first day on which a substantially complete application is submitted for approval of a drug containing the certification described in paragraph (2)(A)(vii)(IV) with respect to a patent for which information was filed under subsection (b) or (c)''; and

(2) in subparagraph (D), by striking subclause (I) and inserting the following:

''(I) FAILURE TO MARKET.—

''(aa) IN GENERAL.—Except as provided in item (bb), a first applicant fails to market the drug by the earlier of the date that is—

''(AA) 75 days after the date on which the approval of the application of the first applicant is made effective under subparagraph (B)(iii); or

''(BB) 30 months after the date of submission of the application of the first applicant;

''(bb) EXCEPTION.—If the first applicant has on the first application date submitted the certification described in paragraph (2)(A)(vii)(IV) with respect to a patent, and the first applicant is thereafter permitted to maintain and has thereafter maintained the certification with respect to the patent, the forfeiture under this subclause shall not take effect before the date that is 75 days after the date on which any of the following occurs with respect to the patent:

''(AA) In an infringement action brought against the first applicant or any other applicant (which other applicant has obtained tentative approval) with respect to the patent or in a declaratory judgment action brought by the first applicant or any other

applicant (which other applicant has obtained tentative approval) with respect to the patent, a court enters a final decision from which no appeal (other than a petition to the Supreme Court for a writ of certiorari) has been or can be taken that the patent is invalid or not infringed (including any dismissal for lack of subject matter jurisdiction as a result of a representation of the patent owner, and any other person with the right to enforce the patent, that the patent will not be infringed by, or will not be enforced against, the product of the applicant).

''(BB) In an infringement action or a declaratory judgment action described in subitem (AA), a court signs a settlement order or consent decree that enters a final judgment and includes a finding that the patent is invalid or not infringed.

''(CC) The Secretary notifies the first applicant that a certification has been received by the Secretary from another applicant that had obtained tentative approval and was eligible as of the date of the certification to receive final approval, but for 180-day exclusivity period, stating that the 45-day period referred to in subparagraph (B)(iii) had ended without a civil action for patent infringement having been brought against such other applicant and, in addition, such other applicant had received from the patent owner (and from and any other person with the right to enforce the patent) a written representation that the patent will not be infringed by the commercial manufacture, use, offer for sale, or sale of the product at issue in the application submitted by such other applicant, or will not be enforced against the commercial manufacture, use, offer for sale, or sale of the product at issue in the application submitted by such other applicant.''.

[Alternative language for (CC)—equivalent treatment to (AA) and (BB).]

[''(CC) The Secretary notifies all applicants that, after the forty-five day period referred to in subparagraph (B)(iii) has expired without a civil action for patent infringement having been brought against the first applicant or against any other applicant that has obtained tentative approval, that applicant has certified to the Secretary that that applicant has received from the patent owner (and from and any other person with the right to enforce the patent) a written representation that the patent will not be infringed by the commercial manufacture, use, offer for sale, or sale of the product at issue in the application submitted by that applicant, or will not be enforced against the commercial manufacture, use, offer for sale, or sale of the product at issue in the application submitted by that applicant.]

THE TVPA REAUTHORIZATION

Mr. BROWNBACK. Mr. President, I am pleased to report the success of a bipartisan effort in which Senators, Members of the House, their key staff aides and a broad variety of religious and human rights groups have engaged.

This effort has produced a greatly strengthened Trafficking Victims Protection Reauthorization Act which has passed the House, and which it is my honor to bring to the Senate floor. I am pleased to note that my colleague, the distinguished Senator from New York, Mr. SCHUMER, has joined me in cosponsoring this important legislation. The act will greatly strengthen America's hand in combating the slavery issue and the women's issue of our time—the annual trafficking of as many as 2 million women and children into sex and slave bondage. As such, this act will give needed tools to President Bush, and to all future Presidents, to take on the world's trafficking mafias and to protect the traffickers' victims. It will thus also greatly facilitate the pledge made by President Bush in his United Nations speech of September 23 to make the war against trafficking a major commitment of his administration.

But I am pleased and deeply honored to bring this bill before my colleagues for yet another reason—one that I know will resonate with every Member of this body. Both in spirit and substance, the measure now before the Senate captures the hopes and the ideals of Paul and Sheila Wellstone, without whose passion and commitment no U.S. anti-trafficking initiative against worldwide sex and slave trafficking would have been possible. It is one of my greatest sources of satisfaction and fulfillment as a member of this body to have worked with Paul and with Sheila to sponsor the Trafficking Victims Protection Act of 2000. In doing so, I and others were regularly inspired by these two friends to go the extra mile for the bill. After our first Foreign Relations Committee hearing on the bill, Paul remarked that the victims who testified on behalf of the bill had produced his most moving experience as a Senator. This says much about the man Paul was, and about the manner in which his and Sheila's priorities were always directed on behalf of abused, vulnerable, and powerless victims.

We honor Paul and Shelia today by taking up this bill. As pleased as they would be by that gesture, it would be a much more meaningful tribute if we are able to pass the Trafficking Victims Protection Reauthorization Act, for there are a number of vital, strengthening provisions in the act that will greatly improve the fight against trafficking.

First, the Director of the State Department Office to Combat and Monitor Trafficking in Persons has been raised to ambassadorial rank. This step will elevate the status of the office precisely as it will befit its present incumbent. John Miller, a former House Member known to many of us, is an able, respected, committed, and moral man who is now the Federal Government's chief antislavery and antitrafficking official. He has served as head of the TIP Office with great effectiveness and skill, and I am confident that, as Ambassador Miller, he will continue to do so.

Next, the reauthorization act resolves one of the original act's greatest operational failings by ensuring that ''Tier II'' designations—given to counties that neither satisfy the act's high standards for anti-trafficking performance nor clearly merit the act's automatic sanctions—will not become an overbroad catchill category. Under the act, countries on the cusp of Tier III designations will be placed in a Tier II Special Watch List category and their performance in eliminating trafficking will be subject to special scrutiny, and the issuance of a special February 1 progress report and designation evaluation. Thus, the Special Watch List category will maintain strong pressure on countries that may ''almost but not quite'' merit a sanctions-bearing Tier III designation, and will permit clear differentiation between those countries and others placed on Tier II because they have not met the very high standards required for Tier I designations.

Three points should be made in connection with the act's Special Watch List category. First, countries otherwise meriting Tier III designation but placed on the Tier II Special Watch List because they have made section (e)(3)(A)(iii)(III) ''commitments . . . to take additional future steps over the next year'' should only avoid Tier III designation under extraordinary circumstances, and only where they are engaged in implementing important and curative steps likely to be rapidly completed. Next, the provisions of section (e)(3)(A)(iii)(II) that authorize Special Watch List treatment of countries that have failed to engage in increased efforts to limit trafficking, prosecute traffickers and protect trafficking victims should not be construed to automatically bar Tier II designations when such efforts have not been made. Finally, to address a matter of legitimate concern to the State Department, the act's mandate that special Feburary 1 reports are to be issued for all Special Watch List countries needs to be understood in terms of our intention that only countries on the Tier II-Tier III cusp are to be the subjects of full and complete reports. Finally, as an overall matter, it should be made clear that failure to be placed on the Tier II Special Watch List will not bar a country from being placed on Tier II in the following year.

A third major category of change established by the act involves the establishment of additional ''minimum standards'' criteria for determining appropriate tier designations. First, the reauthorization makes clear that countries may not escape more severe tier designations if they fail to keep meaningful records of what they have done to investigate, prosecute, convict and otherwise monitor their performance in the war against trafficking. Next, the reauthorization establishes an ''appreciable progress'' standard evaluating a country's performance—a standard not intended to exculpate countries still significantly complicit in trafficking activities, but to ensure that countries failing to make measurable progress on a year-to-year basis will be negatively affected. In other words, the reauthorization establishes a bottom-line ''performance standard'' to supplement the original act's ''effort standards.'' Next, and critically, the reauthorization adds a standard based

on the percentage of noncitizen trafficking victims. This provision was added to permit the Trafficking Office to employ critical and needed standards to evaluate the antitrafficking performance of countries that have legitimized prostitution. Simply put, this provision both allows and mandates the Trafficking Office to cut through dubious claims by legalizing countries that they are providing meaningful protections to their so-called ''sex workers.''

A final point with regard to the act's minimum standards criteria for determining countries' tier status: It is the clear intent of the Congress, and there should be no mistake about this, that compliance with one or a few of the criteria does not, must not, lead to automatic designation as a Tier I country. Likewise, compliance with one or a few of the criteria shall not, must not, in and of inself shield countries from Tier III designation. The designation process is intended to be one of judgment and balance; and is not formulaic except to the intent of creating a presumption that Tier I status should only be granted to countries that comply with all of the minimum standards criteria. Countries that deliberately and grossly violate ''only some'' of the act's minimum standards criteria may be designated as Tier III countries if this be the judgment of the Trafficking Office—a judgment that should be exercised where there are gross and flagrant failures to comply with other minimum standards criteria. And, as noted, compliance with most of the statute's minimum standards criteria, combined with even modes noncompliance with a remaining few, is not intended to produce automatic Tier I designations.

Finally, a few words are in order regarding the Senior Policy Operating Group created by this spring's Omnibus Appropriations Act, which today's reauthorization bill both incorporates and strengthens. While what I am about to say should be clear from the act's language, and will be made explicit in the omnibus appropriations bill which the Senate was unfortunately not able to enact today. While the omnibus bill will take care of some of the issues related to the Senior Policy Operating Group with explicit statutory language, I nonetheless believe it important to make Congress's unmistakable intention clear in today's floor statement.

First, it should be clear that Congress established the Senior Policy Operating Group as the body it intended to coordinate all of the Government's antitrafficing grants, policies and grant policies. The Senior Policy Operating Group is comprised of senior political appointees of each of the agencies with trafficking policy responsibilities, and is thus perfectly structured to perform a vital function of monitoring government-wide policy consistency. As presently constituted, the Senior Policy Operating Group is made up of such members as TIP Office Director John Miller, Deputy HHS Secretary Claude Allen, Assistant Attorney General for Legal Policy Dan Bryant, Assistant AID Administrator for Eastern Europe and Russia Kent Hill. The committee meets on a regular basis and has produced an extraordinary consensus, government-wide grant policy directive. Thus, the Senior Policy Operating Group, including its chairman, John Miller, can and must perform the function intended for it by Congress: to be the sole and accountable body responsible for coordinating Federal anti-trafficking policies, grants and grant policies. Having said this, it should be noted that the coordinating responsibilities of the Senior Policy Operating Group are not intended to supercede the decision-making authority of the constituent members of the Task Force to Monitor and Combat Trafficking in Persons, to whom operating group members continue to report.

Finally, as should be clear from the language of the act, but as is also worth unmistakably establishing, Congress did not intend that the designation of grants and/or policies as being for ''public health'' or like purposes should in any way remove such policies or grants from Senior Policy Operating Group coordinating jurisdiction when those policies or grants deal with the activities of traffickers, brothel owners, pimps or the women and children from whose activities they profit. It is vital for the Federal Government to make consistent and otherwise harmonize its activities to stop the spread of communicable disease and AIDS and its activities designed to prosecute traffickers and eliminate trafficking. Both are vital objectives, and as recent letters form the Moscow Duma have clearly shown, such harmonization is imperatively pressing. Some persons may believe that forming partnerships with traffickers, pimps, and brothel owners in order to ensure use of clean needles and condoms, and doing so in a manner which legitimizes the abusers and enslavers of women and children and shields them from prosecution, is the way to go. They are wrong. Others may believe that public health measurers to protect prostitutes from AIDS always stand in the way of prosecuting the traffickers, pimps and brothel owners who exploit them. They too are wrong. What Congress intends is that a Senior Policy Operating Group comprised of political appointees of all involved agencies is the body responsible for harmonizing the above objectives into a single set of government-wide policies.

All this said, I reiterate my belief that the memory and spirit of Paul and Sheila Wellstone are alive in the bill before us, as are the spirits of such activists as the great English Parliamentarian and evangelist William Wilberforce, and the abolitionist leaders of my home State of Kansas who led the 19th century war against the chattel enslavement of African men and women. If we do it right, the Trafficking Victims Protection Act will be seen by generations to come to have met the high standards of William Wilberforce and the Free Kansas activists. If we do it right, we will have created a true monument to the memory of Paul and Sheila Wellstone. This act makes this possible. I urge my colleagues to pass it.

CONSOLIDATED APPROPRIATIONS ACT, 2004

Mr. NICKLES. Mr. President, I take this opportunity to provide an initial report on the budgetary effect of the conference report to accompany H.R. 2673, the Consolidated Appropriations Act for 2004, otherwise referred to as the omnibus appropriation bill.

While I will share scoring on these individual bills compared to each subcommittee's 302(b) allocation during later debate, allow me to summarize where this bill stands relative to the 2004 budget resolution as it applies in the Senate.

Combined with the other six appropriation bills already enacted for 2004 as well as the 2004 Iraq supplemental, this conference report would set total non-emergency discretionary funding for 2004 at $791.023 billion in budget authority and $862.889 billion in outlays. Because it does not include sufficient offsets to pay for the additional spending included within, this conference report exceeds the discretionary allocations and caps provided by the budget resolution ($784.675 billion in budget authority and $861.084 billion in outlays) by $6.348 in budget authority and $1,805 billion in outlays. Therefore, Budget Act points of order (under sections 302(f) and 311) and a budget resolution (section 405(b)) point of order apply against the bill. Other budget resolution points of order apply as well, but they are of a more incidental nature.

Mr. President, I ask unanimous consent that a table displaying the budget Committee scoring of the bill be printed in the RECORD.

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

2004 APPROPRIATIONS INCLUDING H.R. 2673, THE CONSOLIDATED APPROPRIATIONS ACT, 2004—SPENDING COMPARISONS—CONFERENCE REPORT

[Fiscal year 2004, $ millions]

	Budget authority	Outlays
Discretionary	791,023	862,889
Budget Resolution allocation/cap	784,675	861,084
Difference	6,348	1,805

Note: Totals adjusted for consistency with scorekeeping conventions.
Prepared by SBC Majority Staff, 12/9/2003.

AMENDMENT TO S. 671, THE MISCELLANEOUS TRADE & TECHNICAL CORRECTIONS ACT OF 2003

Mr. SPECTER. Mr. President, today I seek recognition to discuss an amendment to S. 671, the Miscellaneous Trade

and Technical Corrections Act of 2003. My amendment will strengthen our domestic dress shirt manufacturers and the pima cotton growers. My amendment is a technical correction that levels the playing field by correcting an anomaly in our trade laws that has unfairly advantaged foreign producers and sent hundreds of jobs offshore.

The amendment reduces duties levied on cotton shirting fabric, fabric that is not made in the United States. Currently, U.S. law recognized this lack of fabric availability and granted special favorable trade concessions to manufacturers in Canada, Mexico, the Caribbean, the Andean region, and Africa. The U.S. has allowed shirts to enter this country duty-free from so many other countries, while we have failed to reduce tariffs on those manufacturers that stayed in the U.S. and were forced to compete on these uneven terms. My amendment will correct this inequity.

This amendment also recognizes the need to creatively promote the U.S. shirting manufacturing and textiles sectors, and does so through the creation of a Cotton Competitiveness grant program, which is funded through a portion of previously collected duties.

Our country has experienced an enormous loss of jobs in the manufacturing sector. It is critical that our domestic manufactures be able to compete on a level playing field. In the case of the domestic dress shirting industry, the problem is our own government imposing a tariff of up to 11 percent upon the import of fabric made from U.S. pima cotton. My amendment is a concrete step that this Congress can take to reduce the hemorrhage of U.S. manufacturing jobs.

One group of beneficiaries of this amendment is a Gitman Brothers factory in Ashland, PA. The Ashland Shirt and Pajama factory was built in 1948 and employs 265 workers. This factory in the Lehigh Valley turns out world class shirts with such labels as Burberry and Saks Fifth Avenue that are shipped across the U.S. These workers and their families deserve trade laws that do not chase their jobs offshore. This amendment enjoys the support of the domestic shirting industry, UNITE, and the pima cotton associations.

I offer this legislation on behalf of the men and women of the Gitman factory in Ashland, the domestic dress shirting industry, and the pima cotton growers, so that for them free trade will indeed be fair trade as well.

SEPTEMBER 11TH VICTIM COMPENSATION FUND EXTENSION ACT OF 2003

Mr. LEAHY. Mr. President, I am saddened that the Senate has been unable to reach agreement to extend the pending deadline of the September 11 Victim Compensation Fund to allow for more time for the many still grieving victims who have been unable to bring themselves to endure the painful process of filing claims.

On September 9, Senators DURBIN, SCHUMER, DODD, LIEBERMAN, CLINTON, CORZINE, and LAUTENBERG joined with me to introduce S. 1602, the September 11th Victim Compensation Fund Extension Act of 2003. Unfortunately, this bill continues to be bottlenecked in the Judiciary Committee and blocked from Senate passage by anonymous Republican holds on the Senate floor. Every Democratic Senator has agreed to pass our legislation by unanimous consent, but one or more members of the majority are still objecting to its passage in the Senate.

Senator DASCHLE, Senator LAUTENBERG and I have reached out to our Republican colleagues to try to achieve a compromise to extend this arbitrary deadline. We have expressed our willingness to do so for a period of time less than one year, but unfortunately the opponents of this bill have refused to meet us partway. Moreover, they have been unable to explain why it is necessary to force these families to confront this pain during an already stressful time—the holiday season.

Along with Senator DASCHLE, Congressman GEPHARDT and others, I worked hard to create the Victims Fund in the wake of the September 11 attacks. We insisted that it be included in the legislation to bail out the airlines passed in the wake of the most devastating terrorist attacks on American soil. The authorized deadline of December 22, 2003, for applications to the Victims Fund is rapidly approaching, but it has become apparent that many families need more time before they can take that step. Thus, far only a minority of families have applied to the Fund for compensation, according to the Department of Justice.

Ken Feinberg, the Special Master of the Fund, has been doing his best to get victims families to understand their rights and I commend him and others for their efforts to reach out to the victims and their families.

Victims support groups have told me that to this day, they are still receiving calls from individuals who understand that the deadline is approaching but cannot face the emotional pain of preparing a claim. In a survey conducted recently by victims' organizations, 87 percent of the 356 victims who responded expressed support for extending the December 22 deadline by 1 year. Mr. Feinberg has also commented that many victims remain too paralyzed by their grief to confront the logistical burden and emotional pain of filing a death claim.

In light of this painful reality, I believe it would have been appropriate to extend the deadline for filing applications to the Victims Fund. This extension would have given grieving families additional time to mourn those who were lost and to overcome the emotional challenges of filing paperwork with the Victims Fund. Every single September 11 victims support group that I have spoken with agreed that a modest extension would provide some relief during these dark days for victims' families as they endure the grieving process. There is simply no reason not to grant these families a little bit of relief by extending the deadline. I am disappointed and saddened that anonymous Republican holds will result in unnecessarily closing off the September 11 Victim Fund before each victim had a sufficient chance to consider their options.

With the holiday season upon us, victims did not need this arbitrary deadline confronting them. This was something that the Senate could and should have accomplished for the still grieving victims of September 11. It is an unnecessary shame that we have not done so.

ADDITIONAL STATEMENTS

FREEDOM TO TRAVEL TO CUBA ACT OF 2003

• Mr. BAUCUS. Mr. President, I rise today to express deep frustration with the way congressional leaders have thwarted the will of the majority of Members on Cuba.

Last month, the Senate approved an amendment to the Transportation-Treasury appropriations bill that would suspend enforcement of the Cuba travel restrictions. We passed this amendment 59 to 36—a 23-vote margin. In September, the House approved the same amendment 227 to 188—a 39-vote margin.

So, both Chambers of Congress approved the same amendment to suspend enforcement of the Cuba travel ban and to allow travel by Americans to Cuba. These votes reflected the sentiments of the overwhelming majority of Americans who support ending the utterly ineffectual travel ban.

Opinion leaders, too, in newspapers all across the country, in papers big and small, applauded the Senate and House votes. Orlando, Chicago, New York, Winston-Salem, Tuscaloosa, and San Diego. Papers from every corner of the country commended Congress for its efforts and called for an end to the absurd travel ban.

Then, the Senate Foreign Relations approved by a 13-to-5 margin a bill—S. 950, the Freedom to Travel to Cuba Act of 2003—that would permanently repeal the Cuba travel ban. Senator ENZI and I, along with 31 other colleagues—fully one-third of the Senate, from both sides of the aisle and representing every region of this country—introduced this legislation because we felt the time had come to end this pointless ban on American liberty. As its vote demonstrates, the Senate Foreign Relations Committee agrees.

Given these votes, and given the popular support for our efforts to end the travel ban, one would think the conferees of the Transportation-Treasury appropriations bill would not be able to strip out our amendment. When the Senate and House have approved the

same amendment, there ought to be nothing for conferees to reconcile.

But here we are with an omnibus bill that does not include our amendment to suspend enforcement of the Cuba travel ban. How did this happen?

It wasn't the conferees. Thirteen of the 16 Senate conferees were supportive of our amendment. The conferees would not have stripped out the amendment.

But the congressional leadership would. And they did, before even submitting the bill to the conference committee for consideration. They pointed to a phony veto threat—not made by the President—to justify a blatantly political move calculated to improve their standing with a small number of constituents in Florida.

This, despite a recent poll by the Miami Herald and St. Petersburg Times that found that most Florida voters favor lifting the ban on travel to Cuba—by better than a 2-to-1 margin.

Is this democracy in action? Is this the example we are setting for the rest of the world? Is this the example of participatory government that we hold to the Cuban dissidents as the beacon of freedom and liberty?

If this ugly episode were the only consequence of this administration's obsession with retaining the failed Cuba travel ban, that would be bad enough.

But it is not the only consequence. Far worse, the administration's pandering to its south Florida allies is undermining U.S. efforts to fight terrorism.

The Treasury Department's Office of Foreign Assets Control, OFAC, is charged with enforcing sanctions against foreign countries, terrorist networks, international narcotics traffickers, and those involved in proliferating weapons of mass destruction.●

(At the request of Mr. DASCHLE, the following statement was ordered to be printed in the RECORD.)

WILLIAM JOHNSON'S RETIREMENT

● Mr. CARPER. Mr. President, I wish to recognize William Johnson's retirement after 33 years of teaching in the Brandywine School District. His dedication has won him the respect of two generations of faculty and students alike, along with the gratitude of many in our State. He has been, and remains, a trusted friend.

Mr. Johnson has spent much of his life in public service. He served honorably in the United States Army for 6 years, from 1965–1971. His teaching career at Hanby Middle School in Wilmington, Delaware, where he has taught Earth and Space Science for 23 years comes to an end this month. He will be sorely missed there.

Mr. Johnson received his bachelor's degree in Education from Delaware State University and his Master's in Education from Antioch University. He has also taken advanced studies classes at the University of Pennsylvania and has completed all the classes needed for a doctorate degree with California Coast University. He will be dedicating much of his time after his retirement to working on his dissertation in Earth and Space Science.

Having taught at Hanby since 1980, there are many attributes that make Mr. Johnson a great teacher. He has an unparalleled commitment to his craft. He stays after school on a regular basis to work on experiments with his students, teaches remedial classes with the same expectations as every other class, and ensures his students have a lot of hands on experience in the classroom. In 1997, Mr. Johnson led a group of six students in an inventor's club as they tried to come up with inventions for the Duracell Battery Company. With his leadership and guidance, the students came up with several creations, including a curb sensor to help cars detect curbs behind them, a laser device that takes atmospheric and meteorological measurements, and a computer program that analyzes satellites and orbits around the earth. These inventions are extraordinary for middle school students.

In addition, in October of 1998, Mr. Johnson was honored and certified by then-Vice President Al Gore as a teacher of the Global Learning and Observations to Benefit the Environment Program. Some 500 people were honored with the certification, which enables the teachers to teach students how to view environmental images and read globe data in hopes of determining the effects of global warming.

Mr. Johnson is a member of the Delaware Teachers of Science, National Science Teachers' Association, American Federation of Teachers and the Satellites Educators' Association. Over the years, Mr. Johnson has received many awards and honors including Who's Who Teacher of the Year, FAME Teacher of the Year, as well as Hanby's Teacher of the Year candidate. He also serves as a representative for the United Negro College Fund—UNCF—in the Brandywine School District, coordinating donations from teachers and administrators. The fund goes to support various black colleges across the nation.

Mr. Johnson is married to the former M. Patricia Durnell. The two were married in West Chester, PA in August, 1981, and now reside in Chadds Ford, PA. His hobbies and interests include reading, jogging, collecting baseball cards and jazz albums, baseball, golf, and alto saxophone.

Mr. Johnson is forever the consummate professional. He works hard at his job, works hard for his students, and never desires the spotlight or recognition for all his contributions. Through his tireless efforts, he has made a profound difference in the lives of thousands of students and enhanced the quality of life for an entire state. Upon his retirement, he will leave behind a legacy of commitment to public service for the generations that will follow. On behalf of each student whose life Mr. Johnson has touched, let me express our heartfelt gratitude. We congratulate him on a truly remarkable and distinguished career, and we wish him and his family only the very best in all that lies ahead for each of them.●

RECOGNIZING THE UNIVERSITY OF VIRGINIA ROTC

● Mr. ALLEN. Mr. President, I am pleased today to recognize the outstanding work of the Reserve Officers' Training Corps cadets at the University of Virginia who participated in a 24-hour vigil on September 15–16, 2003 in honor of National POW/MIA Remembrance Day. The POW/MIA Vigil specifically honors those men and women who defended our nation and never returned with a 24-hour, tri-service honor ceremony.

The ROTC cadets at the University of Virginia started their POW/MIA vigils in 2000 when Air Force cadet Elizabeth McGraw served as Arnold Air Society Deputy Commander. Subsequent vigils were commanded by Cadet Christopher Tulip in 2001, Cadet Tara Graul in 2002, and Cadet Jeremy Porto in 2003.

This year's Vigil planning committee included Cadets James Hayne, Joshua Becker, Alina Sullivan, Dan Barton, and Nic Skirpan. U.S. Air Force Colonel John C. Vrba, commander of AFROTC Detachment 890 at Virginia, supervised the ceremony, which began with a solemn precision drill performance by members of the AFROTC Drill Team: Cadets Suzanne Hahl, Jacklyn Noveras, Brandon Bert, Timothy Farwell, and James Hayne. Air Force and Army Cadets, and Navy Midshipmen from the three ROTC detachments then marched in solemn 15 minute ''honor shifts'' guarding the American flag which was displayed prominently on the back wall of the University of Virginia's Amphitheater.

One of the MIAs that these young Cadets honored was U.S. Army Captain Humbert Roque ''Rocky'' Versace, a 1959 graduate of the U.S. Military Academy at West Point. On July 8, 2002, I had the distinct honor of being present at the White House for the posthumous awarding of the Medal of Honor by President George W. Bush for Rocky's conspicuous gallantry at the risk of his life above and beyond the call of duty while a captive of the Viet Cong from October 29, 1965, until he was executed on or about September 26, 1965. His captors took his life after they had given up trying to break Rocky's indomitable will to resist interrogation and indoctrination, his unshakable faith in God, and his steadfast trust in his country and his fellow prisoners.

When I visited the White House last year for Captain Versace's Medal of Honor ceremony, I was among many of Captain Versace's West Point classmates and family members. One of those classmates was John Gurr, who

worked tirelessly to get approval for the creation of the Captain Rocky Versace Memorial Plaza and Vietnam Veterans Memorial in the Captain's boyhood neighborhood in the Del Ray section of Alexandria.

At the conclusion of this year's POW/MIA Vigil, Mr. Gurr made a powerful speech to the UVA ROTC cadets on the great history of honor by Vietnam POWs, which produced five Medal of Honor recipients, and made Rocky Versace the only Army POW to receive the Medal of Honor for his heroism while in captivity during the Vietnam War.

Mr. President, I'd like to enter John Gurr's inspiring words as an extension of my remarks:

I am indeed grateful for this opportunity to speak for my comrades in arms and I would thank you for this opportunity were it not axiomatic in the military profession that you never thank a soldier for doing his duty. You can commend him or her, and I herewith commend wholeheartedly the ROTC cadet corps of the University of Virginia for the vigil you have mounted in memory of our nation's POWs and MIAs. It was your duty to do so, and you did it well. I will share with you up front that I came to this amphitheater last night at around 0200 to witness your vigil for myself. I stood in the deep background for over a half an hour and watched your sentinels, and I thought about what message I will carry to you today.

Here it is in a nutshell, young men and women: the heroic legacies of our fighting men and women, most certainly including those men who suffered so terribly yet endured with honor in the torture chambers of the Vietnamese communist forces, the heroic legacies of those predecessors are soon to pass to you. Be ready, because they are sacred. Duty, Honor, Country. Duty—be professionally ready, do your duty well; do something extra. Honor—guard and cherish your personal honor. Country—stand ready to ever defend this great democracy, which is a unique bastion in a dangerous world.

A bit of background on the POW situation as it developed and ended in Vietnam. There were 771 Americans captured or interned in the Vietnam War, far, far fewer than in any of our major interventions since World War I. 113 of them—almost 15%—died in captivity. The vast majority of POWs were officers, most of them aviators shot down in the north, and the vast majority of them were held in North Vietnam. There were some 19 such prison camps, where a rough total of some 550 men were held. In the north, brutal tortures were the rule, and the death rate was about 5%.

In the much smaller and equally scattered prison camps in South Vietnam and Laos, hunger and disease and brutality were common, but torture was much less systematic. Even so, the death rate in the southern camps was about 20%—four times higher than in the north where food and medical care and the support of fellow prisoners made the chances of survival better.

As to the purpose of torture in the northern camps, let me quote from Vice Admiral James Bond Stockdale, who suffered 7½ years in captivity there and was the ranking man in the camps. I quote from his ''Afterword'' in the famed book Honor Bound which details the experiences of American POWs in Southeast Asia:

''I was the only wing commander in that long war to lead prisoner resistance and therefore the natural target for Major Bui—'The Cat'—Commissar of the North Vietnamese prison camps. The business of the Commissar was extortion. He had to continually intimidate—to break—a number of POWs so that he had Americans at the ready to parade before press conferences for foreign 'dignitaries' (often Americans from the antiwar movement) and to exploit for propaganda statements favorable to the communist agenda. Our job was to hold out as long as we could, to make it difficult for The Cat to exploit us. To do this, he hired experienced 'torture guards' who in 40 minutes or so, with bars and ropes, could reduce a self-respecting American officer to a sobbing wreck.''

Admiral Stockdale and his fellow prisoners in the north early decided that their goal was to resist as best they could and return to the U.S. with honor. I say again, ''with honor.'' Thus the title of the book from which I quote, ''Honor Bound.'' The American POWs were ''Honor Bound.'' Under circumstances that will draw a tear if you understand. Admiral Stockdale was awarded the Congressional Medal of Honor upon his return. Duty well done, Admiral! Well done!

As to the prisoners in South Vietnam, I will speak with an indirect credibility of the experience of a West Point classmate of mine, Captain ''Rocky'' Versace. I will speak with a passion because ''Rocky'' was a friend of mine, and he, too, won the Congressional Medal of Honor for his resistance and leadership as a prisoner of war. A difference is that Versace was executed for his stubborn, and often even argumentative and aggressive resistance to the communist effort to break him for propaganda purposes. The Medal of Honor was presented posthumously, to ''Rocky's'' family in the White House on July 8, 2002, in the presence of 250 people which included 89 of his West Point classmates. As we said to ourselves at the time, ''We came for you 'Rocky.' We were late, but we came.'' ''Rocky'' Versace's story is one of a young man of exceptional physical endurance and truly extraordinary mental toughness. He was deeply religious, and he had come to love and admire the South Vietnamese people for whom and alongside whom he had fought for almost 18 months before he was severely wounded in battle and captured in October 1963. For the first five months of his captivity in the Delta of South Vietnam he was held in a small camp with only two other American prisoners. Successive teams of Viet Cong indoctrinators sought to break ''Rocky,'' to get him to make statements rejecting the South Vietnamese effort to resist a communist takeover, and they tried to get him to make recordings or quick movies opposing America's intervention on behalf of the South Vietnamese forces. Fluent in Vietnamese and French, he argued so credibly with his indoctrinators that they had to switch to English because they began to notice that the enlisted communist guards were starting to nod their heads in agreement with some of ''Rocky's'' rebuttals. ''Rocky's'' fellow prisoners heard him say in one of the indoctrination sessions ''You can make me come here, and you can make me listen, but frankly I don't believe a word you say and you can go to hell.'' On another occasion they heard him say ''I know that if I am true to myself and to my God, that something better awaits in the hereafter. So you might as well kill me now.''

''Rocky'' attempted escape four times and was captured, beaten and leg-ironed in a stifling bamboo cage after each such unsuccessful attempt. Only three weeks after his capture and on his first attempt, he had to drag himself through the jungle on his belly because he had taken three rounds in his right leg in the battle in which he'd been captured, and he could not walk. As a captain and the ranking man in his POW camp, he sought to encourage his somewhat separated fellow prisoners by singing ''God Bless America'' and other popular or patriotic songs, frequently inserting a stray word or two to communicate with his men. ''Rocky'' set the example, and he took the heat off his fellow prisoners.

After five months, ''Rocky'' was deemed to be an incorrigible propaganda prospect, and he was taken from the camp and held in isolation. That's where he was held for the last 18 months of his 23-month captivity. Alone, emaciated by hunger and disease, his head swollen and yellow from jaundice. There were occasional reports during that time from villagers who said that ''Rocky'' was frequently led or dragged through their villages as a sad example of what the American fighting man looked like. Even so, they said that ''Rocky'' sometimes interrupted the propaganda diatribes in the village centers, refuting and embarrassing his captors in his fluent Vietnamese. He was beaten, and one report said that, as he went down, he smiled. ''Rocky'' Versace was a winner.

He was executed in September 1965, ending not only his life but his imminent plan to leave the Army and return to South Vietnam as a Maryknoll missionary. He had been accepted to become a priest-candidate at the Maryknoll Order in Tarrytown, NY. But he never made it there.

Thus ended the life of a decent man, a courageous and unbreakable soldier, and now the only Army man to get the Medal of Honor for conduct as a POW during the Vietnam War.

And now let's turn to you. What you've just heard is a part of your legacy. You must not let it down. Last night there was just one old soldier sitting there in the back of this amphitheater, watching you, watching your vigil, and witnessing the changing of the guard. In a few short months or years, your turn will come to bear the mantle of Duty, Honor, Country. And there will be a ghostly phalanx of old soldiers, sailors, airmen and marines who will always, I repeat ''always,'' be watching you. You cannot fall short of the standard that has been set.

I appreciate this opportunity to speak for my past and present comrades, we commend you for doing your duty so well, and my last words to you are:

Be ready. Be ready.

Mr. President, I would like to commend John Gurr and the ROTC cadets at the University of Virginia for their dedicated service to our Nation and for their work to honor those like Captain Rocky Versace who paid the ultimate sacrifice in defense of America and its ideals. I wish them Godspeed as they stand strong for freedom.●

(At the request of Mr. DASCHLE, the following statement was ordered to be printed in the RECORD.)

The PASSING OF MEYER ''MIKE'' STEINBERG

● Mr. LAUTENBERG. Mr. President, on December 4, 2003, an outstanding example of the American Dream ended with the passing of Meyer ''Mike'' Steinberg. Mike was a young 84 with a personal vitality and clarity of mind that many far younger people would envy. He was recently stricken with lung cancer even though he had given up smoking more than 30 years ago. He was an individual admired and beloved by those who had the good fortune to know him in his lifetime. This past

Sunday, December 7, Park Avenue Synagogue in New York was filled with 1,000 people who wanted to share the grief of his passing with his family who loved him so deeply that eight of his grandchildren, including an 11-year-old, wanted to share their innermost thoughts of affection and sadness with everyone gathered there.

Mike's life, his grit and determination, his business successes, and his devotion to family are the stuff of which books are often written. In every definition of the American Dream, Mike Steinberg would emerge as an ideal example. From the humblest beginnings, having to end his formal education at the age of 15, he went on, ultimately, to the role of a real estate magnate. He developed, owned, and managed properties from New York to Texas to California.

He was someone I was proud to know. He had a rare ability to attract admiration and respect from all who had contact with him and he will long be remembered as someone who proved that business success, devotion to family, pride in his heritage, and regard for others are still goals to be cherished in these days of disposable relationships.

We grieve his passing but we honor his being and I ask to have printed in the RECORD an item I placed in the New York Times on December 6 commemorating his extraordinary life.

The material follows.

[From the New York Times, Dec. 6, 2003]

STEINBERG, MEYER ''MIKE''.

Steinberg—Meyer ''Mike''. To our dearest husband and Dad from your five lucky girls. We are forever blessed with the love and life you showered upon us. There wasn't a time you weren't there are always knew we could count on you. Our hearts are broken and the void can never be filled. You will be cherished in our hearts forever and ever. We will always honor your memory and we will live our lives by the examples you set for us. You are our King of Hearts, our hero, we will love you forever. Jean, Susan, Bonnie, Carol, and Lois.

Steinberg—Meyer ''Mike''. Extraordinary beloved husband of Jean. Most cherished father of Susan Zises Green, Bonnie S. Englebardt, Carol S. and Michael Weisman, Lois Robbins Zaro and Andrew Zaro. Adoring and revered grandfather of Lynn Zises, Justin H. Green, Danielle and Lara Englebardt, Brett and Jad Weisman, Alex, Olivia, Stephen and Victoria Zaro. Great-grandfather of Isabelle Zises Krugman. Services Sunday, 1 pm, Park Avenue Synagogue, 87th and Madison Ave. In lieu of flowers, contributions may be made to honor his memory to the S.L.E. Foundation for Lupus Research, 149 Madison Ave., NY NY 10016. For further information call Plaza Community Jewish Chapel.

Steinberg—Meyer ''Mike''. An admired friend, extraordinary entrepreneur, beloved family leader, husband, father, grandfather and greatgrandfather. To know him as I did, father of my dearest Bonnie Englebardt, was a special privilege. His success in the business world was outstanding, but it never interfered with his role as the family patriarch. The risks that he took in his business life were always motivated by his desire to protect his family's security. His love of family extended as well to philanthropy. He supported Israel's survival and the fight to cure Lupus disease, among many other programs to help the needy. He was a special human being, someone I cared deeply about, and his memory will be forever an inspiration to all who knew him. Frank R. Lautenberg United States Senator.

Steinberg—Meyer. The Officers, Trustees, Clergy and Members of Park Avenue Synagogue mourn the passing of a devoted congregant. We extend to his wife Jean, his daughters Susan, Bonnie, Carol and Lois and the entire family our heartfelt sympathy. David H. Lincoln Senior Rabbi Amy A.B. Bressman Chairman of the Board Menachem Z. Rosensaft President.

Steinberg—Meyer. The Directors and staff of the S.L.E. Lupus Foundation and the Lupus Research Institute mourn the loss of our dear friend Mike Steinberg, a devoted champion in the fight to conquer lupus. We extend our deepest sympathies to the Steinberg family, his devoted wife Jean and his beloved daughters Bonnie, Carol, Lois, and Susan. Richard K. DeScherer President, The S.L.E. Lupus Foundation.

Steinberg—Meyer. The Gural Family would like to extend its deepest sympathies to the family of Meyer Steinberg. We were proud to call Meyer our friend and partner. He was a true humanitarian, a charitable person in every sense of the word, and his presence will be greatly missed. Our hearts go out to Jean, Susan, Bonnie, Carol, Lois and the entire Steinberg Family for their loss.

Steinberg—Meyer ''Mike''. The Board of Governors and the members of The Seawane Club record with sorrow the loss of our beloved member, Meyer ''Mike'' Steinberg. We extend heartfelt sympathy to his wife Jean and family. Ted Markson, President.

Steinberg—Meyer ''Mike''. We are heartbroken at he passing of our dear friend. Mike had great courage, accomplishment and was a generous philanthropist. Our condolences to his beloved wife Jean and family. He will be missed but not forgotten. Elma and Milton Gilbert.

Steinberg—Meyer. Newmark and Company Real Estate wishes to extend its condolences to the Steinberg Family, on the loss of their husband, father and grandfather Meyer Steinberg. He was both a friend and partner, and he will be greatly missed.

Steinberg—M. ''Mike''. It is with deepest regret that we mourn the loss of a wonderful, caring person who entered our lives years ago and was a model friend, husband, father and leader of people. Our heart goes out to Jean and her beautiful family. Barbara and Philip Altheim.

Steinberg—Meyer. Our deepest condolences to the Steinberg family on the loss of their beloved husband, father, grandfather, and great grandfather. Mike was a man of great fortitude and charity and he will be missed. The Zises family.

Steinberg—Meyer ''Mike''. To Jean and his beloved children and grandchildren, our sincerest condolences. We will sorely miss our dear friend, Love, Laura and Artie Ratner.

Steinberg—Meyer (Mike). My heartfelt sympathy to the Steinberg family on the their loss. Mike will be greatly missed by all his friend and associates. Norman F. Levy.●

PASSING OF FORMER CONGRESSMAN JOE SKEEN

● Mr. DOMENICI. Mr. President, with a heavy sense of sadness today, we mark the passing of former Congressman Joe Skeen from New Mexico.

On Sunday night, Joe Skeen lost his valiant battle with Parkinson's disease. Joe's passing is very hard for me to accept even though he had been ill for so long. We have lost a great friend to New Mexico. Joe fit his district like a hand in a glove, and that fact will define his legacy as a public servant and a man of the people. My heart goes out to Mary and the Skeen family. In visiting with them, I know their sadness and sense of loss is severe.

I had the highest honor of serving the State of New Mexico with this amazing man for more than 20 years. Joe was first elected to the House of Representatives in 1980 as a write-in candidate. He is only the third man in the history of this country to achieve this feat.

As great an accomplishment as this was, history will show that it was among the least of his great achievements. As I am sure you can imagine, the litany of successes that Joe has had in his work for New Mexico is much too long to go into here today. Suffice it to say that New Mexico is infinitely better for having had Joe Skeen representing us in Congress; this country is better for having had Joe participate in making decisions that affect the entire Nation.

Joe was the first to tell you that he had not done it on his own, however. He had a partner in his great adventure who walked beside him every step of the way. Mary, his wife of 57 years, was a calming influence in the storm that is the life of a Congressman. She made it possible for Joe to continue to be a ranching Representative, running the family ranch while Joe served in Washington.

Since Joe Skeen retired from Congress in 2002, I have missed working with him on behalf of New Mexico. We were partners in so many projects for more than three decades. I am from our State's largest city, Albuquerque, and Joe was a rancher from one of the many rural parts of our State. Our different backgrounds did not prevent us from working together; rather, I would characterize them as allowing us to form an even better partnership on behalf of New Mexico.

We first got to know each other in 1960 when I was fresh out of law school and Joe was an up and coming member of our party. A decade later, in 1970, we teamed up together to run for Governor and Lieutenant Governor respectively. And, again in 1980, when Joe Skeen was first elected to Congress, we had the opportunity once again to work side-by-side. More than anything, Joe and I were able to use our respective positions on the House and Senate Appropriations Committees to help New Mexico. He was always a good, solid and dependable man, and always a champion for his district. He certainly left huge shoes for those who follow him.

Today, my wife Nancy and I mourn. Joe is at rest, and our prayers are now with Mary, who has been such a force behind Joe and all his work.●

(At the request of Mr. DASCHLE, the following statement was ordered to be printed in the RECORD.)

AFRICAN AMERICAN MUSEUM

• Mr. REID. Mr. President, I wanted to amplify the remarks I made a few weeks ago when we approved a bill to create a museum of African American History as part of the Smithsonian Institution, on or near the National Mall.

As I said at the time, the passage of this measure is an enormous tribute to the work of Congressman JOHN LEWIS.

Mr. LEWIS came to Congress as a representative from Atlanta in 1987. The next year he began his fight to create a museum that would tell the story of the African people in the United States of America.

It is a complex story, and a compelling one.

Of course there is the horror of slavery—one of the greatest stains on our Nation's soul. That story must be told—we cannot flinch from the truth, no matter how painful it might be.

But we must not allow it to blind us to the rest of the story . . . to the enormous contributions that people of African descent have made in the United States.

This very Capitol in which we now stand, a magnificent building that is a symbol of freedom around the world, was built with the labor of slaves.

African Americans fought to keep our Nation free . . . even when their own freedom was not fully realized.

And the ideas and talent of African Americans have enriched all of our lives.

From the Nobel laureate Toni Morrison to our great composer Duke Ellington, from the inventor and city planner Benjamin Banneker to the brilliant jurist Thurgood Marshall, from Jesse Owens to Jackie Robinson, our Nation has been inspired and enlightened by our African American citizens.

I regret that black people in this country have had to struggle so hard to win equality and be treated the same as everybody else. I wish that struggle had not been necessary.

Yet, that struggle has had an enormous impact on our Nation. The words and actions of men like Martin Luther King Jr. and JOHN LEWIS have uplifted us all.

Forty years ago, I lived in Washington and attended school here. I will never forget the great March on Washington of August 28, 1963.

Coming from Nevada, I was stunned by the sight of thousands of buses streaming into the city and the hundreds of thousands of people who marched peacefully for their cause. That event touched me in a profound way.

We all remember Martin Luther King's ''I Have A Dream'' speech from that day. It is rightly regarded as one of the greatest speeches of the 20th Century.

But JOHN LEWIS also spoke at the March on Washington—the only speaker from that great event who is still alive today.

And I will never forget what he said—that African Americans must free themselves not only from political slavery, but also from economic slavery.

In the years since then, we have made tremendous progress. The legal rights of African Americans have been secured. But until economic equality and justice are achieved, the fight will not be won.

JOHN LEWIS has never stopped fighting for freedom and justice. That's why he recognizes the importance of a museum that will tell the story of the African American experience.

This museum was first proposed in 1915 by African Americans who had fought in the Civil War.

When Mr. LEWIS arrived in Congress, he adopted the cause as his own.

Each year since 1988, he has fought to create this museum. This year is the first time his bill has passed both the House and the Senate.

The bill has now gone to President Bush, and I hope he will sign it as soon as possible so we can begin the next phase of the journey—raising private contributions to match the Federal funds for the Museum of African American History.

I salute JOHN LEWIS for his good work. Not just the creation of this important museum, but the work of his entire life—the struggle for freedom, equality and justice.•

RECOGNIZING THE BRIDGEWATER JUNIOR LEAGUE ALL-STARS

• Mr. ALLEN. Mr. President, I am very pleased today to recognize the Bridgewater Junior League All-Stars for their third place finish in the Junior League World Series this summer.

Throughout their incredible run, the Bridgewater Junior Leaguers were a source of great pride for their local community. The team of talented 13- and 14-year-olds cruised through the early rounds of the tournament, eventually making it all the way to the finals of the Junior League World Series. This team of winners should be applauded for their exciting play throughout the tournament. The 12 outstanding players on this young team have truly promising futures in front of them.

Congratulations to the Bridgewater All-Stars: Alex Arey, Andrew Armstrong, Daniel Bowman, Alex Crank, Brandon Craun, Kyle Craun, Sam Groseclose, Luke Long, Carl McIntyre, Tyler Milstead, Joshua Tutwiler and Josh Wright, their manager, Don Tutwiler, and coaches Sherrill Wright and Bill Groseclose. They have made Bridgewater and the Commonwealth of Virginia proud of their accomplishments.•

(At the request of Mr. DASCHLE, the following statement was ordered to be printed in the RECORD.)

TRIBUTE TO SGM PHILIP R. ALBERT

• Mr. LIEBERMAN. Mr. President, I wish to pay tribute to SGM Philip R. Albert, U.S. Army, of Plymouth, CT. A 23-year Army veteran, he had served in Operation Desert Storm and already had a tour in Afghanistan. Sergeant Major Albert was considered an adventurer with a good sense of humor, dedicated to the Army, and devoted to his friends and family.

Joining the Army as a teenager, Sergeant Major Albert was an example of the powerful American spirit which permeates this Nation's history. A member of the 2nd Battalion, 87th Infantry Regiment, 10th Mountain Division, Sergeant Major Albert was killed in a helicopter crash during a combat operation on November 23 in Afghanistan. Five others died with him and eight others were injured.

Sergeant Major Albert who loved the military, served as a messenger of high justice and idealism in the best tradition of American principles and patriotism. I am both proud and grateful that we have the kind of fighting force exemplified by Sergeant Major Albert serving in the Persian Gulf.

Our Nation extends its heartfelt condolences to his mother, brothers, and sisters. We extend our appreciation for sharing this outstanding soldier with us, and we offer our prayers and support. You may be justifiably proud of his contributions which extend above and beyond the normal call of duty.•

OREGON VETERAN HERO

• Mr. SMITH. Mr. President, today I rise to honor an Oregon veteran who has gone above and beyond the call of duty in service to her country and to her State. Blanche Osborn Bross was born on July 21, 1916, and has lived in Oregon since the age of 8.

In 1943, Blanche heeded the call to duty by joining the Women's Air Force Service Pilots, WASP, an experimental program developed to compensate for the lack of men available for pilot training; when American men were critically needed for combat duty during World War II, important piloting jobs across the country were left vacant. WASPs like Blanche spent countless hours training to assume piloting jobs, deliver planes from factories to their domestic bases, tow targets for gunnery practice, and train cadet pilots.

More than 25,000 women applied for the prestigious WASP program, and while 1,830 were chosen for training, a select 1,074 women graduated from the rigorous program. After graduating, Blanche became one of 17 women sent to Columbus, OH, to learn to fly four-engine aircraft. In Ohio, Blanche became a pilot of the legendary B–17 ''Flying Fortress,'' ferrying the enormous aircraft between bases. Fortunately, at 5 feet, 8 inches tall, Blanche was just tall enough to reach the rudder pedals.

After her first assignment in Ohio, Blanche was sent to Fort Myers, FL, to assist in gunnery training. As a pilot, she took gunners up in the air where

they fired at targets towed by a B–25. Many of the gunners had been in male-dominated combat and were shocked to greet women pilots in the cockpit. One soldier even exclaimed, ''I have to write home about this!''

After spending close to a year at Fort Myers, Blanche and three other WASPs were transferred to the Las Vegas gunnery school where they were used in the engineering squadron to test repaired aircraft. The program generated significant publicity during the war, and Blanche was featured in a famous picture of female pilots walking off of the ''Pistol Packin' Mama,'' a B–17 bomber. The photograph has since been used in advertisements for clothing lines, fashion magazines, and historical chronicles.

Blanche lived to fly, and is quick to point out she always felt accepted by the men in the military. On December 20, 1944, however, a bill sent before Congress that would have allowed women to enter the Air Force did not pass, and the WASP program was dismantled. After being deactivated from the WASPs, Blanche joined the American Red Cross and was sent to Kunming, China where, although she did not fly planes, she was heavily involved in operating clubs for service members stationed overseas.

Following her tour in China, Blanche returned to the U.S. to begin a family. In 1957, she married William H. Bross with whom she had a son, Charles. Together, they moved to Portland, OR, where she developed a seaplane flying base. Later in life, Blanche received a commercial pilot license and flew construction crews to work sites.

For many years, one distinct honor alluded Blanche and the other female pilots. The WASPs had retained their civilian status while flying aircraft in World War II, and therefore, were not considered ''veterans'' after the war. At long last in 1977, Blanche and other female pilots were finally recognized for their invaluable service to their country when the WASPs were finally designated as veterans.

Today, Blanche resides with her husband in Bend, OR, where she plays golf on a regular basis, and continues to enjoy the outdoors. When asked what one thing she would want others to know about her, she replied simply, ''I want people to know I'm proud to be an Oregonian and proud to have served this country.''

For her selfless service to others, and to the United States in times of war, I salute Blanche Osborn Bross as an Oregon Veteran Hero.●

(At the request of Mr. DASCHLE, the following statement was ordered to be printed in the RECORD.)

IN REMEMBRANCE OF JOHN PATRICK HUNTER

● Mr. FEINGOLD. Mr. President, today, I pay tribute to John Patrick Hunter, a respected journalist and a dear friend.

After growing up in Depression-era West Virginia, witnessing the aftermath of Hiroshima, and the paranoia of the McCarthy era, John Patrick used his opposition to war and fierce defense of civil liberties to fuel his passion for journalism. For nearly half a century, John Patrick served as a reporter and editor for the Capital Times in Madison, WI. He challenged politicians and policies, but at the same time made many friends and established lasting bonds along the way.

After serving in the Navy during World War II, John Patrick attended the University of Wisconsin on the GI Bill and earned his degree. He joined the Capital Times in 1951 and that is where he stayed until his retirement in 1995.

John Patrick will forever be remembered for his work during the turbulent McCarthy era. Many were silenced by McCarthyism but John Patrick took action. For his July 4 assignment in 1951, John Patrick asked people to sign a petition he had put together using only the Declaration of Independence and the Bill of Rights. One hundred twelve refused out of fear of what might happen to them, 20 called John Patrick a communist, and only one signed. After the story broke nationally, President Harry Truman heralded John Patrick's efforts.

And as far as my own personal good fortune in knowing John Patrick, he asked me tough question for over 20 years. When I would give him a feisty answer, he would grin and I always felt buoyed by the unofficial but potent encouragement of Wisconsin's glorious progressive legacy.

My condolences go out to John Patrick's wife Merry and his entire family. His unparalleled contributions to Wisconsin journalism will never be forgotten.●

TRIBUTE TO MASTER SERGEANT DENNIS TAKESHITA

● Mr. AKAKA. Mr. President, I rise today to honor the service of Master Sergeant Dennis Takeshita, a member of the Hawaii Air National Guard. After 37 years of exemplary commitment and dedicated service in defense of our great Nation and 30 years in the Air National Guard, Master Sergeant Takeshita retired on October 3, 2003.

Master Sergeant Takeshita's career experiences have been extensive. He received a commission into the Air Force Reserves in 1966 and served on active duty until 1972. Soon after his honorable discharge from the United States Air Force, Master Sergeant Takeshita joined the Hawaii Air National Guard. He is a decorated soldier who has received numerous citations and awards for his outstanding service and professionalism.

A graduate of St. Louis High School in Honolulu and the University of Hawaii, Master Sergeant Takeshita's career has been one of dedication, service and sacrifice. He served a combat tour of duty during the Vietnam conflict from 1968 to 1969, as well as Operations Allied Force, Noble Eagle, and Enduring Freedom.

Master Sergeant Takeshita is to be commended for his long tenure, unwavering patriotism, courageous service, unselfish leadership, and individual contributions to the defense of the United States. I applaud the distinguished career of Master Sergeant Dennis Takeshita and express my best wishes for a well-deserved and enjoyable retirement.●

(At the request of Mr. DASCHLE, the following statement was ordered to be printed in the RECORD.)

TRIBUTE TO BG EDWARD M. HARRINGTON, USA

● Mr. KENNEDY. Mr. President, today I pay tribute to BG Edward M. Harrington, upon his retirement from the United States Army after more than three decades of distinguished service to our Nation.

Ed Harrington's military career can truly be described as an American success story. A son of Massachusetts, he grew up in the coastal town of Marshfield, where his family's roots extend back three generations. After graduating from Marshfield High School, he attended Northeastern University in Boston, earning a degree in Business Administration. Before the ink was dry on his diploma, Ed received his draft notice and soon donned the battle dress of an infantryman. It wasn't long until his superior recognized his leadership potential, and he was selected for Officer Candidate School. This marked the beginning of what turned out to be an exemplary career as an officer who rose to the pinnacle of the complex world of acquisition management.

As a lieutenant in the Quartermaster Corps, he received orders for Vietnam where he was assigned to the First Cavalry Division. After service in Vietnam, he returned stateside and assumed command of the 259th Field Service Company at Fort Bragg. Then, with family in tow, he headed for Germany, serving in various Signal Command positions.

After being promoted to captain, Ed returned to Massachusetts to become a professor of military science at Worcester Polytechnic Institute and Fitchburg State College.

In the mid-1980s, Ed's expertise in defense acquisition management prompted his selection for the challenging position of production manager for the M1A1 Abrams Tank at the Tank-Automotive and Armaments Command in Warren, Michigan. There, he met the technical challenge of upgrading the tank's armor plating improving survivability and personnel protection. Years later, he would return to that organization as the Deputy for System Acquisition, a position in which he exercised milestone decision authority for more than 200 Army programs, including the

Paladin artillery system and the High Mobility Multi-Purpose Wheeled Vehicle, better known as the HUMVEE.

Following high-level logistics assignments overseas and stateside, he assumed the first of three command assignments that would culminate in his selection for flag officer and his ascension to the top of the Defense Contract Management Agency.

In the mid-1990s, as commander of the defense contract management office in Syracuse, he oversaw the performance of contracts associated with a number of large systems, including the Seawolf Submarine, the C–17 aircraft, and the Javelin anti-tank missile system. A few years later, Ed returned to his home State, serving as the director of Defense Contract Management Command's eastern district headquartered in Boston. There, with a dispersed workforce of 6,000 and more than 20 field offices, he and his staff managed nearly all the defense contracts performed in the eastern United States.

Since assuming leadership of the Defense Contract Management Agency, DCMA, in February 2001, Brigadier General Harrington has refashioned and expanded DoD's acquisition-management mission, and in so doing, has affirmed DCMA's standing as one of DoD's premiere combat support agencies. Today, DCMA carries out its responsibilities around the globe at sites as diverse as a circuit board manufacturer in Silicon Valley to a combat theater in the Middle East.

Ed Harrington's compassion and distinct style of leadership were dramatically brought to the fore following the tragic events of September 11, 2001, in which one of his DCMA colleagues, Herb Homer of Milford, MA, perished while on official travel aboard United Airlines Flight 175 that crashed into the south tower of the World Trade Center. With compassion and grace, Ed went above and beyond his duty to comfort and console the Homer family, and assist Herb's widow, Karen, in dealing with the administrative complexities following the death of her husband. Thanks to the efforts of Ed Harrington, the memory of Herb Homer and the recognition of his sacrifice will long endure as an inspiration to thousands throughout the DoD acquisition community.

Whether he was on a muddy ridge as an infantryman, at the front of a college lecture hall, on a contractor's plant floor, or at the side of a grieving family, BG Edward M. Harrington served his country with valor, loyalty, and integrity. On the occasion of his retirement from the United States Army, I offer thanks and congratulations to one of New England's finest, and wish him and his wife, Jane, well in their future pursuits.●

RECOGNIZING RUSSELL C. SCHOOLS

● Mr. ALLEN. Mr. President, I am very pleased today to recognize Russell C. Schools of Capron, VA, upon his retirement this year from the Virginia Peanut Growers Association.

Throughout his long career as a peanut farmer, Russell C. Schools has made numerous contributions to his field of work, dedicating his time and efforts to improve and promote the peanut industry, specifically in Virginia. Perhaps his most impressive achievement was the 34 years he spent as the executive secretary of the Virginia Peanut Association. Recently, Mr. Schools was inducted into the American Peanut Council's Peanut Hall of Fame, a fitting tribute to his outstanding career in the peanut industry.

Mr. President, I commend Russell C. Schools for the hard work and dedication that he has demonstrated throughout his distinguished career. He is a great Virginian and a great American and I wish him well in his retirement.●

(At the request of Mr. DASCHLE, the following statement was ordered to be printed in the RECORD.

TRIBUTE TO JULIE ELLIS LEMOULT

● Ms. MIKULSKI. Mr. President, I rise to pay tribute to the life and legacy of Julie Ellis LeMoult, an extraordinary young woman from Bethesda, MD.

This past spring, Julie Ellis LeMoult, loyal, compassionate, understanding and forgiving friend passed away far too early at the age of 28. Her death has dimmed the light of all who knew her: her husband, Chris LeMoult; her parents, Bruce and Donna Ellis; her sisters, Sheri DeLorenzo, Andrea Lynch and Christiane Ellis, and her many, many friends in Bethesda and all across the country.

Julie is irreplaceable. She dedicated her short life to maintaining and exalting humankind by paying tribute to each person's individual gifts. Above all, Julie was always selfless and strived to draw on and draw out the best in everyone she met.

The third of four children and the daughter of an entrepreneur who catered to kings, queens, presidents, diplomats, charitable causes and private social functions, Julie was raised in Bethesda, MD and attend Georgetown Visitation Preparatory School.

In December 1996, Julie graduated from Ohio Wesleyan University where she received a business degree in 3½ years while playing lacrosse. She excelled in her academics through fortitude and perseverance, overcoming a childhood struggle with dyslexia. Her self-esteem remained intact because of her athletic abilities, providing her swimming, diving, basketball, softball and lacrosse teams with the highest excellence of leadership and sportsmanship. Julie's stride and form as a runner exhibited her most memorable style of athletic grace.

In 1997, Julie worked for Hambrecht and Quist in San Francisco before returning to Maryland to join Discovery Communications where she was an invaluable member of its corporate affairs and communications department.

As an adult, Julie became a knowledgeable resource for many people experiencing panic and anxiety disorders and was able to recommend The Ross Center of Washington, DC, and the Midwest Center for Anxiety, Stress and Depression to those who sought her counsel.

Julie Katherine Ellis married Christopher M. LeMoult of Cape Code, MA, in September 2001. She delivered their baby boy, Logan Donnelly, in April 2003. Her life as a mother allowed her to be with her son for only 8 hours before unknown complications took her life.

In addition to her beautiful smile and peaceful nature, Julie's greatest legacies are her son Logan and her ability to open up her heart unconditionally to family, friends, acquaintances and strangers alike in the hope of making their lives better while expecting nothing in return.

The sorrow over Julie's loss is accompanied by the abundance of joy that exists in the memories her family and friends share, her life that they celebrate and her love that will live on. At Thanksgiving and always, Julie's parents, sisters, husband, son, family, friends and colleagues are grateful for the brilliance of her life. Julie Ellis LeMoult will never be forgotten.●

CONTRATULATIONS TO JUDITH SPOONER

● Mr. BUNNING. Mr. President, I pay tribute and congratulate Judith Spooner of Louisville, KY on her reception of the Adoption Excellence Award given to her by the United States Department of Health and Human Services.

Ms. Spooner has dedicated her life to helping improve and increase adoptions and foster families in Kentucky. Her devotion to this cause was put to great work during her time at the Kentucky Cabinet for Families and Children. She has done a wonderful public service through her innovative efforts to increase the number of adoptive families in Kentucky. She has also been instrumental in setting up area support groups for foster and adoptive parents. Although she retired in March of 2003, we are all very lucky that she will continue to spend some of her time with AdoptUSKids, a nonprofit group that helps match waiting children with adoptive families.

The citizens of Kentucky are fortunate to have the leadership of Judith Spooner. Her example of dedication, hard work and compassion should be an inspiration to all throughout the Commonwealth.

She has my most sincere appreciation for this work and I look forward to her continued service to Kentucky.●

RECOGNIZING THE HONORABLE ALFRED C. ANDERSON

● Mr. ALLEN. Mr. President, today I recognize Alfred C. Anderson, who ends 28 years of service as the treasurer for Roanoke County in January 2004.

Mr. Anderson is the longest serving treasurer in the history of Roanoke County, first being elected in 1971. He served until 1975 and then resumed the elected post in 1979. He has been Roanoke County's treasurer ever since.

As treasurer, Mr. Anderson helped modernize the office, allowing for online payments and computer record keeping. He has distinguished himself and his office, becoming the president of the Treasurer's Association of Virginia in 1986 President of the National Association of County Treasurers and Finance Officers and receiving the award for National Treasurer of the Year in 1996, County Republican Official of the Year in 1998 and the Commonwealth's Award in 1997.

Mr. Anderson is a community leader, serving as past chairman of the Roanoke United Methodist Church, past president of the Dogwood Festival and Vinton Lions Club. He currently serves as Chairman of the 6th District Republican party and as a board member on the Blue Ridge Education and Training Council.

Alfred Anderson is a graduate of East Tennessee State University. He and his wife Ann live in Vinton, VA and have two children.

Mr. Anderson has left an indelible mark on his office and his community. I congratulate him and wish him well on his retirement.●

(At the request of DASCHLE, the following statement was ordered to be printed in the RECORD.)

TRIBUTE TO INTERNS

● Mr. HARKIN. Mr. President, today I extend my appreciation to my fall 2003 class of interns: Dennis O'Connor, Melissa Hall, Jason Eaton, Theresa Fruher, and Natalie Dupcher. Each of them has been a tremendous help to me and to the people of Iowa over the past several months. Their efforts have not gone unnoticed.

Since I was first elected into the Senate in 1984, my office has offered internships each fall to young Iowans and other interested students. Through their work in the Senate, our interns have not only seen the legislative process at work, but they also have personally contributed to our Nation's democracy.

It is with much appreciation that I recognize Dennis, Melissa, Jason, Theresa, and Natalie for their hard work this fall. It has been a delight to watch them take on their assignments with enthusiasm and hard work. I am very proud to have worked with each of them. I hope they take from their fall a sense of pride in what they have been able to accomplish and an increased interest in public service and our democratic system and process.●

RECOGNIZING PATRICIA BUCKLEY MOSS

● Mr. ALLEN. Mr. President, today I recognize Patricia Buckley Moss for her outstanding contributions to the advancement of art and education in the Commonwealth of Virginia.

Ms. Moss was born and raised in New York City, where she attended the Washington Irving High School for the Fine Arts. After developing her artistic talents in high school, Ms. Moss received a scholarship to the prestigious Cooper Union for the Advancement of Science and Art in New York. While at Cooper Union, she studied fine arts and graphic design for 4 years.

In 1964, Ms. Moss and her family relocated to Waynesboro, VA. Living in the stunning Shenandoah Valley gave Ms. Moss the opportunity to experience and appreciate the natural beauty of the outdoors, which has played a prominent role in her art ever since. Over the past 40 years, she has created a unique style that is well known by collectors across the globe. Her artistic work eventually led to the creation of the P. Buckley Moss Museum, which opened in Waynesboro, VA, in 1989. This well-known museum in the Shenandoah Valley was created to ''permanently record and illuminate the Moss phenomenon through educational exhibitions, lectures, permanent collections and archival files.''

During her illustrious artistic career, Ms. Moss has exhibited tremendous dedication to many charitable endeavors. In particular, she has remained committed to various children's charities, with a primary focus on special education programs. In 1986, the P. Buckley Moss Society was created by a group of her most dedicated collectors to facilitate the management of her various charitable activities. This society has grown to over 20,000 members worldwide and uses fundraisers to provide for charitable projects. Among its projects in 1995, the Society created the P. Buckley Moss Foundation for Children's Education; the mission of this educational foundation is to ''promote the integration of the arts into all educational programs, with a special focus on programs for children who learn differently.''

Patricia Buckley Moss is an excellent role model for aspiring young artists throughout our country. She has left an indelible mark on her community not only through her art, but also through her charitable work, which has touched the lives of so many, specifically those who are learning impaired. I commend her for her service and wish her continued success in her life.●

(At the request of Mr. DASCHLE, the following statement was ordered to be printed in the RECORD.)

CONGRATULATING AG PRODUCER OF THE YEAR KIRK CORDES

● Mr. JOHNSON. Mr. President, I wish to publicly congratulate Kirk Cordes of Rapid City, SD, for receiving the Ag Producer of the Year award at the Rapid City Area Chamber of Commerce Ag Appreciation banquet.

The Ag Producer of the Year is awarded to one recipient a year who distinguishes themselves in the Agricultural Business Community in South Dakota. The award has been given out since 2001. The award goes to a person who uses the most recent and innovative technology to further advance the agriculture industry for the better.

Kirk Cordes understands the word perseverance. Mr. Cordes was raised on a ranch outside of Elm Springs, SD, where he attended elementary school in a one room school house. After graduating from South Dakota State University in 1970 with a degree in agriculture/business, he worked hard and saved his income. In 1973, the hard work and determination paid off. He bought his mother and father in-law's 6,800 acre ranch, and he and his family have owned and operated the ranch ever since.

Kirk Cordes has been recognized numerous times for his devotion to the agricultural industry in South Dakota. Among his numerous awards, he is a member of various organizations and serves on many boards. He is a past director of the Pennington County Soil Conservation District. He has also been a past director, vice president and State president of the South Dakota section for range management and recipient of Rangeman of the year for South Dakota in 1983. He is a current member of the South Dakota Cattlemen's Association, the National Cattlemen's Beef Association, the Rapid City Area Chamber Ag Committee and the Western South Dakota Buckaroos. For the past 10 years, he has been president of the West River/Lyman Jones Rural Water Systems, which is part of the Mni Wiconi Water Project.

After 30 years of ranching, Kirk and his wife Kathy will be turning the ranch over to their son and daughter-in-law.

I am pleased that his agricultural leadership is being publicly recognized and that his achievements will serve as a model for all outstanding agricultural producers throughout the State to emulate. It is with great honor that I share his impressive achievements with my colleagues.●

RECOGNITION OF MARTIN FINKEL

● Mr. SPECTER. Mr. President, I wish to recognize Martin Finkel, a distinguished doctor and family friend. Dr. Finkel has practiced medicine for over 30 years on the Upper West Side of Manhattan.

Martin Finkel, M.D., F.A.C.P., P.C., a Diplomat of the American Board of Internal Medicine and Gastroenterology, was voted for inclusion in the October edition of the prestigious ''Guide to America's Top Physicians.''

In designating this distinction, the editors of the Guide noted that Dr.

Finkel was ''among the select few that have earned this prestigious recognition.'' I join them today in their salute to Dr. Martin Finkel.●

(At the request of Mr. DASCHLE, the following statement was ordered to be printed in the RECORD.)

JAMES L. ''JAY'' JENKINS 1919–2003

● Mr. EDWARDS. Mr. President, I wish the honor to life of a remarkable North Carolinian.

Jay Jenkins was one of North Carolina's finest. He was a member of a large and distinguished family descended from 18th century Scottish missionaries, and he left his own mark on our State and the South. With his passing, we have lost a great humanitarian.

Jay's long career spanned his early years as a political reporter and later as a leader at the University of North Carolina.

Many in North Carolina believe he was the best political reporter the State has ever known. He was always the one with the scoop. He had the best contacts and knew how to work them. He was a mentor to many, including Charles Kuralt, whose own distinguished career took him to CBS News, David Cooper, retired editorial page editor of the Akron, OH, Beacon-Journal, James Batten, the late president of the Knight-Ridder Publishing Co., Joe Doster, retired publisher of the Winston-Salem Journal and Eugene Roberts, retired managing editor of The New York Times. His competitors admired him at the same time they were wondering how he always managed to get the story.

The qualities that made him such a good reporter were his straightforwardness and his integrity. He was concerned about writing what was really happening. He looked for pretension in politicians and avoided those personalities. His emphasis was the common man. He cared about North Carolina providing programs that truly met the needs of children.

Jay counted among his close friends former Senator Jesse Helms, whom he met when both were students in the late 1930s at what was then Wake Forest College. He also was a close friend to former Governor and Senator Terry Sanford.

His reporting also led to several journalism awards, including the National Sidney Hillman Award for investigative articles in the News & Observer exposing activities of the Klu Klux Klan in North Carolina. In 1991, Jay Jenkins was inducted into the North Carolina Journalism Hall of Fame.

Jay later joined UNC system President Bill Friday as a senior assistant. During his tenure with the university system, he expanded the concept of public relations to be more than just reporting about the students. Most importantly, he originated and founded the television news show, North Carolina People, hosted by President Friday. This show is still running and remains popular in North Carolina. He was also was highly respected in the legislature, where he represented the university with distinction.

''I remember him as the best of his generation,'' President Friday said of Jay. ''He was a man of real integrity, honesty and plain raw courage. His motivation was always what was best for North Carolina.''

Jay was an accomplished outdoorsman and athlete who played semiprofessional baseball. He was a devoted follower of the Atlanta Braves and his beloved Wake Forest Demon Deacons.

A veteran of World War II, Jay served our country with distinction in the Army Air Corps in the Pacific Theater for 30 months.

Jay was a true North Carolina treasure. We will miss him dearly.●

TRIBUTE TO CRAIG WILLIAMS

● Mr. BUNNING. Mr. President, I wish to pay tribute to Craig Williams, director of the Chemical Weapons Working Group, which is based in Berea, KY. On Thursday, December 11, Craig will receive the Public Interest Research Group's annual John O'Connor Citizen Achievement Award.

The O'Connor Award is presented annually to a dedicated advocate for a cleaner, better America. Craig Williams has dedicated his life to grassroots organizations safeguarding the environment and protecting Americans working and living near chemical weapons storage facilities. He rightly deserves this tremendous honor.

I have personally worked with Craig for years on protecting the local citizens and environment surrounding the Bluegrass Army Depot in central Kentucky. As the director of the Chemical Weapons Working Group, Craig was instrumental in ensuring the safest possible disposal of chemical weapons in Kentucky. Craig has been a tireless advocate against the incineration of these deadly weapons and has done a remarkable job educating and mobilizing the local communities surrounding these disposal sites across the country.

I congratulate Craig for receiving this honor, and I thank him for his tireless advocacy on behalf of a cleaner environment and protection of all those living and working near chemical weapons storage facilities. I look forward to working with Craig on future projects. I thank the Senate for allowing me to pay tribute to this dedicated Kentuckian.●

MESSAGES FROM THE PRESIDENT

Messages from the President of the United States were communicated to the Senate by Ms. Evans, one of his secretaries.

EXECUTIVE MESSAGES REFERRED

As in executive session the Presiding Officer laid before the Senate messages from the President of the United States submitting sundry nominations, two treaties, and a withdrawal which were referred to the appropriate committees.

(The nominations received today are printed at the end of the Senate proceedings.)

ANNUAL REPORT OF THE RAILROAD RETIREMENT BOARD FOR THE FISCAL YEAR ENDING SEPTEMBER 30, 2002—PM 58

The Presiding Officer laid before the Senate the following message from the President of the United States, together with an accompanying report; which was referred to the Committee on Health, Education, Labor, and Pensions:

To the Congress of the United States:

I transmit herewith the Annual Report of the Railroad Retirement Board presented for forwarding to you for the fiscal year ending September 30, 2002, consistent with the provisions of section 7(b)(6) of the Railroad Retirement Act and section 12(1) of the Railroad Unemployment Insurance Act.

GEORGE W. BUSH.

THE WHITE HOUSE, *December 8, 2003*.

MESSAGE FROM THE HOUSE RECEIVED DURING RECESS

The Secretary of the Senate, during the recess of the Senate, received a message from the House of Representatives announcing that the Speaker has signed the following enrolled bills and joint resolution:

S. 459. An act to ensure that a public safety officer who suffers a fatal heart attack or stroke while on duty shall be presumed to have died in the line of duty for purposes of public safety officer survivor benefits.

H.J. Res. 80. Joint resolution appointing the day for the convening of the second session of the One Hundred Eighth Congress.

H.R. 1. An act to amend title XVIII of the Social Security Act to provide for a voluntary program for prescription drug coverage under the Medicare Program, to modernize the Medicare Program, to amend the Internal Revenue Code of 1986 to allow a deduction to individuals for amounts contributed to health savings security accounts and health saving accounts, to provide for the disposition of unused health benefits in cafeteria plans and flexible spending arrangements, and for other purposes.

H.R. 1437. An act to improve the United States Code.

H.R. 1813. An act to amend the Torture Victims Relief Act of 1998 to authorize appropriations to provide assistance for domestic and foreign centers and programs for the treatment of victims of torture, and for other purposes.

H.R. 2297. An act to amend title 38, United States Code, to improve benefits under laws administered by the Secretary of Veterans Affairs, and for other purposes.

H.R. 2622. An act to amend the Fair Credit Reporting Act, to prevent identity theft, improve resolution of consumer disputes, improve the accuracy of consumer records, make improvements in the use of, and consumer access to, credit information, and for other purposes.

H.R. 3287. An act to award congressional gold medals posthumously on behalf of Reverend Joseph A. DeLaine, Harry and Eliza Briggs, and Levi Pearson in recognition of their contributions to the Nation as pioneers in the effort to desegregate public schools that led directly to the landmark desegregation case of Brown et al. v. the Board of Education of Topeka et al.

H.R. 3348. An act to reauthorize the ban on undetectable firearms.

Under the authority of the order of the Senate of November 25, 2003, on December 2, 2003, the enrolled bills and joint resolution were signed by the Acting President pro tempore (Mr. FRIST).

MESSAGES FROM THE HOUSE

At 10:05 a.m., a message from the House of Representatives, delivered by Ms. Niland, one of its reading clerks, announced that the House agreed to the amendment of the Senate to the amendment of the House to the bill (S. 877) to regulate interstate commerce by imposing limitations and penalties on the transmission of unsolicited commercial electronic mail via the Internet.

The message also announced that the House agreed to the amendment of the Senate to the amendment of the House to the bill (S. 1680) to reauthorize the Defense Production Act of 1950, and for other purposes.

The message further announced that the House agreed to the amendment of the Senate to the bill (H.R. 100) to restate, clarify, and revise the Soldiers' and Sailors' Civil Relief Act of 1940.

The message also announced that the House agreed to the amendments of the Senate to the bill (H.R. 622) to provide for the exchange of certain lands in the Coconino and Tonto National Forests in Arizona, and for other purposes.

The message further announced that the House agreed to the amendments of the Senate to the bill (H.R. 1006) to amend the Lacey Act Amendments of 1981 further the conservation of certain wildlife species.

The message also announced that the House agreed to the amendment of the Senate to the bill (H.R. 1012) to establish the Carter G. Woodson Home National Historic Site in the District of Columbia, and for other purposes.

The message further announced that the House agreed to the report of the committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 2673) making appropriations for Agriculture, Rural Development, Food and Drug Administration, and Related Agencies for the fiscal year ending September 30, 2004, and for other purposes.

The message also announced that pursuant to section 7(b)(1) of the Prison Rape Elimination Act of 2003 (Public Law 108–79), the Minority Leader appoints the following individuals on the part of the House of Representatives to the National Prison Rape Reduction Commission: Ms. Brenda V. Smith of the District of Columbia and Ms. Jamie Fellner, Esq., of New York.

At 11:04 a.m., a message from the House of Representatives, delivered by Ms. Niland, one of its reading clerks, announced that the House has passed the following bills, without amendment:

S. 811. An act to support certain housing proposals in the fiscal year 2003 budget for the Federal Government, including the downpayment assistance initiative under the HOME Investment Partnership Act, and for other purposes.

S. 1683. An act to provide for a report on the parity of pay and benefits among Federal law enforcement officers and to establish an exchange program between Federal law enforcement employees and State and local law enforcement employees.

S. 1929. An act to amend the Employee Retirement Income Security Act of 1974 and the Public Health Service Act to extend the mental health benefits parity provisions for an additional year.

S. 1947. An act to prohibit the offer of credit by a financial institution to a financial institution examiner, and for other purposes.

The message also announced that the House has passed the following bill and joint resolution, in which it requests the concurrence of the Senate:

H.R. 3652. An act to amend the Internal Revenue Code of 1986 to modify the taxation of imported archery products.

H.J. Res. 82. Joint resolution making further continuing appropriations for the fiscal year 2004, and for other purposes.

The message further announced that the House has agreed to the following concurrent resolution, in which it requests the concurrence of the Senate.

H. Con. Res. 345. Concurrent resolution authorizing the printing as a House document of the transcripts of the proceedings of ''The Changing Nature of the House Speakership: The Cannon Centenary Conference,'' sponsored by the Congressional Research Service on November 12, 2003.

MEASURES REFERRED

The following bills were read the first and the second times by unanimous consent, and referred as indicated:

H.R. 7. An act to amend the Internal Revenue Code of 1986 to provide incentives for charitable contributions by individuals and business, and for other purposes; to the Committee on Finance.

H.R. 153. An act to restore the second amendment rights of all Americans; to the Committee on Energy and Natural Resources.

H.R. 253. An act to amend the National Flood Insurance Act of 1968 to reduce losses to properties for which repetitive flood insurance claim payments have been made; to the Committee on Banking, Housing, and Urban Affairs.

H.R. 408. An act to provide for expansion of Sleeping Bear Dunes National Lakeshore; to the Committee on Energy and Natural Resources.

H.R. 1964. To assist the States of Connecticut, New Jersey, New York, and Pennsylvania in conserving priority lands and natural resources in the Highlands region, and for other purposes; to the Committee on Energy and Natural Resources.

H.R. 2218. To amend the Federal Food, Drug, and Cosmetic Act to provide for the regulation of all contact lenses as medical devices, and for other purposes; to the Committee on Health, Education, Labor, and Pensions.

H.R. 2584. To provide for the conveyance to the Utrok Atoll local government of a decommissioned National Oceanic and Atmospheric Administration ship, and for other purposes; to the Committee on Energy and Natural Resources.

H.R. 2898. An act to improve homeland security, public safety, and citizen activated emergency response capabilities through the use of enhanced 911 wireless services, and for other purposes; to the Committee on Commerce, Science, and Transportation.

H.R. 2907. An act to provide for a land exchange in the State of Arizona between the Secretary of Agriculture and Yavapai Ranch Limited Partnership; to the Committee on Energy and Natural Resources.

H.R. 3108. An act to amend the Employee Retirement Income Security Act of 1974 and the Internal Revenue Code of 1986 to temporarily replace the 30-year Treasury rate with a rate based on long-term corporate bonds for certain pension plan funding requirements and other provisions, and for other purposes; to the Committee on Finance.

H.R. 3181. An act to amend the Robert T. Stafford Disaster Relief and Emergency Assistance Act to reauthorize the predisaster mitigation program, and for other purposes; to the Committee on Environment and Public Works.

H.R. 3214. An act to eliminate the substantial backlog of DNA samples collected from crime scenes and convicted offenders, to improve and expand the DNA testing capacity of Federal, State, and local crime laboratories, to increase research and development of new DNA testing technologies, to develop new training programs regarding the collection and use of DNA evidence, to provide post-conviction testing of DNA evidence to exonerate the innocent, to improve the performance of counsel in State capital cases, and for other purposes; to the Committee on the Judiciary.

H.R. 3521. An act to amend the Internal Revenue Code of 1986 to extend certain expiring provisions, and for other purposes; to the Committee on Finance.

H.R. 3652. An act to amend the Internal Revenue Code of 1986 to modify the taxation of imported archery products; to the Committee on Finance.

The following concurrent resolution was read, and referred as indicated:

H. Con. Res. 206. Concurrent resolution supporting the National Marrow Donor Program and other bone marrow donor programs and encouraging Americans to learn about the importance of bone marrow donation; to the Committee on Health, Education, Labor, and Pensions.

ENROLLED BILL PRESENTED

The Secretary of the Senate reported that on December 3, 2003, she had presented to the President of the United States the following enrolled bill:

S. 459. An act to ensure that a public safety officer who suffers a fatal heart attack or stroke while on duty shall be presumed to have died in the line of duty for purposes of public safety officer survivor benefits.

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Ms. COLLINS, from the Committee on Governmental Affairs:

Report to accompany S. 1522, a bill to provide new human capital flexibility with respect to the GAO, and for other purposes (Rept. No. 108-216).

Report to accompany S. 1612, a bill to establish a technology, equipment, and information transfer within the Department of Homeland Security (Rept. No. 108–217).

By Mr. INHOFE, from the Committee on Environment and Public Works, with amendments and an amendment to the title:

S. 156. A bill to amend the Atomic Energy Act of 1954 to reauthorize the Price-Anderson provisions (Rept. No. 108–218).

By Mr. McCAIN, from the Committee on Commerce, Science, and Transportation, with amendments:

S. 1401. A bill to reauthorize the National Oceanic and Atmospheric Administration, and for other purposes (Rept. No. 108–219).

By Mr. GREGG, from the Committee on Health, Education, Labor, and Pensions, without amendment:

S. 1879. A bill to amend the Public Health Service Act to revise and extend provisions relating to mammography quality standards (Rept. No. 108–220).

EXECUTIVE REPORTS OF COMMITTEES

The following executive reports of committees were submitted on November 21, 2003:

Mr. WARNER. Mr. President, for the Committee on Armed Services I report favorably the following nomination lists which were printed in the RECORDS on the dates indicated, and ask unanimous consent, to save the expense of reprinting on the Executive Calendar that these nominations lie at the Secretary's desk for the information of Senators.

Air Force nomination of Mary J. Quinn.

Air Force nominations beginning Christopher C. Erickson and ending Mark A. Mcclain, which nominations were received by the Senate and appeared in the Congressional Record on November 17, 2003.

Army nomination of Lance A. Betros.

Army nominations beginning Thomas B. Sweeney and ending Paul L. Zanglin, which nominations were received by the Senate and appeared in the Congressional Record on October 30, 2003.

Army nominations beginning John D. Mcgowan II and ending Kenneth E. Nettles, which nominations were received by the Senate and appeared in the Congressional Record on November 17, 2003.

Army nominations beginning Vernal G. Anderson and ending Donald J. Kerr, which nominations were received by the Senate and appeared in the Congressional Record on November 17, 2003.

Army nominations beginning Gaston P. Bathalon and ending Paula J. Rutan, which nominations were received by the Senate and appeared in the Congressional Record on November 17, 2003.

Army nomination of William B. Carr, Jr.

Army nominations beginning John E. Atwood and ending William E. Zoesch, which nominations were received by the Senate and appeared in the Congressional Record on November 17, 2003.

Army nominations beginning Cheryl Kyle and ending Terry C. Washam, which nominations were received by the Senate and appeared in the Congressional Record on November 17, 2003.

Army nomination beginning Michael A. Buley and ending Gary M. Zaucha, which nominations were received by the Senate and appeared in the Congressional Record on November 17, 2003.

Army nomination of Gary R. McMeen.

Marine Corps nomination of Michael S. Nisley.

Marine Corps nominations beginning Leonard Halik III and ending Ernest R. Hines, which nominations were received by the Senate and appeared in the Congressional Record on February 1, 2003.

Marine Corps nomination of David B. Morey.

Navy nomination of Patrick J. Moran.

Navy nomination of Lawrence J. Chick.

Navy nomination of Robert E. Vincent II.

Navy nominations beginning Rodney A Bolling and ending Jay S Vignola, which nominations were received by the Senate and appeared in the Congressional Record on November 3, 2003.

By Mr. SHELBY for the Committee on Banking, Housing, and Urban Affairs.

*Thomas J. Curry, of Massachusetts, to be a Member of the Board of Directors of the Federal Deposit Insurance Corporation for a term of six years.

*Alicia R. Castaneda, of the District of Columbia, to be a Director of the Federal Housing Finance Board for a term expiring February 27, 2004.

*Alicia R. Castaneda, of the District of Columbia, to be a Director of the Federal Housing Finance Board for a term expiring February 27, 2011.

By Mr. GRASSLEY for the Committee on Finance.

*Arnold I. Havens, of Virginia, to be General Counsel for the Department of the Treasury.

By Ms. COLLINS for the Committee on Governmental Affairs.

*James M. Loy, of Virginia, to be Deputy Secretary of Homeland Security.

*Scott J. Bloch, of Kansas, to be Special Counsel, Office of Special Counsel, for the term of five years.

By Mr. SPECTER for the Committee on Veterans' Affairs. Alan G. Lance, Sr., of Idaho, to be a Judge of the United States Court of Appeals for Veterans Claims for the term prescribed by law.

Lawrence B. Hagel, of Virginia, to be a Judge of the United States Court of Appeals for Veterans Claims for the term prescribed by law.

*Cynthia R. Church, of Virginia, to be an Assistant Secretary of Veterans Affairs (Public and Intergovernmental Affairs).

*Robert N. McFarland, of Texas, to be an Assistant Secretary of Veterans Affairs (Information and Technology).

*Gordon H. Mansfield, of Virginia, to be Deputy Secretary of Veterans Affairs.

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

(Nominations without an asterisk were reported with the recommendation that they be confirmed.)

DISCHARGED NOMINATIONS

The Senate Committee on Foreign Relations was discharged from further consideration of the following nominations and the nominations were confirmed:

David C. Mulford, of Illinois, to be Ambassador Extraordinary and Plenipoltentiary of the United States of America to India.

James C. Oberwetter, of Texas, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the Kingdom of Saudi Arabia.

The Senate Committee on Banking, Housing, and Urban Affairs was discharged from further consideration of the following nominations and the nominations were confirmed:

Joseph Max Cleland, of Georgia, to be a Member of the Board of Directors of the Export-Import Bank of the United States for a term expiring January 20, 2007.

April H. Foley, of New York, to be First Vice President of the Export-Import Bank of the United States for the remainder of the term expiring January 20, 2005.

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second times by unanimous consent, and referred as indicated:

By Mr. GRAHAM of Florida:

S. 1980. A bill to amend the Help America Vote Act of 2002 to require a voter-verified permanent record or hardcopy under title III of such Act, and for other purposes; to the Committee on Rules and Administration.

By Mr. SANTORUM:

S. 1981. A bill to amend the Constitution Heritage Act of 1988 to provide for the operation of the National Constitution Center; to the Committee on Energy and Natural Resources.

By Mr. SCHUMER (for himself, Mr. HATCH, and Mr. DURBIN):

S. 1982. A bill to establish within the United States Marshalls Service a short term State witness protection program to provide assistance to State and local district attorneys to protect their witnesses in homicide and major violent crimes cases and to provide Federal grants for such protection; to the Committee on the Judiciary.

By Mr. SCHUMER (for himself, Mr. REED, Mrs. CLINTON, Mrs. FEINSTEIN, and Mr. DURBIN):

S. 1983. A bill to amend title 18 of the United States Code, to enhance the authority of the Bureau of Alcohol, Tobacco, Firearms, and Explosives to enforce the compliance of gun dealers with Federal firearms laws, and for other purposes; to the Committee on the Judiciary.

By Mr. GRASSLEY (for himself and Mr. BAUCUS):

S. 1984. A bill to amend the Internal Revenue Code of 1986 to make technical corrections, and for other purposes; to the Committee on Finance.

By Mrs. FEINSTEIN:

S. 1985. A bill for relief of Benjamin Cabrera-Gomez and Londy Patricia; to the Committee on the Judiciary.

By Mrs. CLINTON:

S. 1986. A bill to amend the help America Vote Act of 2002 to require voter verification and improved security for voting systems under title III of the Act, and for other purposes; to the Committee on Rules and Administration.

By Mr. LUGAR:

S. 1987. A bill to implement the obligations of the United States under the Protocol Additional to the Agreement between the United States of America and the International Atomic Energy Agency for the Application of Safeguards in the United States of America, known as ''the Additional Protocol'' signed by the United States on June 12, 1998; to the Committee on Foreign Relations.

By Mr. DASCHLE (for Mr. EDWARDS):

S. 1988. A bill to amend titles XVIII and XIX of the Social Security Act to establish

minimum requirements for nurse staffing in nursing facilities receiving payments under the Medicare or Medicaid Program; to the Committee on Finance.

By Mr. DAYTON:

S. 1989. A bill to provide that, for purposes of making determinations for certain trade remedies and trade adjustment assistance, imported semi-finished steel slabs and taconite pellets produced in the United States shall be considered to be articles like or directly competitive with each other; to the Committee on Finance.

By Mr. DAYTON:

S. 1990. A bill to authorize the Economic Development Administration to make grants to producers of taconite for implementation of new technologies to increase productivity, to reduce costs, and to improve overall product quality and performance; to the Committee on Environment and Public Works.

By Mr. DASCHLE (for Mr. KERRY (for himself and Mr. KENNEDY)):

S. 1991. A bill to require the reimbursement of members of the Armed Forces or their family members for the costs of protective body armor purchased by or on behalf of members of the Armed Forces; to the Committee on Armed Services.

By Mr. KENNEDY:

S. 1992. A bill to amend the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 to eliminate privatization of the medicare program, to improve the medicare prescription drug benefit, to repeal health savings accounts, and for other purposes; to the Committee on Finance.

By Mr. WARNER (for himself and Mrs. CLINTON):

S. 1993. A bill to amend title 23, United States Code, to provide a highway safety improvement program that includes incentives to States to enact primary safety belt laws; to the Committee on Environment and Public Works.

By Mr. DASCHLE (for Mr. FEINGOLD):

S. 1994. A bill to amend part D of title XVIII of the Social Security Act to strike the language that prohibits the Secretary of Health and Human Services from negotiating prices for prescription drugs furnished under the medicare program; to the Committee on Finance.

By Mr. DASCHLE (for Mr. FEINGOLD):

S. 1995. A bill to amend title XVIII of the Social Security Act to repeal the MA Regional Plan Stabilization Fund; to the Committee on Finance.

By Mr. DASCHLE:

S. 1996. A bill to enhance and provide to the Oglada Sioux Tribe and Angostura Irrigation Project certain benefits of the Pick-Sloan Missouri River basin program; to the Committee on Indian Affairs.

By Mr. BYRD (for himself, Mr. BAYH, and Mr. ROCKEFELLER):

S. 1997. A bill to reinstate the safeguard measures imposed on imports of certain steel products, as in effect on December 4, 2003; to the Committee on Finance.

By Mr. BINGAMAN (for himself, Ms. SNOWE, Mr. SCHUMER, Mr. LEAHY, Mrs. CLINTON, Mr. NELSON of Nebraska, Mrs. LINCOLN, Mr. HAGEL, Mr. JEFFORDS, Mr. DOMENICI, Mr. HARKIN, and Mr. PRYOR):

S. 1998. A bill to amend title 49, United States Code, to preserve the essential air service program; to the Committee on Commerce, Science, and Transportation.

By Mr. DASCHLE (for himself, Ms. STABENOW, Mr. GRAHAM of Florida, Mr. KENNEDY, Mr. PRYOR, Mr. DORGAN, Mrs. BOXER, Mr. LAUTENBERG, Mr. BINGAMAN, Ms. MIKULSKI, Mr. JOHNSON, Mr. SCHUMER, Mr. KOHL, Ms. CANTWELL, and Mr. ROCKEFELLER):

S. 1999. A bill to amend part D of title XVIII of the Social Security Act, as added by the Medicare Prescription Drug, Improvement, and Modernization Act of 2003, to provide for negotiation of fair prices for medicare prescription drugs; to the Committee on Finance.

By Mrs. FEINSTEIN (for herself and Mrs. HUTCHISON):

S. 2000. A bill to extend the special postage stamp for breast cancer research for 2 years; considered and passed.

By Mr. INOUYE (for himself and Mr. AKAKA):

S. 2001. A bill to authorize an additional permanent judgeship for the district of Hawaii, and for other purposes; to the Committee on the Judiciary.

By Mr. BAUCUS (for himself and Mr. CRAIG):

S. 2002. A bill to improve and promote compliance with international intellectual property obligations relating to the Republic of Cuba, and for other purposes; to the Committee on the Judiciary.

By Mrs. CLINTON:

S. 2003. A bill to amend the Public Health Service Act to promote higher quality health care and better health by strengthening health information, information infrastructure, and the use of health information by providers and patients; to the Committee on Finance.

By Mr. GRASSLEY (for himself and Mr. FEINGOLD):

S. 2004. A bill to permanently reenact chapter 12 of title 11, United States Code, and for other purposes; to the Committee on the Judiciary.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

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

By Mr. COLEMAN:

S. Res. 279. A resolution recognizing the importance and contributions of sportsmen to American society, supporting the traditions and values of sportsmen, and recognizing the many economic benefits associated with outdoor sporting activities; to the Committee on Environment and Public Works.

By Mrs. BOXER (for herself and Mrs. FEINSTEIN):

S. Res. 280. A resolution congratulating the San Jose Earthquakes for winning the 2003 Major League Soccer Cup; considered and agreed to.

By Mr. FITZGERALD (for himself, Mr. DURBIN, Mr. FRIST, Mr. DASCHLE, and Mr. DEWINE):

S. Res. 281. A resolution relative to the death of the Honorable Paul Simon, a former Senator from the State of Illinois; considered and agreed to.

By Mr. STEVENS:

S. Res. 282. A resolution providing the funding to assist in meeting the official expenses of a preliminary meeting relative to the formation of a United States Senate-China interparliamentary group; considered and agreed to.

By Mr. SESSIONS (for himself, Mr. SHELBY, Mr. INHOFE, Mr. BROWNBACK, Mr. NICKLES, Mr. BUNNING, Mr. TALENT, Mr. CHAMBLISS, Mr. CRAIG, Mr. DOMENICI, Mr. KYL, and Mr. HOLLINGS):

S. Res. 283. A resolution affirming the need to protect children in the United States from indecent programming; considered and agreed to.

ADDITIONAL COSPONSORS

S. 59

At the request of Mr. INOUYE, the name of the Senator from North Dakota (Mr. DORGAN) was added as a cosponsor of S. 59, a bill to amend title 10, United States Code, to permit former members of the Armed Forces who have a service-connected disability rated as total to travel on military aircraft in the same manner and to the same extent as retired members of the Armed Forces are entitled to travel on such aircraft.

S. 344

At the request of Mr. AKAKA, the name of the Senator from Oregon (Mr. SMITH) was added as a cosponsor of S. 344, a bill expressing the policy of the United States regarding the United States relationship with Native Hawaiians and to provide a process for the recognition by the United States of the Native Hawaiian governing entity, and for other purposes.

S. 480

At the request of Mr. HARKIN, the name of the Senator from South Carolina (Mr. HOLLINGS) was added as a cosponsor of S. 480, a bill to provide competitive grants for training court reporters and closed captioners to meet requirements for realtime writers under the Telecommunications Act of 1996, and for other purposes.

S. 491

At the request of Mr. REID, the name of the Senator from California (Mrs. BOXER) was added as a cosponsor of S. 491, a bill to expand research regarding inflammatory bowel disease, and for other purposes.

S. 533

At the request of Mr. SCHUMER, the names of the Senator from Iowa (Mr. HARKIN), the Senator from Hawaii (Mr. INOUYE), the Senator from Massachusetts (Mr. KENNEDY), the Senator from Georgia (Mr. MILLER), the Senator from Arkansas (Mr. PRYOR), the Senator from Nevada (Mr. REID) and the Senator from Nebraska (Mr. NELSON) were added as cosponsors of S. 533, a bill to provide for a medal of appropriate design to be awarded by the President to the next of kin or other representative of those individuals killed as a result of the terrorist attacks of September 11, 2001.

S. 736

At the request of Mr. ENSIGN, the name of the Senator from Virginia (Mr. WARNER) was added as a cosponsor of S. 736, a bill to amend the Animal Welfare Act to strengthen enforcement of provisions relating to animal fighting, and for other purposes.

S. 976

At the request of Mr. WARNER, the name of the Senator from Illinois (Mr. FITZGERALD) was added as a cosponsor of S. 976, a bill to provide for the issuance of a coin to commemorate the 400th anniversary of the Jamestown settlement.

S. 985

At the request of Mr. GREGG, his name was added as a cosponsor of S.

985, a bill to amend the Federal Law Enforcement Pay Reform Act of 1990 to adjust the percentage differentials payable to Federal law enforcement officers in certain high-cost areas, and for other purposes.

S. 1010

At the request of Mr. HARKIN, the name of the Senator from North Carolina (Mr. EDWARDS) was added as a cosponsor of S. 1010, a bill to enhance and further research into paralysis and to improve rehabilitation and the quality of life for persons living with paralysis and other physical disabilities.

S. 1032

At the request of Mr. SARBANES, the name of the Senator from California (Mrs. BOXER) was added as a cosponsor of S. 1032, a bill to provide for alternative transportation in certain federally owned or managed areas that are open to the general public.

S. 1034

At the request of Mrs. FEINSTEIN, the name of the Senator from Ohio (Mr. DEWINE) was added as a cosponsor of S. 1034, a bill to repeal the sunset date on the assault weapons ban, to ban the importation of large capacity ammunition feeding devices, and for other purposes.

S. 1040

At the request of Mr. SHELBY, the name of the Senator from Idaho (Mr. CRAIG) was added as a cosponsor of S. 1040, a bill to repeal the current Internal Revenue Code and replace it with a flat tax, thereby guaranteeing economic growth and greater fairness for all Americans.

S. 1091

At the request of Mr. DURBIN, the name of the Senator from Hawaii (Mr. AKAKA) was added as a cosponsor of S. 1091, a bill to provide funding for student loan repayment for public attorneys.

S. 1177

At the request of Mr. KOHL, the name of the Senator from New Jersey (Mr. LAUTENBERG) was added as a cosponsor of S. 1177, a bill to prevent tobacco smuggling, to ensure the collection of all tobacco taxes, and for other purposes.

S. 1252

At the request of Mr. DAYTON, the name of the Senator from Washington (Ms. CANTWELL) was added as a cosponsor of S. 1252, a bill to provide benefits to domestic partners of Federal employees.

S. 1431

At the request of Mr. LAUTENBERG, the name of the Senator from New York (Mr. SCHUMER) was added as a cosponsor of S. 1431, a bill to reauthorize the assault weapons ban, and for other purposes.

S. 1568

At the request of Mr. HATCH, the names of the Senator from Arkansas (Mrs. LINCOLN) and the Senator from Florida (Mr. GRAHAM) were added as cosponsors of S. 1568, a bill to amend the Internal Revenue Code of 1986 to simplify certain provisions applicable to real estate investment trusts.

S. 1645

At the request of Mr. CRAIG, the name of the Senator from Delaware (Mr. BIDEN) was added as a cosponsor of S. 1645, a bill to provide for the adjustment of status of certain foreign agricultural workers, to amend the Immigration and Nationality Act to reform the H–2A worker program under that Act, to provide a stable, legal agricultural workforce, to extend basic legal protections and better working conditions to more workers, and for other purposes.

S. 1679

At the request of Mr. BUNNING, the name of the Senator from Alabama (Mr. SESSIONS) was added as a cosponsor of S. 1679, a bill to amend the Internal Revenue Code of 1986 to reduce the depreciation recovery period for roof systems.

S. 1700

At the request of Mr. LEAHY, the name of the Senator from Massachusetts (Mr. KERRY) was added as a cosponsor of S. 1700, a bill to eliminate the substantial backlog of DNA samples collected from crime scenes and convicted offenders, to improve and expand the DNA testing capacity of Federal, State, and local crime laboratories, to increase research and development of new DNA testing technologies, to develop new training programs regarding the collection and use of DNA evidence, to provide post-conviction testing of DNA evidence to exonerate the innocent, to improve the performance of counsel in State capital cases, and for other purposes.

S. 1702

At the request of Mr. SMITH, the name of the Senator from Washington (Ms. CANTWELL) was added as a cosponsor of S. 1702, a bill to amend the Internal Revenue Code of 1986 to extend the exclusion from gross income for employer-provided health coverage to designated plan beneficiaries of employees, and for other purposes.

S. 1736

At the request of Mr. ENZI, the name of the Senator from Vermont (Mr. LEAHY) was added as a cosponsor of S. 1736, a bill to promote simplification and fairness in the administration and collection of sales and use taxes.

S. 1748

At the request of Mr. DEWINE, the names of the Senator from Indiana (Mr. LUGAR) and the Senator from New Jersey (Mr. LAUTENBERG) were added as cosponsors of S. 1748, a bill to establish a program to award grants to improve and maintain sites honoring Presidents of the United States.

S. 1786

At the request of Mr. DASCHLE, his name was added as a cosponsor of S. 1786, a bill to revise and extend the Community Services Block Grant Act, the Low-Income Home Energy Assistance Act of 1981, and the Assets for Independence Act.

S. 1801

At the request of Mrs. MURRAY, the name of the Senator from Vermont (Mr. LEAHY) was added as a cosponsor of S. 1801, a bill to promote the economic security and safety of victims of domestic and sexual violence, and for other purposes.

S. 1807

At the request of Mr. MCCAIN, the names of the Senator from Massachusetts (Mr. KENNEDY) and the Senator from Massachusetts (Mr. KERRY) were added as cosponsors of S. 1807, a bill to require criminal background checks on all firearms transactions occurring at events that provide a venue for the sale, offer for sale, transfer, or exchange of firearms, and for other purposes.

S. 1830

At the request of Mr. BROWNBACK, the name of the Senator from New York (Mr. SCHUMER) was added as a cosponsor of S. 1830, a bill to authorize appropriations for fiscal years 2004 and 2005 for the Trafficking Victims Protection Act of 2000, and for other purposes.

S. 1882

At the request of Mr. LAUTENBERG, the name of the Senator from Ohio (Mr. DEWINE) was added as a cosponsor of S. 1882, a bill to require that certain notifications occur whenever a query to the National Instant Criminal Background Check System reveals that a person listed in the Violent Gang and Terrorist Organization File is attempting to purchase a firearm, and for other purposes.

S. 1907

At the request of Mr. DASCHLE, the name of the Senator from Arkansas (Mrs. LINCOLN) was added as a cosponsor of S. 1907, a bill to promote rural safety and improve rural law enforcement.

S. 1925

At the request of Mr. KENNEDY, the names of the Senator from North Dakota (Mr. DORGAN), the Senator from Washington (Ms. CANTWELL) and the Senator from Maryland (Mr. SARBANES) were added as cosponsors of S. 1925, a bill to amend the National Labor Relations Act to establish an efficient system to enable employees to form, join, or assist labor organizations, to provide for mandatory injunctions for unfair labor practices during organizing efforts, and for other purposes.

S. 1928

At the request of Mr. SARBANES, the name of the Senator from North Carolina (Mr. EDWARDS) was added as a cosponsor of S. 1928, a bill to amend the Truth in Lending Act to protect consumers against predatory practices in connection with high cost mortgage transactions, to strengthen the civil remedies available to consumers under existing law, and for other purposes.

S. 1937

At the request of Mr. BAUCUS, the names of the Senator from Louisiana

(Mr. BREAUX), the Senator from Massachusetts (Mr. KERRY) and the Senator from West Virginia (Mr. ROCKEFELLER) were added as cosponsors of S. 1937, a bill to amend the Internal Revenue Code of 1986 to curtail the use of tax shelters, and for other purposes.

S. 1973

At the request of Mr. DEWINE, the name of the Senator from Wisconsin (Mr. FEINGOLD) was added as a cosponsor of S. 1973, a bill to amend the Communications Act of 1934 to protect the privacy rights of subscribers to wireless communications services.

At the request of Mr. FEINGOLD, the name of the Senator from Vermont (Mr. LEAHY) was added as a cosponsor of S. 1973, supra.

S. 1974

At the request of Mr. DASCHLE, the name of the Senator from New York (Mr. SCHUMER) was added as a cosponsor of S. 1974, a bill to make improvements to the Medicare Prescriptions Drug, Improvement, and Modernization Act of 2003.

S. 1979

At the request of Mr. THOMAS, his name was added as a cosponsor of S. 1979, a bill to amend the Internal Revenue Code of 1986 to prevent the fraudulent avoidance of fuel taxes.

S.J. RES. 26

At the request of Mr. ALLARD, the name of the Senator from Alabama (Mr. SHELBY) was added as a cosponsor of S.J. Res. 26, a joint resolution proposing an amendment to the Constitution of the United States relating to marriage.

S. CON. RES. 81

At the request of Mrs. FEINSTEIN, the name of the Senator from Alaska (Ms. MURKOWSKI) was added as a cosponsor of S. Con. Res. 81, a concurrent resolution expressing the deep concern of Congress regarding the failure of the Islamic Republic of Iran to adhere to its obligations under a safeguards agreement with the International Atomic Energy Agency and the engagement by Iran in activities that appear to be designed to develop nuclear weapons.

S. RES. 54

At the request of Mr. MCCAIN, the name of the Senator from New Jersey (Mr. CORZINE) was added as a cosponsor of S. Res. 54, a resolution to provide Internet access to certain Congressional documents, including certain Congressional Research Service publications, certain Senate gift reports, and Senate and Joint Committee documents.

S. RES. 202

At the request of Mr. CAMPBELL, the name of the Senator from Massachusetts (Mr. KENNEDY) was added as a cosponsor of S. Res. 202, a resolution expressing the sense of the Senate regarding the genocidal Ukraine Famine of 1932–33.

S. RES. 276

At the request of Mrs. FEINSTEIN, the name of the Senator from Vermont (Mr. JEFFORDS) was added as a cosponsor of S. Res. 276, a resolution expressing the sense of the Senate regarding fighting terror and embracing efforts to achieve Israeli-Palestinian peace.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. GRAHAM of Florida:

S. 1980. A bill to amend the Help America Vote Act of 2002 to require a voter-verified permanent record or hardcopy under title III of such Act, and for other purposes; to the Committee on Rules and Administration.

(At the request of Mr. DASCHLE, the following statement was ordered to be printed in the RECORD.)

● Mr. GRAHAM of Florida. Mr. President, today I rise to introduce the Voter Confidence and Increased Accessibility Act.

In 2000, Florida grabbed the national spotlight as an unfortunate example of an electoral process gone awry. The question of who would assume our Nation's highest office became contingent on such things as whether a chad was bulging or hanging. In the aftermath of that debacle, Americans demand that Congress improve the accuracy and integrity of our electoral process. Congress responded with the Help America Vote Act (HAVA), which we passed in 2002.

HAVA aimed to modernize our electoral system and there have been some positive developments. Under the law, States have replaced punch card and lever voting systems with modern computer voting machines. Modernization, however, has failed to overcome all the pitfalls seen in recent elections. In 2002, Floridians were subject to another failure of our electoral process when a software error failed to court approximately 100,000 votes.

As it now stands, computer-voting systems—including the popular touch screen models—are not mandated to include a paper record verifying voter intent. In the absence of a paper trail, confirming the accuracy of a computer voting machine is very difficult, sometimes even impossible. Further, voting irregularities, security intrusions and electronic errors can go unnoticed. We have a duty to our democracy to continue to address challenges that threaten to undermine the security and reliability of our electoral system.

The Voter Confidence & Increased Accessibility Act renews our commitment to fulfilling that obligation. It will take us one step closer to our ultimate goal: ensuring that every vote really counts. This legislation responds to a set of challenges presented by computer voting systems. It would require all voting systems produce a verifiable paper record. States would also be given assistance in meeting this standard through funds dedicated to HAVA.

The Voter Confidence & Increased Accessibility Act also stipulates several other provisions to ensure that every vote really counts. It would prohibit the use of unreported software and wireless communication devices in all voting systems. It would also restrict electronic communications from voting machines, permitting outgoing transmissions of vote totals only.

The legislation specifies that voting systems must comply with these standards in time for the November 2004 general election. In the event that a locality is unable to get their computer voting systems compliant by this deadline, they are authorized to use a paper system as an interim measure. The Federal Government would be authorized to pay the cost of these paper systems for the November 2004 election.

The Voter Confidence & Increased Accessibility Act also requires that individuals with disabilities must be accommodated with electronic voting systems by January 1, 2006, a year earlier than mandated by HAVA. While a paper record of a disabled persons vote is not expressly required, voting systems for disabled persons must include a means for voter verification. In the event a jurisdiction cannot meet this standard, disabled voters must be given the option to utilize a temporary paper system, with the assistance of an aide of their choosing.

Finally, the legislation would require the Election Assistance Commission to conduct unannounced recounts in .5 percent of domestic jurisdictions and .5 percent of overseas jurisdictions. This way, Congress and America's voters can be assured that the election equipment is operating properly, and votes are really being counted.

Creating these new standards will help ensure that our elections accurately reflect the intent of the voting public, and put into place an election system in which Americans can have full confidence.●

By Mrs. CLINTON:

S. 1986. A bill to amend the help America Vote Act of 2002 to require voter verification and improved security for voting systems under title III of the Act, and for other purposes; to the Committee on Rules and Administration.

Mrs. CLINTON. Mr. President, I rise to introduce the Protecting American Democracy Act of 2003, legislation that is vital to ensuring that the voting systems used in our Federal elections are as secure as possible while also ensuring that each and every voter in our Nation has an equal opportunity to verify his or her vote before that vote is cast and permanently recorded. At its core, this legislation will ensure that every vote is properly counted, ensuring the integrity of each vote, which is at the heart of our democracy.

In recent months, there has been discussion about the increasing use of electronic voting systems such as direct recording electronic systems (DREs), the first completely computerized voting systems. Computerized voting systems can have many advantages. As the Congressional Research

Service has reported, they are arguably the most user-friendly and versatile of any current voting system. Among many features, such voting machines can be easily programmed to display ballots in different languages and can be made fully accessible for persons with disabilities, including the visually impaired. They can also prevent overvotes and spoilage of ballots due to extraneous marks since no document ballot is involved. In addition, fully computerized systems have the ability to notify voters of undervotes. Presently, no other kind of voting system possesses so many features. For this reason, it is expected that within the next two years, with funding authorized under the Help America Vote Act of 2002 (''HAVA''), state and local jurisdictions across the country will begin purchasing fully computerized systems.

One of the disadvantages of these electronic voting systems, however, is that they do not give voters an opportunity to verify their votes—to confirm that the voting machinery is registering the vote that the voter intended to cast—before the vote is cast and permanently recorded. In addition, electronic voting systems raise other concerns because of the ability of the software in the voting system to be compromised, or worse, maliciously attacked, by someone who may want to alter the voting results. Indeed, a number of recent studies, including the July 2001 study by Caltech/MIT, the July 2003 study by Johns Hopkins and Rice universities, the September 2003 study by the Science Applications International Corporation, requested by the Governor of Maryland, and the two November 2003 studies conducted by Compuware Corporation and InfoSENTRY, requested by the Ohio Secretary of State, pointed to significant and disturbing security risks in electronic voting systems and related administrative procedures and processes.

That is why in addition to ensuring that voters have an opportunity to verify their vote, it is vital that we improve the security of voting system technology, and that means not only the kind of software that is used but also how, for example, that software is designed, stored, disseminated, updated, field tested, and used in an actual election. This is a developing consensus among computer security experts that not only is the security of electronic voting systems wholly inadequate, but that the security policies and procedures that State and local election officials, voting system vendors, and others use are non-existent, inadequate, or, if they exist, are not followed, which is the same as having no policy at all.

Our Nation is the greatest Nation on earth and it is the leading democracy in the world. Central to that democracy is ability of Americans to have confidence in the voting system used to register and record their votes. This is a fundamental standard that must be met. I have concerns, however, that our Nation is falling short of that standard.

That is why I am today introducing the ''Protecting American Democracy Act of 2003,'' which amends by adding a voter verification requirement for voting systems to give each voter an opportunity to verify his or her vote at the time the vote is cast. Voters will be given an opportunity to correct any error made by the voting system before the permanent voting record is preserved.

While requiring that all election jurisdictions give voters the ability to verify their votes, this legislation also gives States and local jurisdictions the flexibility to employ the most appropriate, accurate, and secure voter verification technologies, which may include voter-verifiable paper ballots, votemeters, modular voting architecture, and/or encrypted votes, for their State or jurisdiction in a uniform and nondiscriminatory manner. Any voter verification method used must ensure that voters with disabilities and other affected voters have the ability to cast their vote in private, and language minorities must have equal access in verifying their vote. This is important if we are to ensure that all Americans—including the more than 20 million voters who are visually impaired, the more than 40 million Americans who lack basic literacy skills, and millions of language minorities—will be able to exercise their constitutional right to vote.

To address critical security issues, the ''Protecting American Democracy Act of 2003'' also amends HAVA by adding a security requirement for voting systems to ensure that voting systems are as secure as possible. Specifically, voting systems must adhere to the security requirements for Federal computer systems as required under current law or, alternatively, more stringent requirements adopted by the Election Assistance Commission. Currently no such requirement exists. I believe that, at minimum, the systems used by the people of the United States to exercise their constitutional right to vote, the hallmark of our democracy, should be at least as secure as the computer systems used by the Federal Government.

The security requirements must also provide that no voting system shall contain any wireless device, which reduces the risk that hackers will be able to attack any electronic voting system. In addition, all software and hardware used in any electronic voting system must be certified by laboratories accredited by the Commission as meeting all security requirements.

The Act also requires the Election Assistance Commission to report to Congress within 6 months of enactment regarding a proposed security review and certification process for all voting systems. Within 3 months of enactment, the Government Accounting Office, unless the Commission has already completed the following report, must issue a report to Congress on the operational and management systems that should be employed to safeguard the security of voting systems, together with a schedule for how quickly each such measure should be implemented.

Lastly, immediately upon enactment, the National Institute of Standards and technology (NIST) must provide security consultation services to State and local jurisdiction. Two million dollars in Fiscal Years 2004 through 2006 are authorized to be appropriated to assist NIST in providing these security consultation services.

I cannot think of a more significant risk to our democracy than for Americans to lack complete confidence in the voting systems used to cast and count their votes in Federal elections. For all those who believe that in a democracy, there is no more important task than assuring the sanctity of votes, this should be an easy step to take to assure it. For this reason, I urge all of my colleagues to support this legislation. I ask unanimous consent that the text of this bill be printed in the RECORD.

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

S. 1986

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

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Protecting American Democracy Act of 2003''.

SEC. 2. REQUIRING VERIFICATION FOR VOTERS.

(a) IN GENERAL.—Section 301(a)(2) of the Help America Vote Act of 2002 (42 U.S.C. 15481(a)(2)) is amended by adding at the end the following new subparagraph:

''(C) VOTER VERIFICATION.—

''(i) The voting system shall provide a means by which each individual voter must be able to verify his or her vote at the time the vote is cast, and shall preserve each vote within the polling place on the day of the election in a manner that ensures the security of the votes as verified for later use in any audit.

''(ii) The voting system shall provide the voter with an opportunity to correct any error made by the system before the permanent record is preserved for use in any audit.

''(iii) The verified vote produced under this subparagraph shall be available as an official record.

''(iv) Any method used to permit the individual voter to verify his or her vote at the time the vote is cast and before a permanent record is created—

''(I) shall use the most accurate technology, which may include voter-verifiable paper ballots, votemeters, modular voting architecture, and encrypted votes, in a uniform and nondiscriminatory manner;

''(II) shall guarantee voters with disabilities and other affected voters the ability to cast a vote in private, consistent with paragraph (3)(A); and

''(III) shall guarantee voters alternative language accessibility under the requirements of section 203 of the Voting Rights Act of 1965 (42 U.S.C. 1973aa–1a), consistent with paragraph (4).''.

SEC. 3. REQUIRING INCREASED SECURITY FOR VOTING SYSTEMS.

(a) Section 301(a) of the Help America Vote Act of 2002 (42 U.S.C. 15481(a)) is amended by

adding at the end the following new paragraph:

''(7) INCREASED SECURITY FOR VOTING SYSTEMS.—

''(A) VOTING SYSTEM SECURITY REQUIREMENT.—The voting system shall adhere to security requirements for Federal computer systems or more stringent requirements adopted by the Election Assistance Commission after receiving recommendations from the Technical Guidelines Development Committee under sections 221 and 222. Such requirements shall provide that no voting system shall contain any wireless device. All software and hardware used in any electronic voting system shall be certified by laboratories accredited by the Commission as meeting the requirements of this subsection.

''(B) REPORT TO CONGRESS ON SECURITY REVIEW.—The Commission, in consultation with the National Institute of Standards and Technology (NIST), shall report to Congress not later than 6 months after the date of enactment of the Protecting American Democracy Act of 2003 regarding a proposed security review and certification process for all voting systems.

''(C) GENERAL ACCOUNTING OFFICE REPORT.—Not later than 3 months after the date of enactment of the Protecting American Democracy Act of 2003, the Government Accounting Office, unless the Commission has previously completed such report, shall issue a report to Congress on the operational and management systems that should be employed to safeguard the security of voting systems, together with a schedule for how quickly each such system should be implemented.

''(D) PROVISION OF SECURITY CONSULTATION SERVICES.—

''(i) IN GENERAL.—On and after the date of enactment of the Protecting American Democracy Act of 2003, the National Institute of Standards and Technology (NIST) shall provide security consultation services to State and local jurisdictions.

''(ii) AUTHORIZATION.—To carry out the purposes of this subparagraph, $2,000,0000 is authorized for each of fiscal years 2004 through 2006.''.

SEC. 4. EFFECTIVE DATE.

The amendments made by this Act shall take effect as if included in the enactment of the Help America Vote Act of 2002.

By Mr. LUGAR:

S. 1987. A bill to implement the obligations of the United States under the Protocol Additional to the Agreement between the United States of America and the International Atomic Energy Agency for the Application of Safeguards in the United States of America, known as ''the Additional Protocol'' signed by the United States on June 12, 1998; to the Committee on Foreign Relations.

Mr. LUGAR. Mr. President, at the request of the administration, I am pleased to introduce the Additional Protocol Implementation Act of 2003. This important legislation is needed to implement the provisions of the Protocol to the Agreement of the International Atomic Energy Agency, IAEA, Regarding Safeguards in the United States.

The United States signed the Additional Protocol in Vienna on June 12, 1998. President Bush submitted the Additional Protocol to the Senate on May 9, 2002. The State Department sent the implementing legislation to us on November 19, 2003, and asked that it be considered in conjunction with the Senate's advice and consent on the Protocol. The adoption of this agreement is an important step in demonstrating U.S. leadership in the fight against the spread of nuclear weapons. The Additional Protocol will provide the United States and the IAEA with another tool as we attempt to secure broader inspection rights in non-nuclear-weapon states that are parties to the Treaty on the Nonproliferation of Nuclear Weapons, NPT.

When the Committee on Foreign Relations reported out the NPT in 1968, it noted that ''the treaty's fundamental purpose is to slow the spread of nuclear weapons by prohibiting the nuclear weapon states which are party to the treaty from transferring nuclear weapons to others, and by barring the non-nuclear weapon countries from receiving, manufacturing, or otherwise acquiring nuclear weapons.'' Since the Senate ratified the NPT, we have seen 188 states join the United States in approving the treaty. But recently we also have seen a disturbing increase in the global availability of nuclear materials and reprocessing and enrichment technology. To ensure that these materials and technologies are devoted only to peaceful purposes, the IAEA must have the power to conduct intrusive inspections at almost any location in a non-nuclear-weapon state to verify state parties' commitments under the NPT.

The world community has learned that existing safeguard arrangements in non-nuclear-weapon states do not provide the IAEA with a complete and accurate picture of possible nuclear weapons-related activities. It is critical that the IAEA have the ability to expand the scope of its activities in states that pose a potential proliferation threat. At this point, the only means at the IAEA's disposal, beyond existing safeguards arrangements, is the Model Additional Protocol.

The United States, as a declared nuclear-weapon state party to the NPT, may exclude the application of IAEA safeguards on its nuclear activities. Under the negotiated Additional Protocol, the United States also has the right to exclude activities and sites of direct national security significance in accordance with its National Security exclusion. This provision is crucial to U.S. acceptance of the Additional Protocol and provides a basis for the protection of U.S. nuclear weapons-related activities, sites, and materials as a declared nuclear power.

The Additional Protocol does not contain any new arms control or disarmament obligations for the United States. While there are increased rights granted to the IAEA for the conduct of inspections in the United States, the administration has assured the committee that the likelihood of an inspection occurring in the United States is very low. Nevertheless, should an inspection under the Additional Protocol be potentially harmful to U.S. national security interests, the United States has the right, through the National Security Exclusion, to prevent such an inspection.

The Committee on Foreign Relations will hold hearings early next year to consider the Additional Protocol. I am confident the Committee will draft a resolution of ratification that will enjoy the support of the senate. Ratification of this treaty and passage of its implementing legislation would be an important demonstration of the U.S. commitment to vigorous and expansive authority for the IAEA in non-nuclear-weapon states.

I am pleased to introduce this legislation today as a statement of the Committee's strong support for aggressive verification capabilities in the global fight against the spread of weapons of mass destruction. I look forward to working closely with my friend, Senator HATCH, Chairman of the Committee on the Judiciary, to construct legislation that protects U.S. national security interests, while strengthening the ability of the IAEA to discover illegal nuclear weapons activities.

the package I send to the desk today contains a letter from the Department of State, the administration's implementing legislation, and a section-by-section analysis, all submitted by the administration.

I ask unanimous consent that the referenced letter and analysis be printed in the RECORD.

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

UNITED STATES DEPARTMENT OF STATE,
Washington, DC.

HON. RICHARD G. LUGAR,
Chairman, Committee on Foreign Relations, United States Senate.

DEAR MR. CHAIRMAN: On behalf of the President, I am pleased to submit for consideration the Administration's recommended text for legislation to implement the Protocol Additional to the Agreement Between the United States of America and the International Atomic Energy Agency for Application of Safeguards in the United States of America (U.S.–IAEA Additional Protocol). The U.S.–IAEA Additional Protocol, signed in Vienna on June 12, 1998, is a bilateral treaty that supplements and amends the Agency verification arrangements under the existing Agreement Between the United States of America and the International Atomic Energy Agency for the Application of Safeguards in the United States of America of November 18, 1977 (the ''Voluntary Offer''), which entered into force on December 9, 1980.

The U.S.–IAEA Additional Protocol contains a number of provisions that require implementing legislation to give them effect within the United States. These include:

Declarations of U.S. civil nuclear activities and related industry;

Restrictions on disclosure of information; and

International inspections of locations in the United States.

The President, in his letter of transmission dated May 9, 2002, stated that the U.S.–IAEA ''Additional Protocol is in the best interests of the United States. Our acceptance of this agreement will sustain our longstanding record of voluntary acceptance of nuclear safeguards and greatly strengthen our ability to promote universal adoption of the

Model Protocol, a central goal of my nuclear nonproliferation policy. Widespread acceptance of the Protocol will contribute significantly to our nonproliferation objectives as well as strengthen U.S., allied and international security.'' We urge the Senate to give early and favorable consideration to the Protocol and the recommended implementing legislation.

The Office of Management and Budget advises that there is no objection to the submission of this proposal and its enactment, is in accord with the President's program.

We hope this information and the enclosed recommended legislation and sectional analysis are helpful. Please let us know if we can be of further assistance.

Sincerely,

PAUL V. KELLY,
Assistant Secretary, Legislative Affairs.

SECTION-BY-SECTION ANALYSIS OF THE PROPOSED ADDITIONAL PROTOCOL TO THE U.S.-IAEA SAFEGUARDS AGREEMENT IMPLEMENTATION ACT OF 2003

OVERVIEW

The Protocol Additional to the Agreement between the United States of America and the International Atomic Energy Agency (IAEA) for the Application of Safeguards in the United States of America (the Additional Protocol) contains a number of provisions that require legislation to give them effect within the United States. These include provisions on the submission to the United States Government of civil nuclear and nuclear-related information by entities identified in Article 2 of the Additional Protocol, and on civil and criminal penalties for failure of such entities to keep or provide such information. The proposed legislation also sets forth procedures for inspections, or ''complementary access,'' by the IAEA at U.S. locations under the Additional Protocol.

The proposed Additional Protocol to the U.S.-IAEA Safeguards Agreement Implementation Act (the Act) contains five miscellaneous sections and six titles. The five miscellaneous sections concern the short title of the Act, the table of contents, Congressional findings, definitions, and a severability clause. Title I provides specific authority for the President to implement and carry out the Act and the Additional Protocol through directing the issuance of necessary regulations. Title II authorizes complementary access at U.S. locations consistent with the Act, and establishes the terms upon which such access may take place. For example, it addresses the notice that must be given to the owner or operator of the inspected location, and the procedures to be followed for seeking access—including obtaining an administrative search warrant where necessary. Title III restricts disclosure of certain information provided pursuant to the Act or the Additional Protocol. Title IV makes it illegal for entities willfully to fail to report information required by regulations pursuant to the Act, and Title V provides for criminal and civil penalties for such violations. Finally, Title VI authorizes appropriation of funds for the Agencies required to carry out responsibilities under the Act.

MISCELLANEOUS SECTIONS

The first part of the Act contains five miscellaneous sections: the short title of the Act, the table of contents, Congressional findings, definitions, and a severability clause. The first two sections are standard provisions. The third section contains seven Congressional findings, which recognize the threat posed by nuclear proliferation, the importance of the Nuclear Non-Proliferation Treaty (NPT), the urgency of strengthening its safeguards system, and the need to implement the U.S.-IAEA Additional Protocol as a means of encouraging other NPT State Parties to accept stricter verification measures. The fourth section provides definitions of key terms as they are used in the Act. In many instances, the same definitions appear in the Additional Protocol, and are therefore cross-referenced. Finally, the fifth section provides that, if any provision of the Act is held invalid, the remainder of the Act shall remain in force. The Administration believes that the Additional Protocol and the Act are fully consistent with the U.S. Constitution, but has included this section as a matter of prudence.

TITLE I—AUTHORIZATION

Title I authorizes the President to implement and carry out the provisions of the Act and the Additional Protocol. This is to be accomplished through an Executive Order designating Agencies to promulgate regulations requiring, inter alia, submission to the United States Government of information specified under Article 2 of the Additional Protocol. This information is necessary for the United States to fulfill its Treaty obligation to provide the IAEA with a broad declaration of its civil nuclear and nuclear-related activities. While the Agencies most likely to issue or amend such regulations are identified in Section 101(a) of the Act, this list is not exclusive.

TITLE II—COMPLEMENTARY ACCESS

Title II sets forth the terms under which complementary access may occur in the United States. Section 201 of the Act makes clear that the IAEA may not conduct complementary access in the United States without the authorization, in accordance with the Act, of the United States Government. It further directs that certain U.S. agencies may not participate in complementary access. These agencies, including the Environmental Protection Agency and the Occupational Safety and Health Administration, are excluded because their employees may detect violations of regulatory schemes wholly unrelated to the Additional Protocol. Section 201 further requires the number of U.S. representatives be kept to a minimum.

Section 202 addresses procedures for complementary access. For example, Section 202(b) sets forth the requirement for the United States Government to provide ''actual written notice'' of a complementary access request, as soon as possible, to the owner, operator, occupant or agent in charge of the location to be inspected. The notice must contain all appropriate information provided by the IAEA concerning the purpose of the access request, the basis for selection of the location, the activities it intends to carry out, the time and duration of the access, and the identities of inspectors. In addition, Section 202(c) requires IAEA and U.S. personnel participating in the complementary access to show their credentials prior to gaining entry to the inspected location.

Section 202(d)(1) states the general rule that IAEA inspectors may conduct all activities specified under Article 6 of the Additional Protocol for the type of location being inspected. However, there are several exceptions to this rule. First, a warrant issued authorizing complementary access at a location may restrict the activities that inspectors may conduct. Second, as indicated in 202(d)(1), the United States Government has certain rights under the Additional Protocol to limit such access. In addition to its right under Article 1(b) of the

Protocol to deny IAEA access to activities with direct national security significance or to location or information associated with such activities, the United States may manage access in connection with such activities, locations or information. These rights are unilateral and absolute; they are not subject to challenge by or negotiation with the IAEA. Furthermore, Article 7 of the Additional Protocol provides for managed access, under arrangements with the IAEA, to prevent the dissemination of proliferation sensitive information, to meet safety or physical protection requirements, or to protect proprietary or commercially sensitive information. Third, Section 202(d)(2) lists a series of items that are specifically excluded from IAEA access. This third set of exceptions, which are mainly directed at protecting commercial information, may not however be enforced if the Additional Protocol requires such disclosure. Section 202(e) requires that all persons participating in complementary access, including U.S. representatives, observe all environmental, health, safety and security regulations applicable for the inspected location.

Section 203 provides the legal framework for IAEA inspectors to gain complementary access to U.S. locations under the Additional Protocol. Section 203(a) sets forth three grounds for such access: warrantless access, where the Fourth Amendment of the U.S. Constitution does not require a warrant; consent to the access by the owner/operator of the location; or, where necessary, obtaining an administrative search warrant. Section 203(a)(2) makes clear that the legislation is intended to impose no warrant requirement beyond that which is required by the Fourth Amendment. Where such a warrant requirement exists, Section 203(a)(1) directs the United States Government first to seek consent to access from the location's owner or operator. The remainder of Section 203 addresses the requirements for obtaining an administrative search warrant, and what such a warrant should contain. Section 203(b)(1) states that the United States Government shall provide to the judge all appropriate information it has received from the IAEA regarding its basis for selecting a particular location for complementary access. A ''judge of the United States'' is defined by the Act to mean a judge or magistrate judge of a district court of the United States. In addition, Section 203(b)(2) requires the United States to submit to the judge a more detailed affidavit showing, among other things, that the Additional Protocol is in force in the United States, applicable to the location to be inspected, and that the complementary access requested is consistent with the provisions of the Additional Protocol, including Article 4 regarding the purpose of the access, and Article 6 regarding its scope. The affidavit must also indicate the anticipated time and duration of the inspection.

Finally, the affidavit must show that the location to be inspected was selected by the IAEA either (i) because there is probable cause, on the basis of specific evidence, to believe that information required to be reported regarding a location pursuant to regulations promulgated under the Act is incorrect or incomplete, and that the location to be accessed contains evidence regarding that violation; or (ii) pursuant to a reasonable general administrative plan developed by the IAEA based upon specific neutral criteria. Selection based on either of these approaches would meet U.S. Constitutional requirements for issuance of a warrant. Section 203 directs that a judge, upon receiving the affidavit, shall promptly issue an administrative search warrant authorizing the requested complementary access. The warrant is to specify the same information as the affidavit, and shall, if known, also include the identities of the IAEA complementary access

team and accompanying U.S. representatives.

TITLE III—CONFIDENTIALITY OF INFORMATION

Title III of the proposed implementing legislation restricts the disclosure of information provided to the United States Government, or to its contractor personnel, pursuant to the Act or the Additional Protocol. For example, Section 301(a) exempts from the Freedom of Information Act (FOIA) disclosure information obtained by the United States Government in implementing the provisions of the Additional Protocol. Thus, information reported to the Government by entities covered by Article 2 of the Additional Protocol, as required by regulation, is not subject to release under the FOIA.

TITLE IV—RECORDKEEPING

Title IV of the proposed implementing legislation prohibits the willful failure of any person to maintain records or submit reports to the United States Government as required by regulations issued under Section 101 of the Act. The prohibitions of Title IV are necessary to implement the Additional Protocol, as the United States is dependent on such reporting to meet its Treaty obligations. A person is defined by the Act very broadly to ensure that all possible entities within the United States are covered.

TITLE V—ENFORCEMENT

Title V of the proposed implementing legislation provides for both civil and criminal penalties for failure to meet the recordkeeping and reporting requirements of Title IV. Violators shall be subject to imprisonment for not more than five years, criminal fines, and civil penalties up to $25,000 per violation. While the Agency issuing the applicable regulations is responsible for their enforcement, an entity subject to civil penalty under this Title may seek judicial review. Title V also provides United States district courts with jurisdiction to specifically enforce Agency orders, either by restraining or compelling action so as to avoid a violation of Title IV.

TITLE VI—AUTHORIZATION OF FUNDS

Title VI of the proposed legislation authorizes the appropriation of such sums as necessary to carry out the purpose of the Act.

By Mr. DASCHLE (for Mr. KERRY (for himself and Mr. KENNEDY)):

S. 1991. A bill to require the reimbursement of members of the Armed Forces or their family members for the costs of protective body armor purchased by or on behalf of members of the Armed Forces; to the Committee on Armed Services.

(At the request of Mr. DASCHLE, the following statement was ordered to be printed in the RECORD).

• Mr. KERRY. Mr. President, it is the responsibility of the military departments to ''organize, train, and equip,'' the armed forces of the United States. Yet, reports indicate that nearly a quarter of the 130,000 U.S. troops in Iraq still wait for the latest ''Interceptor'' body armor, which is a Kevlar vest with ''small-arms protective inserts''—boron carbide ceramic plates—that protect critical organs from weapons fired by assault rifles like the Ak–47s favored by Iraqi insurgents.

While the Congress has taken measures to provide the latest personal protective gear to all U.S. forces in Iraq and Afghanistan, over the last several months we have heard alarming reports of family members scurrying to buy bullet-proof vests to send to their loved ones in Iraq. Military families are patriotic and selfless. Their devotion is no less than that of those serving in harm's way. They have more than enough to worry about, let alone whether or not they can find and buy the gear that might save their child's life. This is the responsibility of the Department of Defense, plain and simple. There is no excuse for their failure.

On November 19, 2003, acting-Secretary of the Army Les Brownlee admitted to Congress that the administration failed to provide basic equipment, like body armor, to all of our forces in Iraq because, as he put it, ''Events since the end of major combat operations in Iraq have differed from our expectations and have combined to cause problems.'' The Washington Post reported recently that, ''Going into the war in Iraq, the Army decided to outfit only dismounted combat soldiers with the plated vests, which cost about $1,500 each. But when Iraqi insurgents began ambushing convoys and killing clerks as well as combat troops, controversy erupted.'' I ask unanimous consent that the full text of this article be included in the RECORD.

Stories abound of family members, fathers and mothers, wives, and others paying for personal body armor out of their own pockets and shipping the much needed equipment to Iraq. Consider the case of Mimi McCreary of Victorville, CA, whose son Olaf received his bullet-proof vest not from his reserve unit, but from his colleagues on the Clinton, SC, police department. Or consider the 120 members of the National Guard from Marin County, CA, who were unsure of when their body armor would be made available. Instead of letting their neighbors go off to war, the men and women of law enforcement in Marin County donated more than 60 vests so that they would have ''at least some protection.'' Or consider Army Specialist Richard Murphy of Sciota, PA, whose parents, Susan and Joe Werfelman, purchased the ceramic plates missing from their son's vest. According to Murphy's stepfather, he ''called us frantically three or four times on this . . . We said, ''If the Army is not going to protect him, we've got to do it.''

We owe Mr. and Mrs. Werfelman and Mrs. McCreary and every other military family an incredible debt of gratitude. They raised children who believe in this country and are risking all in service to it. The last thing we should ask of them now is to take money out of their own pockets to buy the gear their kids should have had in the first place. But that's exactly what poor planning has led to.

The legislation I introduce today with Senator KENNEDY requires the Department of Defense to reimburse family members who paid money out of their own pockets to provide the personal body armor that the government failed to provide our troops. Lives and blood will always be the cost of war. But it is a dereliction of duty to send anyone into harm's way without basic protective gear, and it is disgusting for family members to have to take this burden of outfitting their loved ones for war. This grateful Nation must make right by those family members and reimburse their expenses in providing these materials to their sons and daughters, husbands and wives. Let families send pictures and letters from home. The Department of Defense should provide the gear.

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

[From the Washington Post, Dec. 4, 2003]

BODY ARMOR SAVES LIVES IN IRAQ

(By Vernon Loeb and Theola Labbé)

BAGHDAD.—Pfc. Gregory Stovall felt the explosion on his face. He was standing in the turret of a Humvee, manning a machine gun, when the roadside bomb went off. At the time, he was guarding a convoy of trucks making a mail run. In an instant, Stovall's face was perforated by shrapnel, the index finger on his right hand was gone, and the middle finger was hanging by a tendon. But the 22-year-old from Brooklyn remembers instinctively reaching for his chest and stomach—''to make sure everything was there,'' he said. It was, encased in a Kevlar vest reinforced by boron carbide ceramic plates that are so hard they can stop AK–47 rounds traveling 2,750 feet per second. Thus, on the morning of Nov. 4, Stovall became the latest in a long line of soldiers serving in Iraq to be saved by the U.S. military's new Interceptor body armor.

This high-tech ''system''—the Kevlar vest and ''small-arms protective inserts,'' which the troops call SAPI plates—is dramatically reducing the kind of torso injuries that have killed soldiers on the battlefield in wars past.

Soldiers will not patrol without the armor—if they can get it. But as of now, there is not enough to go around. Going into the war in Iraq, the Army decided to outfit only dismounted combat soldiers with the plated vests, which cost about $1,500 each. But when Iraqi insurgents began ambushing convoys and killing clerks as well as combat troops, controversy erupted.

Last month, Rep. TED STRICKLAND (D-Ohio) and 102 other House members wrote to Rep. DUNCAN HUNGER (R-Calif.), chairman of the House Armed Services Committee, to demand hearings on why the Pentagon had been unable to provide all U.S. service members in Iraq with the latest body armor. In the letter, the lawmakers cited reports that soldiers' parents had been purchasing body armor with ceramic plates and sending it to their children in Iraq.

The demand came after Gen. John Abizaid, head of the U.S. Central Command and commander of all military forces in Iraq, told a House Appropriations subcommittee in September that he could not ''answer for the record why we started this war with protective vests that were in short supply.''

With the armor, ''it's the difference between being hit with a fist or with a knife,'' said Ben Gonzalez, chief of the emergency room at the 28th Combat Support Hospital in Baghdad, the largest U.S. Army hospital in the country, which treats the majority of wounded soldiers.

Jonathan Turley, a law professor at George Washington University, began investigating the Army's decision not to equip all troops deploying to Iraq with Interceptor body armor after learning that one of his students, reservist Richard Murphy, was in the

country with a Vietnam-era flak jacket. ''There's been an overwhelming effort to get the military every possible resource,'' Turley said. ''To have such an item denied to troops in Iraq was a terrible oversight.'' Since he began publicizing the lack of body armor, Turley said, he has been deluged with e-mails from people offering to donate body armor to U.S. troops.

Joe Werfelman, the father of Turley's student, said he was dismayed to learn that his son had been sent to Iraq in May without ceramic plates. ''He called us frantically three or four times on this,'' Werfelman said in an interview. ''We said, 'If the Army is not going to protect him, we've got to do it.' '' So Werfelman, of Scotia, Pa., found a New Jersey company that had the ceramic plates in stock, plunked down $660 for two plates and a carrying case, and sent them to his son. ''As far as I know, he's still using the ones that we got him'' he said. ''Some units have the new plates and some units don't.''

At a hearing of the Senate Armed Services Committee on Nov. 19, Sen. JOHN W. WARNER (R-Va.), the committee's chairman, told Acting Army Secretary Les Brownlee that the shortage of body armor in Iraq was ''totally unacceptable.'' ''Now, where was the error—and I say it's an error made in planning—to send those troops to forward-deployed regions, and the conflict in Iraq, without adequate numbers of body armor?'' Warner asked. ''Events since the end of major combat operations in Iraq have differed from our expectations and have combined to cause problems,'' Brownlee said. Before approving the administration's $87 billion supplemental bill for Iraq and Afghanistan, Congress added hundreds of millions of dollars for more body armor, armored Humvees, and other systems to protect soldiers from roadside bombs and ambushes.

Now, three manufacturers are working overtime to produce the 80,000 vests and 160,000 plates required to outfit everyone in Iraq by the end of the year. Assembly lines are producing 25,000 sets a month.

Commanders say the vests are changing the way soldiers think and act in combat. ''I will tell you that the soldiers—to include this one—experience some degree of feeling a little indestructible, particularly in light of the fact that we have seen the equipment work,'' said Lt Col. Henry Arnold, a battalion commander and combat veteran in the 101st Airborne Division in northern Iraq. ''It's a security blanket,'' Stovall said from his hospital bed, awaiting a medevac flight to Germany with his hand bandaged. ''If only they had a glove, I might have my finger, but I'm thankful that I'm here.''

The product of a five-year military research effort aimed at reducing the weight and cost of the plates while increasing their strength, the body armor made its combat debut last year in Afghanistan and was credited with saving more than a dozen lives during Operation Anaconda. The camouflage Kevlar vest, which alone can stop rounds from a 9mm handgun, weighs 8.4 pounds, while each of the plates weighs 4 pounds. At 16.4 pounds, Interceptor body armor is a third lighter than the 25-pound flak jacket from the Vietnam era, but it provides far more protection.

Consider the case of Charlie Company, 1st Battalion, 505th Parachute Infantry Regiment of the 82nd Airborne Division. During a foot patrol in Fallujah in late September, an Iraqi insurgent suddenly emerged from an alleyway and fired an AK–47 at Spec. John Fox from point-blank range. Fox was hit in the stomach as he returned fire, and the blast knocked him off his feet. The bullet hit the middle of three ammunition magazines hanging from the front of his Kevlar vet, igniting tracer rounds and setting off a smoke grenade. A thick gray plume poured from his vest where he lay. His squad mates, having shot and killed the gunman, rushed to his side. ''Am I bleeding? Am I bleeding?'' they recalled Fox asking. They checked and discovered he was unharmed. His body armor had protected him not only from the AK–47 round by also from his own exploding munitions. ''Fox must have been only 10, 15 meters from this guy,'' recalled St. Roger Vasquez. ''And this thing stopped the bullet.''

A month later, two of those who had rushed to Fox's side, Spec. Sean Bargmann and Spec. Joseph Rodriguez, were on a mounted patrol in Fallujah, sitting atop a Humvee, when a powerful roadside bomb exploded just feet away. ''It felt like somebody took a Louisville Slugger to my head,'' Bargmann said. Weeks after the attack, he and Rodriguez still bore the outlines of their armor: The tops of their head, protected by their Kevlar helmets, and their torsos, protected by their body armor, were unscathed. But Bargmann had a deep cut right below the helmet line, and Rodriguez had three scars running down his right cheek and a scar above his left eye.

This often happens with body armor: Lives are saved, but faces, arms and legs are punctured and scarred. Doctors are treating serious wound to the extremities that are creating large numbers of amputees—soldiers who in earlier wars never would have made it off the battlefield. Gonzalez, the doctor at the 28th Combat Support Hospital, is not complaining about the number of amputations. ''The survival rate has increased significantly,'' he said. ''In the past, you'd see head and chest and abdominal injuries. They would die even before they got to me.''

Sgt. Gary Frisbee of the 2nd Armored Cavalry Regiment remembers standing in the turret of a Humvee waiting to die. His vehicle was bringing up the rear during a routine three-vehicle patrol in Sadr City, Baghdad's vast Shiite slum, when hundreds of armed followers of the Shiite cleric Moqtada Sadr opened fire on them with AK–47s and rocket-propelled grenades. ''I knew it was all over; it was just a matter of when,'' he recalled. ''You're bracing yourself, because you're just waiting for the bullet to hit you. The volume of AK fire was unreal, from the roofs, in front of your, and behind you.'' Two of 10 soldiers on the patrol were killed; four were wounded. During the battle, Frisbee felt something hit the back of his Kelvar vest but kept on fighting. When the smoke finally cleared, he pulled out the back plate to see what had happened and found a bullet hole. It has been, as he had thought, just a matter of time. He had been hit—and saved by boron carbide.●

By Mr. KENNEDY:

S. 1992. A bill to amend the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 to eliminate privatization of the medicare program, to improve the medicare prescription drug benefit, to repeal health savings accounts, and for other purposes; to the Committee on Finance.

Mr. KENNEDY. Mr. President, today, along with Senator BOB GRAHAM I am introducing the ''Defense of Medicare and Real Prescription Drug Benefit Act.'' Congressman JOHN DINGELL is introducing companion legislation in the House of Representatives.

The more senior citizens learn about the legislation President Bush has just signed, the more concerned they are. It's a sweetheart deal for big insurance companies and pharmaceutical companies and a raw deal for senior citizens. It's not really a prescription drug bill. It's an anti-Medicare bill.

Our legislation will reverse these destructive policies. Our legislation will protect and preserve Medicare—not turn senior citizens over to the un-tender mercies of HMOs and insurance companies. It will provide prescription drug benefit for senior citizens, without coverage gaps or hidden loopholes. It will protect senior citizens with good retirement coverage from a former employer, and it will protect the poorest of the poor on Medicaid. It will reduce prescription drug costs, by allowing safe importation of drugs from Canada and government negotiations with drug companies for discounts. And it will repeal the program of Health Savings Accounts that help the healthy, wealthy and insurance companies who have contributed heavily to the Republican Party, while harming every family that needs comprehensive, affordable health insurance.

The legislation the President signed is designed to destroy Medicare and turn senior citizens over to the un-tender mercies of HMOs. Our legislation will protect Medicare.

The legislation the President signed provides a skimpy, inadequate, and unreliable drug benefit. Our legislation provides comprehensive drug coverage and assures that senior citizens can get it everywhere in the country without having to join an HMO or other private plan.

The legislation the President signed denies senior citizens the right to get safe drugs at lower prices from Canada and prohibits the government from negotiating with drug companies to get a good deal for senior citizens. This legislation eliminates those special interest, anti-senior provisions.

The legislation the President signed allows unfettered Heath Savings Accounts. These accounts are a bonanza for the healthy, the wealthy, and for favored insurance companies, but they are a disaster for ordinary citizens who need comprehensive coverage and can't afford to put thousands of dollars aside to meet medical needs that insurance is supposed to cover. This legislation repeals this unwise policy.

Senior citizens want prescription drug coverage under Medicare, and they deserve it. Instead, the President and the Republican Party used their control of Congress to attack Medicare itself and force senior citizens into HMOs and other private insurance plans. They want to privatize Medicare, and if they get away with it, they'll try to privatize Social Security too.

Their legislation raises Medicare payments to HMOs so that Medicare can't compete. They use the elderly's own Medicare money to undermine the Medicare program they depend on. According to estimates of the Medicare Actuary, Medicare already pays 16 percent too much for every senior citizen

who joins an HMO or other private insurance plan, because these programs attract the healthiest elderly. IN addition, the Republican legislation raises the base payment to 109 percent of what it costs Medicare to care for an average senior citizen, without even taking into account the health selection bonus the HMOs receive. The total overpayment is 25 percent—a whopping $2,000 per senior citizen. And to top it all off, the legislation establishes a $12 billion slush fund for the new PPO program established by the bill. This isn't competition, its corporate welfare—and senior citizens and the Medicare program are the losers.

Their legislation also creates a vast social experiment—called the ''premium support'' program—using millions of senior citizens as guinea pigs. The sole purpose of the experiment is to raise Medicare premiums so that senior citizens have to give up their Medicare and join an HMO.

Our legislation eliminates these indefensible overpayments and restores parity to the competition between conventional Medicare and private sector alternatives. It repeals the premium support program, so that senior citizens will have choice, not coercion, when they decide whether they prefer conventional Medicare or an HMO.

The assistance with prescription drug costs their program provides is actually very little. Overall, it covers less than 25 percent of the drug expenses faced by the elderly. Senior citizens with $1,000 in drug expenses would pay 86 percent of the cost out of their own pockets. Those with $5,000 in drug expenses would pay 78 percent. When senior citizens' drug costs exceed $2,250, they get no benefits at all until their costs reach $5,100, even though they have to continue to pay premiums. And senior citizens won't necessarily have access to the drugs their doctor's prescribe, if they aren't on the formularies of the private insurance companies that will administer the benefit. A bus ticket to Canada would do more to reduce drug costs for senior citizens than this bill.

Our legislation fills the gaps in the Medicare benefit, so that it truly meets the needs of the elderly and is comparable to the assistance provided under most private insurance plans and that is available to every member of Congress. It assures that the formularies offered by the insurance companies administering the program are not manipulated by the companies to exclude the drugs senior citizens need most.

Nine million senior citizens—almost one of every four—will actually be worse off in their drug coverage under the Bush program than they are today. According to the nonpartisan Congressional Budget Office, almost 3 million senior citizens with good retiree drug coverage through a former employer will lose it as the result of this bill. Six million senior citizens and the disabled who have both Medicare and Medicaid—the poorest of the poor—will actually pay more and have reduced access to the drugs they need. The Bush plan establishes a cruel and demeaning assets test, so that millions of senior citizens with very low incomes are disqualified from the special assistance they need, simply because they have managed to save a little bit for a rainy day, or because they have a car that's worth too much or a burial fund, or personal property like jewelry or furniture.

Our legislation addresses these problems. It ends the discriminatory treatment of senior citizens with private retirement coverage, so that employers do not have an incentive to drop this coverage. It restores benefits to dual eligibles—senior citizens with coverage under both Medicare and Medicaid—so that they will not be made worse off by the new program. It eliminates the assets test.

The Republican bill does nothing about escalating drug prices. Republicans even had the nerve to include a specific prohibition on any role by the Federal government in any negotiation on drug prices. The Congressional Budget Office has estimated that drug prices will actually increase as the result of this bill. No wonder drug company stocks are soaring and senior citizens are concerned. Our legislation will allow reimportation of drugs from Canada—where drug prices are much lower—with stringent controls to assure that any imported drugs meet FDA standards. It will allow the Federal government to negotiate the best possible price for prescription drugs, so that senior citizens and the Medicare program are no longer victimized by exorbitant prices that have little relationship to costs or value.

It's not just seniors who are very concerned. Younger Americans will be hurt too. A separate booby trap in the Republican program includes tax breaks for the healthy and wealthy to buy private policies with very high deductibles that will undermine health insurance for those who are not elderly. These tax breaks, called health savings accounts, encourage people to buy high deductible policies and put money aside in a tax-free savings account. Because the healthy people don't contribute to the cost of regular insurance, premiums skyrocket for people who can't afford thousands of dollars in out-of-pocket costs before their insurance kicks in. The Urban Institute and the American Academy of Actuaries have estimated that premiums for regular insurance policies could increase 60 percent or more. Our bill repeals this unjustified and destructive policy.

The President's signing of the Republican legislation yesterday was the beginning of this fight, not the end. We will never rest until we have protected Medicare and provided senior citizens a prescription drug benefit that truly meets their needs.

I ask unanimous consent that a summary of the ''Defense of Medicare and Real Prescription Drug Benefit Act'' be printed in the RECORD.

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

SUMMARY: PROVISIONS OF THE DEFENSE OF MEDICARE AND REAL MEDICARE PRESCRIPTION DRUG BENEFIT ACT

Title 1: Defense of Medicare

Repeals the premium support demonstration.

Requires risk adjustment between private sector plans and Medicare. Medicare will pay private sector plans an amount reflecting Medicare's cost for covering an individual, rather than paying HMOs a large markup as a result of failing to adjust for the better health of senior citizens who join HMOs.

Repeals PPO slush fund.

Pays all private sector plans an amount equivalent to average Medicare costs, rather than paying an average of 109 percent of Medicare costs, as provided under the current legislation. Phased in over 5 years.

Repeals Medicare spending cap.

Title II: Establishment of Real Medicare Prescription Drug benefit

Elminates coverage gap in 2006–2008, beneficiaries will pay 75 percent coinsurance in the coverage gap. In 2009–2011, they will pay 50 percent. In 2012 and subsequent years, they will pay the same 25 percent copayment as under the initial coverage limit.

Eliminates discriminatory treatment of employer plans.

Allows Medicaid wrap-around for dual eligibles.

Eliminates assets test.

Requires two stand-alone prescription drug plans to avoid federal fallback.

Secretary defines classes and categories under any formula.

Repeals prohibition on Medigap coverage of prescription drugs. Modifies current Medigap policies covering drugs to wrap-around new benefit.

Phases out elimination of state ''clawback.''

Title III: Reduction in Prescription Drug Prices

Allows reimportation from Canada with certification and inspection of Canadian exporters to assure safety of drugs.

Repeals prohibition on government negotiating directly with drug companies for best prices and gives authority for such negotiations.

Title VI: Repeals Health Savings Accounts

By Mr. WARNER (for himself and Mrs. CLINTON):

S. 1993. A bill to amend title 23, United States Code, to provide a highway safety improvement program that includes incentives ot States to enact primary safety belt laws; to the Committee on Environment and Public Works.

Mr. WARNER. Mr. President, I am pleased to introduce today with my distinguished colleague from New York, Senator CLINTON, the National Highway Safety Act of 2003. It would be our intention in the course of the deliberations next year on the reauthorization or, as we call it, the successive piece of legislation to TEA–21, that this bill, which we introduce today, would be incorporated as an amendment.

As the Congress prepares to consider legislation next year to enact a new 6-year surface transportation law to succeed TEA–21, our foremost responsibility, in my judgment and in the judgment of many, and in the judgment of the President of the United States, must be to improve highway safety for the driving public. Simply by increasing the number of Americans who will buckle up is the most effective step that can be taken to save the their lives and the lives of others. That is the single most important step.

I am privileged to serve on the Environment and Public Works Committee that has now completed its markup of the TEA–21 reauthorization bill. The bill addresses, as it should, highway safety measures, such as how to build safer roads, how to do use new technologies to improve safety. But, statistics show that the greatest measure of safety, again, to drivers, passengers, and possibly third parties not connected with the vehicle, is through the use of a seatbelt. It is remarkable, the lives that have been saved through the use of this simple device. I have, through my career in the Senate—I say with modesty—been associated with, and indeed I think in the forefront of, trying to move forward on seatbelt legislation. I will not belabor what this humble Senator has done working with others through the years, but we are very proud today that America has about a 79 percent use rate of seatbelts. That has been translated into the saving of tens of thousands of lives and injuries in automobile accidents.

Those are the facts. Are we just going to have a standstill, or are we going to move forward? Senator CLINTON and I think we should move forward with this somewhat new approach. I will address the technical aspects as we go along.

We have debated the benefits of seatbelt use on many occasions in this body, and elsewhere across America. And whether it is in the town forums we conduct, town meetings, or here on the floor of the Senate, there is always that individual who comes back: Don't tell me what I have to do. What does it matter to you, JOHN WARNER—or to any other colleague with whom I am privileged to serve—what does it matter to you whether I buckle up?

Well, let's take a look. No one disputes that the absence of a seatbelt causes more serious loss of life and injury and, to some extent, crashes. The statistics show that with the impact associated with the crash, to the extent the driver can maintain, as best he can control of the vehicle in those fatal microseconds, often fatal, perhaps the severity of the crash, and perhaps the loss of life can be reduced by the use of a safety belt—simply said.

Accidents involving unbelted drivers result in a significant cost to the wallet, out of your pocket. Many people are rushed from the accident scene to various emergency facilities. All of that has the initial cost of the law enforcement that responds, the rescue squads that respond, and eventually the emergency room or whatever medical facility you might have the good fortune to be taken to, to hopefully save you your life. That isn't free. There is a cost. Maybe it is a hidden cost in the budgets of the towns and the communities and the States, but there is definitely a cost. Regrettably, a number of persons who suffer those types of injuries are uninsured. Again, the cost often devolves down on the good old hard-working taxpayers; in most instances, the taxpayers who buckle up.

This also is rather interesting and fascinating. When an accident happens, regrettably, on our roads and highways across this great Nation, we try to refrain from rubbernecking. Nevertheless, chances are that we take a glance. More often than not, the accident with the combined slowdown of those passing the accident causes significant congestion for some considerable portion of time. Either the lane in which we are traveling moves very slowly because of the accident or, indeed, we come to a standstill, as often is the case when a lane is closed to clear an accident. That standstill frequently is necessitated because of the severity of the injuries experienced in that accident. It takes the response team longer in their carefully trained steps to extricate the injured person, to give the initial treatment, and then to carefully transport that individual, if necessary, to a medical facility. That takes time. That road is backed up.

That is lost time for your mission on the road, be it for business, family, or pleasure. That is lost time and productivity. Behind you often are trucks and other vehicles involved in commerce. That is lost time and delay due to the seriousness occasioned by injuries and accidents where there has been the lack of use of seatbelts. It is as simple as that.

The legislation Senator CLINTON and I are introducing today will take an important step forward for the States to adopt either a primary safety belt law, or take steps of their own devising to meet a 90 percent seat belt use rate—not the Warner-Clinton bill or the legislative measure put forth by the administration upon which Senator CLINTON and I draw for concepts of certain portions. The States can decide for themselves how they achieve a 90-percent goal of the use of seatbelts in their respective States. That is the purpose of this legislation—to move every State to a 90-percent use rate for safety belts.

In a letter dated November 12, 2003, to Chairman INHOFE of the Committee on the Environment and Public Works, on which I am privileged to serve, Secretary Mineta states:

> President Bush and I believe that increasing safety belt usage rates is the single most effective means to decrease highway fatalities and injuries.

That is explicit and clear. The Secretary goes on to say:

> The surest way for a State to increase safety belt usage is through the passage of a primary safety belt law.

I have had this debate with Governors, former Governors, even in this Chamber with former Governors. I think they would tell you that a primary safety belt law is a tough piece of State legislation to pass solely on its own. Frankly, it needs the impetus of Uncle Sam, the impetus of the Congress of the United States to move that process in the States forward, so the local politicians can shake their fist saying, it is Washington that has done it again—more regulation, more direction—you know the arguments. But I think quietly in the hearts of those State legislatures is the thought that we will improve safety in my State. We will improve the chance of survivability on the roads in my State. So that is why we are here today. I ask unanimous consent that the full text of Secretary Mineta's letter be printed in the RECORD at the conclusion of my remarks.

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

Mr. WARNER. As provided in our legislation, the Warner-Clinton bill, States can increase seatbelt use either by enacting, as I said, a primary seatbelt law—everybody knows what a primary seatbelt law is and how it works. It means a law enforcement officer can literally stop a vehicle if they observe that the individual is not wearing his or her seatbelt. It is as simple as that. But a State, if they decide not to enact a primary safety belt law, can, by implementing their own strategies, whatever they may be—and there is a lot of innovation out in the States—that would result in a 90-percent safety belt use rate. So that is a challenge to the States.

The current national belt use, as I said, is 79 percent. But many States—those that have the primary law are sometimes at 90, or even above 90, but those that do not have the primary seatbelt law are down sometimes in the 60 percentile. It is the weight of the primary States that carries the percentile and brings it up to 79 from those States that don't have an effective law. States with their primary safety belt law have the greatest success for drivers wearing seatbelts.

On an average, States with the primary seatbelt law have a 10 to 15 percent higher seatbelt use compared to those with a secondary system. This demonstrates that secondary seatbelt

laws are far more limited in their effectiveness than a primary law.

Essentially, the secondary laws say that if a law enforcement officer has cause other than a perceived or actual seatbelt violation—namely, the driver didn't have it buckled—if they have cause to stop that car, for example, for a speeding offense or a reckless driving offense or indeed an accident and they observed there has been no use of the seatbelt, then in the course of proceeding to enforce the several laws of the State as regards speeding or reckless driving, or whatever the case may be, they can add a second penalty to address the absence of the use of the seatbelt in that State.

Drivers are gamblers. They say: Oh, well, don't worry, I will not buckle up. State law doesn't require it. Unless they stop me—and they are not going to stop me today. It is that gambling attitude that, more often than not, will cause an accident. Then it is too late.

So we come forward today to build on our national programs. We are building on what we did in TEA–21. I was privileged to be on the committee. I was chairman of the subcommittee 6 years ago. I worked with Senator CHAFEE, who was chairman of the full committee, and we drove hard to make progress with the seatbelt laws, and we did it. We basically put aside a very considerable sum of money to encourage States—again, using their own devices—to increase uses. As a direct consequence of what we did in TEA–21, there has been an 11 percent increase in these 6 years in the use of seatbelts.

Sadly, traffic deaths in 2002 rose to the highest level in over a decade. It is astonishing. Of the nearly 43,000 people killed on our highways, over half were not wearing their seatbelts. That is according to the National Highway Traffic Safety Administration. And 9,200 of these deaths might have been prevented if the safety belt had been used.

Those are alarming statistics. Automobile crashes are the leading cause of death for Americans age 2 to 34. Stop to think of that: age 2, that means a child; that means a parent neglected to buckle up a child. Automobile crashes are the leading cause of death for Americans age 2 to 34. That is our Nation's youth. Do we have a higher calling in the Congress of the United States than to do everything we can to foster the dreams and ambitions and the productivity of our Nation's youth? I think not. And this is one of the ways.

Last year, 6 out of 10 children who died in car crashes did not have the belt on—6 out of 10; that is over half. I plead with colleagues to join with me, join with the President who has taken this initiative.

My primary responsibility in the Senate—and this is one of the reasons I got interested in this subject—is the welfare of the men and women in the Armed Forces. I say to colleagues, again, the statistics are tragic. Traffic fatalities are the leading non-combat cause of death for our soldiers, sailors, airmen, and marines. They are in that high-risk age category, 18 to 35.

Someone even took a look at the statistics, the total of the fatalities last year, and said that represents in deaths approximately the size of the average U.S. Army battalion. That is several companies and maybe a reinforced element. Just think, that is the magnitude in one category of those who serve our United States, the men and women in the Armed Forces.

I cannot think of any reason why we all cannot join behind this effort. That alone is a driving impetus for this Senator.

The time is long overdue for a national policy to strengthen seatbelt use rates. I said a national policy, and that is what this bill represents, either through States enacting a primary seatbelt law or giving far greater attention to public awareness programs that result in more drivers and passengers wearing safety belts. Our goal is 90 percent—90 percent.

I have been privileged to serve on this committee 17 years, and I, together with many others, notably my dear friend and late chairman, Senator Chafee, addressed this issue. Our committee is rich in the history of focusing revenue from the highway trust fund on effective safety programs. It goes back through many chairmen and members of the committee.

With jurisdiction over the largest share of the highway trust fund, our committee has had the vision to tackle important national safety problems. Regrettably, I report to you that the recent markup of the committee on the proposed successor to the TEA–21 legislation, which we will take up next year, does provide more funding to help build safer roads—that is a step forward—but it does not have, in my judgment, that provision which represents a step up from what we did in TEA–21, that provision that would represent a recognition for the President's initiative. He has taken a decidedly strong initiative to increase the use of seatbelts. It is absent from the bill, and that is why, I say respectfully to Chairman INHOFE and others on that committee, we need a provision to strengthen and to move forward the position of the Congress on the issue of increased use of safety belts. That is the purpose of this legislation.

It is just unfortunate, but those with reckless intent quickly disregard responsible behavior and drive unbelted at excessive speeds and many times with the use of alcohol. So no increased dollars for improved road engineering, which is in this bill, can defy in many instances and the type of personal conduct that results in reckless behavior. It is as simple as that.

Our automobiles now come equipped with crash avoidance technologies and are more crashworthy than ever before, but these advances are only part of the solution.

In repeated testimony before the Environment and Public Works Committee, from the administration, our States, safety groups, and the highway insurance industry, we are told that three main causes of traffic deaths and injuries are unbelted drivers, speed, and alcohol.

The formula we have devised in this legislation does have a reduction in the amount a State receives under this proposed bill that we will consider next year when they fail to achieve the 90 percent safety belt use rate. It is as simple as that. But the formula is patterned directly after the law that is on the books now with respect to the .08 legal blood alcohol content level.

The net effect of this legislation is simply to recognize we are asking that the same type of sanction policy with regard to one of the three major causes of death—alcohol—be equated to a second cause of death and injury, and that is absence of the use of seatbelts, bringing into parallel two of the three principal causes of death and injury on today's highways.

The administration put forward an innovative safety belt program, as I said, under the leadership of the President that was a major component of their new core transportation program, the Highway Safety Improvement Program. Regrettably, this recommendation is not included in the bill that will come before my committee next year as a consequence of the markup seeking reauthorization of TEA–21.

The proposed reauthorization bill also does not include the current program, the Safety Belt Incentive Grant program, that we even had in the previous highway bill, of which I was primarily one of the authors. Not only are we not going forward, but in a sense we are stepping backwards. I just cannot understand how we can, as a body, not observe our responsibility to do what we can to provide the necessary incentive to the States to take these steps.

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

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

S. 1993

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

SECTION 1. SHORT TITLE.

This Act may be cited as the ''National Highway Safety Act of 2003''.

SEC. 2. HIGHWAY SAFETY IMPROVEMENT PROGRAM.

(a) SAFETY IMPROVEMENT.—

(1) IN GENERAL.—Section 148 of title 23, United States Code, is amended to read as follows:

''§ 148. Highway safety improvement program

''(a) DEFINITIONS.—In this section:

''(1) HIGHWAY SAFETY IMPROVEMENT PROGRAM.—The term 'highway safety improvement program' means the program carried out under this section.

''(2) HIGHWAY SAFETY IMPROVEMENT PROJECT.—

''(A) IN GENERAL.—The term 'highway safety improvement project' means a project described in the State strategic highway safety plan that—

''(i) corrects or improves a hazardous road location or feature; or

''(ii) addresses a highway safety problem.

''(B) INCLUSIONS.—The term 'highway safety improvement project' includes a project for—

''(i) an intersection safety improvement;

''(ii) pavement and shoulder widening (including addition of a passing lane to remedy an unsafe condition);

''(iii) installation of rumble strips or another warning device, if the rumble strips or other warning devices do not adversely affect the safety or mobility of bicyclists and pedestrians;

''(iv) installation of a skid-resistant surface at an intersection or other location with a high frequency of accidents;

''(v) an improvement for pedestrian or bicyclist safety;

''(vi)(I) construction of any project for the elimination of hazards at a railway-highway crossing that is eligible for funding under section 130, including the separation or protection of grades at railway-highway crossings;

''(II) construction of a railway-highway crossing safety feature; or

''(III) the conduct of a model traffic enforcement activity at a railway-highway crossing;

''(vii) construction of a traffic calming feature;

''(viii) elimination of a roadside obstacle;

''(ix) improvement of highway signage and pavement markings;

''(x) installation of a priority control system for emergency vehicles at signalized intersections;

''(xi) installation of a traffic control or other warning device at a location with high accident potential;

''(xii) safety-conscious planning;

''(xiii) improvement in the collection and analysis of crash data;

''(xiv) planning, equipment, operational activities, or traffic enforcement activities (including police assistance) relating to workzone safety;

''(xv) installation of guardrails, barriers (including barriers between construction work zones and traffic lanes for the safety of motorists and workers), and crash attenuators;

''(xvi) the addition or retrofitting of structures or other measures to eliminate or reduce accidents involving vehicles and wildlife; or

''(xvii) installation and maintenance of signs (including fluorescent, yellow-green signs) at pedestrian-bicycle crossings and in school zones.

''(3) PRIMARY SAFETY BELT LAW.—The term 'primary safety belt law' means a law that authorizes a law enforcement officer to issue a citation for the failure of the operator of, or any passenger in, a motor vehicle to wear a safety belt as required by State law, based solely on that failure and without regard to whether there is any other violation of law.

''(4) SAFETY PROJECT UNDER ANY OTHER SECTION.—

''(A) IN GENERAL.—The term 'safety project under any other section' means a project carried out for the purpose of safety under any other section of this title.

''(B) INCLUSION.—The term 'safety project under any other section' includes a project to—

''(i) promote the awareness of the public and educate the public concerning highway safety matters; or

''(ii) enforce highway safety laws.

''(5) STATE HIGHWAY SAFETY IMPROVEMENT PROGRAM.—The term 'State highway safety improvement program' means projects or strategies included in the State strategic highway safety plan carried out as part of the State transportation improvement program under section 135(f).

''(6) STATE STRATEGIC HIGHWAY SAFETY PLAN.—The term 'State strategic highway safety plan' means a plan developed by the State transportation department that—

''(A) is developed after consultation with—

''(i) a highway safety representative of the Governor of the State;

''(ii) regional transportation planning organizations, if any;

''(iii) representatives of major modes of transportation;

''(iv) local traffic enforcement officials;

''(v) persons responsible for administering section 130 at the State level;

''(vi) representatives conducting Operation Lifesaver;

''(vii) representatives conducting a motor carrier safety program under section 31104 or 31107 of title 49;

''(viii) motor vehicle administration agencies; and

''(ix) other major State and local safety stakeholders;

''(B) analyzes and makes effective use of State, regional, or local crash data;

''(C) addresses engineering, management, operation, education, enforcement, and emergency services elements of highway safety as key factors in evaluating highway projects;

''(D) considers safety needs of, and high-fatality segments of, public roads;

''(E) considers the results of State, regional, or local transportation and highway safety planning processes in existence as of the date of enactment of this section;

''(F) describes a program of projects or strategies to reduce or eliminate safety hazards;

''(G) is approved by the Governor of the State or a responsible State agency; and

''(H) is consistent with the requirements of section 135(f).

''(b) PROGRAM.—

''(1) IN GENERAL.—The Secretary shall carry out a highway safety improvement program.

''(2) PURPOSE.—The purpose of the highway safety improvement program shall be to achieve a significant reduction in traffic fatalities and serious injuries on public roads.

''(c) ELIGIBILITY.—

''(1) IN GENERAL.—To receive funds under this section, a State shall have in effect a State highway safety improvement program under which the State—

''(A) develops and implements a State strategic highway safety plan that identifies and analyzes highway safety problems and opportunities as provided in paragraph (2);

''(B) produces a program of projects or strategies to reduce identified safety problems; and

''(C) evaluates the plan on a regular basis to ensure the accuracy of the data and priority of proposed improvements.

''(2) IDENTIFICATION AND ANALYSIS OF HIGHWAY SAFETY PROBLEMS AND OPPORTUNITIES.—As part of the State strategic highway safety plan, a State shall—

''(A) have in place a crash data system with the ability to perform safety problem identification and countermeasure analysis;

''(B) based on the analysis required by subparagraph (A), identify hazardous locations, sections, and elements (including roadside obstacles, railway-highway crossing needs, and unmarked or poorly marked roads) that constitute a danger to motorists, bicyclists, pedestrians, and other highway users;

''(C) adopt strategic and performance-based goals that—

''(i) address traffic safety, including behavioral and infrastructure problems and opportunities on all roads and bridges on the Federal-aid system;

''(ii) focus resources on areas of greatest need; and

''(iii) are coordinated with other State highway safety programs;

''(D) advance the capabilities of the State for traffic records data collection, analysis, and integration with other sources of safety data (such as road inventories) in a manner that—

''(i) complements the State highway safety program under chapter 4 and the commercial vehicle safety plan under section 31102 of title 49;

''(ii) includes all roads and bridges on the Federal-aid system; and

''(iii) identifies hazardous locations, sections, and elements on public roads that constitute a danger to motorists, bicyclists, and pedestrians;

''(E)(i) determine priorities for the correction of hazardous road locations, sections, and elements (including railway-highway crossing improvements), as identified through crash data analysis;

''(ii) identify opportunities for preventing the development of such hazardous conditions; and

''(iii) establish and implement a schedule of highway safety improvement projects for hazard correction and hazard prevention; and

''(F)(i) establish an evaluation process to analyze and assess results achieved by highway safety improvement projects carried out in accordance with procedures and criteria established by this section; and

''(ii) use the information obtained under clause (i) in setting priorities for highway safety improvement projects.

''(d) ELIGIBLE PROJECTS.—

''(1) IN GENERAL.—A State may obligate funds apportioned to the State under this section to carry out—

''(A) any highway safety improvement project on any—

''(i) road or bridge on the Federal-aid system; or

''(ii) publicly owned bicycle or pedestrian pathway or trail; or

''(B) as provided in subsection (e), for other safety projects.

''(2) USE OF OTHER FUNDING FOR SAFETY.—

''(A) EFFECT OF SECTION.—Nothing in this section prohibits the use of funds made available under other provisions of this title for highway safety improvement projects.

''(B) USE OF OTHER FUNDS.—States are encouraged to address the full scope of their safety needs and opportunities by using funds made available under other provisions of this title (except a provision that specifically prohibits that use).

''(e) FLEXIBLE FUNDING FOR STATES WITH A STRATEGIC HIGHWAY SAFETY PLAN.—

''(1) IN GENERAL.—To further the implementation of a State strategic highway safety plan, a State may use up to 25 percent of the amount of funds made available under this section for a fiscal year to carry out safety projects under any other section as provided in the State strategic highway safety plan.

''(2) OTHER TRANSPORTATION AND HIGHWAY SAFETY PLANS.—Nothing in this subsection requires a State to revise any State process, plan, or program in effect on the date of enactment of this section.

''(f) REPORTS.—

''(1) IN GENERAL.—A State shall submit to the Secretary a report that—

''(A) describes progress being made to implement highway safety improvement projects under this section;

''(B) assesses the effectiveness of those improvements; and

''(C) describes the extent to which the improvements funded under this section contribute to the goals of—

''(i) reducing the number of fatalities on roadways;

''(ii) reducing the number of roadway-related injuries;

''(iii) reducing the occurrences of roadway-related accidents;

''(iv) mitigating the consequences of roadway-related accidents; and

''(v) reducing the occurrences of roadway-railroad grade crossing accidents.

''(2) CONTENTS; SCHEDULE.—The Secretary shall establish the content and schedule for a report under paragraph (1).

''(g) FEDERAL SHARE OF HIGHWAY SAFETY IMPROVEMENT PROJECTS.—The Federal share of the cost of a highway safety improvement project carried out with funds made available under this section shall be 90 percent.

''(h) USE OF FUNDS.—

''(1) PROJECTS UNDER SECTION 402.—For fiscal year 2005 and each fiscal year thereafter, 10 percent of the funds made available to a State under this section shall be obligated for projects under section 402, unless by October 1 of the fiscal year, the State—

''(A) has in effect a primary safety belt law; or

''(B) demonstrates that the safety belt use rate in the State is at least 90 percent.

''(2) WITHHOLDING.—

''(A) IN GENERAL.—For fiscal year 2007, the Secretary shall withhold 2 percent, and for each fiscal year thereafter, the Secretary shall withhold 4 percent, of the funds apportioned to a State under paragraphs (1), (3), and (4) of section 104(b) and section 144 if, by October 1 of that fiscal year, the State does not—

''(i) have in effect a primary safety belt law; or

''(ii) demonstrate that the safety belt use rate in the State is at least 90 percent.

''(B) RESTORATION.—If, within 3 years after the date on which funds are withheld from a State under subparagraph (A), the State has in effect a primary safety belt law or has demonstrated that the safety belt use rate in the State is at least 90 percent, the apportionment of the State shall be increased by the amount withheld.

''(C) LAPSE.—If, within 3 years after the date on which funds are withheld from a State under subparagraph (A), the State does not have in effect a primary safety belt law or has not demonstrated that the safety belt use rate in the State is at least 90 percent, the amount withheld shall lapse.''.

(2) ALLOCATIONS OF APPORTIONED FUNDS.—Section 133(d) of title 23, United States Code, is amended—

(A) by striking paragraph (1);

(B) by redesignating paragraphs (2) through (5) as paragraphs (1) through (4), respectively;

(C) in paragraph (2) (as redesignated by subparagraph (B))—

(i) in the first sentence of subparagraph (A)—

(I) by striking ''subparagraphs (C) and (D)'' and inserting ''subparagraph (C)''; and

(II) by striking ''80 percent'' and inserting ''90 percent'';

(ii) by striking subparagraph (C);

(iii) by redesignating subparagraphs (D) and (E) as subparagraphs (C) and (D), respectively; and

(iv) in subparagraph (C) (as redesignated by clause (iii)), by adding a period at the end; and

(D) in paragraph (4)(A) (as redesignated by subparagraph (B)), by striking ''paragraph (2)'' and inserting ''paragraph (1)''.

(3) CONFORMING AMENDMENTS.—

(A) Chapter 1 of title 23, United States Code, is amended by striking the item relating to section 148 and inserting the following:

''148. Highway safety improvement program.''.

(b) APPORTIONMENT OF HIGHWAY SAFETY IMPROVEMENT PROGRAM FUNDS.—Section 104(b) of title 23, United States Code, is amended—

(1) in the matter preceding paragraph (1), by inserting after ''Improvement program,'' the following: ''the highway safety improvement program,''; and

(2) by adding at the end the following:

''(5) HIGHWAY SAFETY IMPROVEMENT PROGRAM.—

''(A) IN GENERAL.—For the highway safety improvement program, in accordance with the following formula:

''(i) 25 percent of the apportionments in the ratio that—

''(I) the total lane miles of Federal-aid highways in each State; bears to

''(II) the total lane miles of Federal-aid highways in all States.

''(ii) 40 percent of the apportionments in the ratio that—

''(I) the total vehicle miles traveled on lanes on Federal-aid highways in each State; bears to

''(II) the total vehicle miles traveled on lanes on Federal-aid highways in all States.

''(iii) 35 percent of the apportionments in the ratio that—

''(I) the estimated tax payments attributable to highway users in each State paid into the Highway Trust Fund (other than the Mass Transit Account) in the latest fiscal year for which data are available; bears to

''(II) the estimated tax payments attributable to highway users in all States paid into the Highway Trust Fund (other than the Mass Transit Account) in the latest fiscal year for which data are available.

''(B) MINIMUM APPORTIONMENT.—Notwithstanding subparagraph (A), each State shall receive a minimum of ½ of 1 percent of the funds apportioned under this paragraph.''.

(c) ELIMINATION OF HAZARDS RELATING TO HIGHWAY FACILITIES.—

(1) FUNDS FOR PROTECTIVE DEVICES.—Section 130(e) of title 23, United States Code, is amended—

(A) in the heading, by striking ''PROTECTIVE DEVICES'' and inserting ''RAILWAY-HIGHWAY CROSSINGS'';

(B) by striking the first sentence and inserting the following:

''(1) IN GENERAL.—For each fiscal year, at least $200,000,000 of the funds authorized and expended under section 148 shall be available for the elimination of hazards and the installation of protective devices at railway-highway crossings.''; and

(C) by striking ''Sums authorized'' and inserting the following:

''(2) OBLIGATION.—Sums authorized''.

(2) BIENNIAL REPORTS TO CONGRESS.—Section 130(g) of title 23, United States Code, is amended in the third sentence—

(A) by inserting ''and the Committee on Commerce, Science, and Transportation,'' after ''Public Works''; and

(B) by striking ''not later than April 1 of each year'' and inserting ''every other year''.

(3) EXPENDITURE OF FUNDS; APPORTIONMENT.—Section 130 of title 23, United States Code, is amended by adding at the end the following:

''(k) EXPENDITURE OF FUNDS; APPORTIONMENT.—Funds made available to carry out this section shall be—

''(1) available for expenditure on compilation and analysis of data in support of activities carried out under subsection (g); and

''(2) apportioned in accordance with section 104(b)(5).''.

(d) TRANSITION.—

(1) IMPLEMENTATION.—Except as provided in paragraph (2), to qualify for funding under section 148 of title 23, United States Code (as amended by subsection (a)), a State shall develop and implement a State strategic highway safety plan as required by subsection (c) of that section not later than October 1 of the second fiscal year after the date of enactment of this Act.

(2) INTERIM PERIOD.—

(A) IN GENERAL.—Before October 1 of the second fiscal year after the date of enactment of this Act and until the date on which a State develops and implements a State strategic highway safety plan, the Secretary shall apportion funds to a State for the highway safety improvement program and the State may obligate funds apportioned to the State for the highway safety improvement program under section 148 for projects that were eligible for funding under sections 130 and 152 of that title, as in effect on the day before the date of enactment of this Act.

(B) NO STRATEGIC HIGHWAY SAFETY PLAN.—If a State has not developed a strategic highway safety plan by October 1 of the second fiscal year after the date of enactment of this Act, but demonstrates to the satisfaction of the Secretary that progress is being made toward developing and implementing such a plan, the Secretary shall continue to apportion funds for 1 additional fiscal year for the highway safety improvement program under section 148 of title 23, United States Code, to the State, and the State may continue to obligate funds apportioned to the State under this section for projects that were eligible for funding under sections 130 and 152 of that title, as in effect on the day before the date of enactment of this Act.

(C) PENALTY.—If a State has not adopted a strategic highway safety plan by the date that is 2 years after the date of enactment of this Act, funds made available to the State under section 1101(6) shall be redistributed to other States in accordance with section 104(b) of title 23, United States Code.

SECRETARY OF TRANSPORTATION
Washington, DC, November 12, 2003.

Hon. JAMES INHOFE,
Chairman, Committee on Environment and Public Works, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: With almost 43,000 people dying every year on our nation's highway, it is imperative that we do everything in our power to promote a safer transportation system. The Bush Administration's proposal to reauthorize surface transportation programs, the Safe, Accountable, Flexible and Efficient Transportation Equity Act of 2003 (SAFETEA), offers several bold and innovative approaches to address this crisis.

President Bush and I believe that increasing safety belt usage rates is the single most effective means to decrease highway fatalities and injuries. As a result, SAFETEA's new core highway safety program provides States with powerful funding incentives to increase the percentage of Americans who buckle up every time they get in an automobile. Every percentage point increase in the national safety belt usage rate saves hundreds of lives and millions of dollars in lost productivity.

Empirical evidence shows that the surest way for a State to increase safety belt usage is through the passage of a primary safety belt law. States with primary belt laws have safety belt usage rates that are on average eight percentage points higher than States with secondary laws. Recognizing that States may have other innovative methods to achieve higher rates of belt use, SAFETEA also rewards States that achieve 90% safety belt usage rates even if a primary safety belt law is not enacted. I urge you to consider these approaches as your Committee marks up reauthorization legislation.

While safety belts are obviously critical to reducing highway fatalities, so too is a data

driven approach to providing safety. Every State faces its own unique safety challenges, and every State must be given broad funding flexibility to solve those challenges. This is a central theme of SAFETEA, which aims to provide States the ability to use scarce resources to meet their own highest priority needs. Such flexibility is essential for States to maximize their resources, including the funds available under a new core highway safety program.

I look forward to working with you on these critically important safety issues as development of a surface transportation reauthorization bill progresses.

Sincerely yours,

NORMAN Y. MINETA.

Mr. DEWINE. Mr. President, let me first congratulate my colleague from Virginia, Senator WARNER, for the very fine statement he just made a moment ago about the bill that he and Senator CLINTON are introducing with regard to the primary seatbelt law. This is something I have been interested in for some time. I congratulate them for their very fine bill and Senator WARNER's very fine statement. He is absolutely correct. If we are serious about saving lives on our highways in this country, there really is nothing more important that we can do than to get our fellow citizens to buckle up.

We have made great progress in this area, but the fact that many of our States do not have a primary seatbelt law on the books costs us thousands and thousands of lives each year. As my colleague from Virginia so eloquently stated in this Chamber a few minutes ago, all the experts—everyone who knows anything about highway safety—will tell you that the most important thing that we could do and the easiest thing we could do would be to have every State of the Union tomorrow, instantly, have a primary seatbelt safety law.

That simply means if law enforcement, instead of having to wait for another type of violation before they could cite someone for not wearing a seatbelt could cite someone directly for not using a seatbelt, the use of seatbelts would dramatically increase in this country. That is what has happened in every single State that has had these laws enacted. Seatbelt use dramatically goes up almost overnight.

We know there is an inverse relationship between the use of seatbelts and auto fatalities. Thousands and thousands of Americans' lives would be saved every single year. I wanted to come to the floor this afternoon after I listened to my colleague's speech in my office. I wanted to thank him. He has been a real leader in the area of highway safety and this is certainly one more example of his leadership.

When we take up the highway safety bill next year, there are a number of highway safety initiatives on which I have been working. I intend to bring them to the floor and talk about them and offer them as amendments, offer them as initiatives. Frankly, there is nothing as important as what my colleague from Virginia has suggested.

I hope the Senate will take this very seriously. This is a great opportunity we will have to save thousands and thousands of lives every year. So I salute my colleague from Virginia.

By Mr. DASCHLE (for Mr. FEINGOLD):

S. 1994. A bill to amend part D of title XVIII of the Social security Act to strike the language that prohibits the Secretary of Health and Human Services from negotiating prices for prescription drugs furnished under the Medicare program; to the Committee on Finance.

(At the request of Mr. DASCHLE, the following statement was ordered to be printed in the RECORD.)

● Mr. FEINGOLD. Mr. President, today I am introducing a bill that will fix one of the fundamental flaws in the new Medicare prescription drug benefit. The ''Efficiency in Government Health Care Spending Act'' will remove language included in the new benefit that prohibits the Medicare program from negotiating prescription drug prices with manufacturers. The new Medicare prescription drug benefit does far too little to bring down the prices of prescription drugs. In fact, it actually takes away one of the best tools the Medicare program could use in bringing down prescription drug prices by denying the government the ability to negotiate price discounts on behalf of Medicare beneficiaries. My bill will allow the Federal Government to take advantage of the purchasing power of the Medicare program Medicare, saving millions of taxpayers' dollars while reducing the costs of prescription drugs for Medicare beneficiaries.

I ask unanimous consent that the text of this legislation be printed in the RECORD.

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

S. 1994

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

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Efficiency in Government Health Care Spending Act''.

SEC. 2. FINDINGS.

Congress makes the following findings:

(1) Prohibiting the Federal Government from negotiating prescription drug prices with manufacturers fails to take advantage of the purchasing power of the Medicare program.

(2) Negotiating prescription drug prices can reduce the costs of prescription drugs for both the Medicare program and taxpayers.

(3) A 2002 study by the inspector general of the Department of Health and Human Services found that—

(A) both the Medicare program and the beneficiaries of the Medicare program continually pay too much for medical equipment and medical supplies; and

(B) if the Medicare program paid the same prices for 16 health care supplies as the Department of Veterans Affairs, which directly negotiates prices with manufacturers, pays for those supplies, the Federal Government could save $958,000,000 each year.

SEC. 3. ELIMINATION OF PROHIBITION OF NEGOTIATION OF PRICES.

(a) REPEAL OF NONINTERFERENCE PROVISION.—

(1) IN GENERAL.—Subsection (i) of section 1860D–11 of the Social Security Act, as added by section 101 of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003, is repealed.

(2) CONFORMING AMENDMENT.—Subsection (j) of section 1860D–11 of the Social Security Act, as added by section 101 of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003, is redesignated as subsection (i).

(b) EFFECTIVE DATE.—The amendments made by this section shall take effect as if included in the enactment of section 101 of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003.●

By Mr. DASCHLE (for Mr. FEINGOLD):

S. 1995. A bill to amend title XVIII of the Social Security Act to repeal the MA Regional Plan Stabilization Fund; to the Committee on Finance.

● Mr. FEINGOLD. Mr. President, today I am introducing a bill that will remove the multi-billion dollar ''stabilization fund'' from the new Medicare prescription drug benefit. This stabilization fund is in essence a slush fund that gives billions of dollars to private insurance companies. This is not an efficient use of taxpayers' dollars. In fact, it's not clear why it's even necessary. If private managed care plans are successful in bring costs down, as backers of the new Medicare bill expect, and if seniors supposedly want to choose private plans, as backers of the new Medicare bill believe, then why should American taxpayers pay private companies more money to get more people to enroll in them?

We should not be subsidizing private health insurance companies in the name of Medicare reform. It is fiscally irresponsible, in a time of record deficits, to use taxpayers' dollars as a giveaway to private insurance companies. By removing this multi-billion slush fund, my bill will save the American taxpayers billions of dollars. Many analysts predict that the new Medicare prescription drug benefit will surpass the $400 billion budgeted for it. We need to look carefully at how we spend Medicare dollars, so that we can ensure that the program remains solvent for future generations.

I ask unanimous consent that the text of this legislation be printed in the RECORD.

(At the request of Mr. DASCHLE, the following statement was ordered to be printed in the RECORD.)

There being no objectin, the bill was ordered to be printed in the RECORD, as follows:

S. 1995

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

SECTION 1. REPEAL OF MA REGIONAL PLAN STABILIZATION FUND.

(a) PURPOSE OF SECTION.—The purpose of this section is to reduce the Federal budget deficit and to more efficiently use taxpayer dollars in health care spending.

(b) REPEAL OF MA REGIONAL PLAN STABILIZATION FUND.—Section 1858 of the Social Security Act, as added by section 221(c) of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003, is amended—

(1) by striking subsection (e);

(2) by redesignating subsections (f), (g), and (h) as subsections (e), (f), and (g), respectively; and

(3) in subsection (e), as so redesignated, by striking ''subject to subsection (e),''.

(c) CONFORMING AMENDMENT.—Section 1851(i)(2) of the Social Security Act (42 U.S.C. 1395w–21(i)(2)), as amended by section 221(d)(5) of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003, is amended by striking''1858(h)'' and inserting ''1858(g)''.

(d) EFFECTIVE DATE.—The amendments made by this section shall take effect as if included in the enactment of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003.●

By Mr. DASCHLE:

S. 1996. A bill to enhance and provide to the Oglada Sioux Tribe and Angostura Irrigation Project certain benefits of the Pick-Sloan Missouri River basin program; to the Committee on Indian Affairs.

Mr. DASCHLE. Mr. President, today I am introducing the Oglala Sioux Tribe Angostura Irrigation Project Rehabilitation and Development Act. I have worked with the leadership of the Oglala Sioux Tribe to develop this legislation, which is intended to benefit the Lakota people by restoring critical water resources and promoting economic development on the Pine Ridge Indian Reservation.

The Angostura Unit of the Bureau of Reclamation was first authorized by Congress under the Water Conservation and Utilization Act of 1939, and later continued under the Flood Control Act of 1944, otherwise known as the Pick-Sloan Missouri River Basin Project. The program consisted primarily of building the six mainstem dams on the Missouri River, to be operated by the U.S. Army Corps of Engineers, along with several Bureau-operated irrigation and water development projects. The Angostura Unit was designed to provide irrigation to 12,218 acres of farm and ranch land in the Angostura Irrigation District, as well as flood control, fish, and wildlife benefits.

Tribes in South Dakota existed long before the creation of the Bureau of Reclamation or the implementation of the water development projects in South Dakota today. Tribes therefore have a vested interest in the operation of these projects. While the projects have been helpful in meeting their authorized goals, they also contribute to adverse economic and environmental conditions on tribal reservations. In particular, the Missouri River reservoirs managed by the Corps led to the taking of thousands of acres of fertile river land from Indian tribes, and with that taking, the tribes lost valuable natural resources.

Federal agencies were directed through subsequent acts to provide for the rehabilitation of the lost fish and wildlife habitat and to generally improve conditions on the reservations, but results were slow in coming, and often never materialized. Legislation was enacted several years ago to finally address some of these issues, but much more remains to be done before South Dakota's tribes realize the benefits that Bureau of Reclamation and Corps projects have provided other parts of the state.

In addition to the irrigation benefits the Angostura Unit provides to ranchers and agricultural producers in the area, a substantial recreation industry has developed around the reservoir, including boating and fishing. However, members of the Oglala Sioux on the Pine Ridge Indian Reservation have not seen equal economic benefits from the Angostura Unit as those experienced from the recreation and irrigation in Fall River County. The Cheyenne River forms the northern boundary of the reservation, which is just 20 miles downstream from the reservoir, and is an important natural resource for the tribe. The river is essential to the survival of riparian vegetation, traditional medicinal plants, fish, and wildlife habitat. The impoundment of water in the reservoir has curbed the Cheyenne River's natural flow, and water quality is reduced. This, coupled with the worst drought the region has seen in a decade, severely affects water resources on the reservation.

The Oglala Sioux Tribe's leadership has long had a desire to address these problems, and this legislation is an important manifestation of their effort. During revision of the Angostura Unit's water management plan in 2002, the Bureau of Reclamation considered a variety of alternatives for future operations, but the tribe felt their concerns about the economic and environmental effects the reservoir has on the reservation were not adequately addressed. One alternative considered by the Bureau of Reclamation during this review would return natural flows to the Cheyenne River, and would provide more water downstream for the tribe and would improve reservation conditions. The Bureau took a different approach, however—one that calls for improved irrigation operations and a more efficient distribution of water resources in the irrigation district. These improvements would help free up additional water resources and hopefully lead to improved conditions on the Cheyenne River that would benefit the tribe.

The Angostura Irrigation Project Rehabilitation and Development Act would authorize the efficiency improvements proposed by the Bureau of Reclamation, benefitting both existing water users and the tribe. The legislation also would authorize the creation of a trust fund to compensate the tribe for the economic impacts and lost natural resources caused by the operation of the Angostura Unit. This trust fund will be used by the tribe to promote economic development, improve infrastructure, and enhance the education, health, and general welfare of the Oglala Lakota people. This dual track will both help ensure continued and efficient operation of the Angostura Unit and the Angostura Irrigation District, while helping to mitigate the problems facing the Oglala Sioux Tribe, and providing the tribe with the natural and financial resources it needs to plan for the future and improve the quality of life for all tribal members.

This legislation is just one small, yet important, step toward ensuring that U.S. natural resource policies are fair to American Indians, and I look forward to working with my colleagues to enact it.

I ask unanimous consent that the text of the legislation be printed in the RECORD.

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

S. 1996

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

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Oglala Sioux Tribe Angostura Irrigation Project Rehabilitation and Development Act''.

SEC. 2. FINDINGS.

Congress finds that—

(1) Congress approved the Pick-Sloan Missouri River basin program by passing the Act of December 22, 1944 (commonly known as the ''Flood Control Act of 1944'') (33 U.S.C. 701–1 et seq.)—

(A) to promote the economic development of the United States;

(B) to provide for irrigation in regions north of Sioux City, Iowa;

(C) to protect urban and rural areas from devastating floods of the Missouri River; and

(D) for other purposes;

(2) the Angostura Unit—

(A) is a component of the Pick-Sloan program; and

(B) provides for—

(i) irrigation of 12,218 acres of productive farm land in the State; and

(ii) substantial recreation and fish and wildlife benefits;

(3) the Commissioner of Reclamation has determined that—

(A) the national economic development benefits from irrigation at the Angostura Unit total approximately $3,410,000 annually; and

(B) the national economic development benefits of recreation at Angostura Reservoir total approximately $7,100,000 annually;

(4) the Angostura Unit impounds the Cheyenne River 20 miles upstream of the Pine Ridge Indian Reservation in the State;

(5)(A) the Reservation experiences extremely high rates of unemployment and poverty; and

(B) there is a need for economic development on the Reservation;

(6) the national economic development benefits of the Angostura Unit do not extend to the Reservation;

(7) the Angostura Unit may be associated with negative affects on water quality and riparian vegetation in the Cheyenne River on the Reservation;

(8) rehabilitation of the irrigation facilities at the Angostura Unit would—

(A) enhance the national economic development benefits of the Angostura Unit; and

(B) result in improved water efficiency and environmental restoration benefits on the Reservation; and

(9) the establishment of a trust fund for the Oglala Sioux Tribe would—

(A) produce economic development benefits for the Reservation comparable to the benefits produced at the Angostura Unit; and

(B) provide resources that are necessary for restoration of the Cheyenne River corridor on the Reservation.

SEC. 3. DEFINITIONS.

In this Act:

(1) ANGOSTURA UNIT.—The term ''Angostura Unit'' means the irrigation unit of the Angostura irrigation project developed under the Act of August 11, 1939 (16 U.S.C. 590y et seq.).

(2) FUND.—The term ''Fund'' means the Oglala Sioux Tribal Development Trust Fund established by section 201(a).

(3) PICK-SLOAN PROGRAM.—The term ''Pick-Sloan program'' means the Pick-Sloan Missouri River basin program approved under the Act of December 22, 1944 (commonly known as the ''Flood Control Act of 1944'') (33 U.S.C. 701–1 et seq.).

(4) PLAN.—The term ''plan'' means the development plan developed by the Tribe under section 201(f).

(5) RESERVATION.—The term ''Reservation'' means the Pine Ridge Indian Reservation in the State.

(6) SECRETARY.—The term ''Secretary'' means the Secretary of the Interior.

(7) STATE.—The term ''State'' means the State of South Dakota.

(8) TRIBAL COUNCIL.—The term ''Tribal Council'' means the governing body of the Tribe.

(9) TRIBE.—The term ''Tribe'' means the Oglala Sioux Tribe of South Dakota.

TITLE I—REHABILITATION

SEC. 101. REHABILITATION OF FACILITIES AT ANGOSTURA UNIT.

The Secretary may carry out the rehabilitation and improvement of the facilities at the Angostura Project described in the report entitled ''Angostura Unit Contract Negotiation and Water Management Final Environmental Impact Statement'', dated August 2002.

SEC. 102. DELIVERY OF WATER TO PINE RIDGE INDIAN RESERVATION.

The Secretary shall provide for—

(1) to the maximum extent practicable, the delivery of water saved through the rehabilitation and improvement of the facilities of the Angostura Unit to the Pine Ridge Indian Reservation; and

(2) the use of that water for purposes of environmental restoration on the Pine Ridge Indian Reservation.

SEC. 103. EFFECT ON OTHER LAW.

Nothing in this title affects—

(1) any reserved water rights or other rights of the Tribe;

(2) any service or program to which, in accordance with Federal law, the Tribe, or an individual member of the Tribe, is entitled; or

(3) any water rights in existence on the date of enactment of this Act held by any person or entity.

SEC. 104. AUTHORIZATION OF APPROPRIATIONS.

There is authorized to be appropriated such sums as are necessary to carry out this title, to remain available until expended.

TITLE II—DEVELOPMENT

SEC. 201. OGLALA SIOUX TRIBAL DEVELOPMENT TRUST FUND.

(a) OGLALA SIOUX TRIBAL DEVELOPMENT TRUST FUND.—There is established in the Treasury of the United States a fund to be known as the ''Oglala Sioux Tribal Development Trust Fund'', consisting of any amounts deposited in the Fund under this title.

(b) FUNDING.—On the first day of the 11th fiscal year that begins after the date of enactment of this Act, the Secretary of the Treasury shall, from the General Fund of the Treasury, deposit in the Fund—

(1) such sums as the Secretary of the Treasury, in consultation with the Secretary, the Secretary of Health and Human Services, and the Tribal Council, are necessary to carry out development under this title; and

(2) the amount that equals the amount of interest that would have accrued on the amount described in paragraph (1) if that amount had been invested in interest-bearing obligations of the United States, or in obligations guaranteed as to both principal and interest by the United States, on the first day of the first fiscal year that begins after the date of enactment of this Act and compounded annually thereafter.

(c) INVESTMENT OF TRUST FUND.—

(1) IN GENERAL.—The Secretary of the Treasury shall invest such portion of the Fund as is not, in the judgment of the Secretary of the Treasury, required to meet current withdrawals.

(2) ACQUISITION OF OBLIGATIONS.—Such investments may be made only in interest-bearing obligations of the United States or in obligations guaranteed as to both principal and interest by the United States.

(3) INTEREST.—The Secretary of the Treasury shall deposit interest resulting from such investments into the Fund.

(d) PAYMENT OF INTEREST TO TRIBE.—

(1) WITHDRAWAL OF INTEREST.—Beginning on the first day of the 11th fiscal year after the date of enactment of this Act and, on the first day of each fiscal year thereafter, the Secretary of the Treasury shall transfer the aggregate amount of interest deposited into the Fund for the fiscal year to the Secretary for use in accordance with paragraph (3).

(2) AVAILABILITY.—Each amount transferred under paragraph (1) shall be available without fiscal year limitation.

(3) PAYMENTS TO TRIBE.—

(A) IN GENERAL.—The Secretary shall use the amounts transferred under paragraph (1) only for the purpose of making payments to the Tribe, as such payments are requested by the Tribe pursuant to tribal resolution.

(B) LIMITATION.—Payments may be made by the Secretary of the Interior under subparagraph (A) only after the Tribe has adopted a plan under subsection (f).

(C) USE OF PAYMENTS BY TRIBE.—The Tribe shall use the payments made under subparagraph (B) only for carrying out projects and programs under the plan prepared under subsection (f).

(e) LIMITATION ON TRANSFERS AND WITHDRAWALS.—Except as provided in subsections (c) and (d)(1), the Secretary of the Treasury shall not transfer or withdraw any amount deposited under subsection (b).

(f) DEVELOPMENT PLAN.—

(1) IN GENERAL.—Not later than 18 months after the date of enactment of this Act, the governing body of the Tribe shall prepare a plan for the use of the payments to the Tribe under subsection (d).

(2) CONTENTS.—The plan shall provide for the manner in which the Tribe shall expend payments to the Tribe under subsection (d) to promote—

(A) economic development;

(B) infrastructure development;

(C) the educational, health, recreational, and social welfare objectives of the Tribe and members of the Tribe; or

(D) any combination of the activities described in subparagraphs (A) through (C).

(3) PLAN REVIEW AND REVISION.—

(A) IN GENERAL.—The Tribal Council shall make available for review and comment by the members of the Tribe a copy of the plan before the plan becomes final, in accordance with procedures established by the Tribal Council.

(B) UPDATING OF PLAN.—

(i) IN GENERAL.—The Tribal Council may, on an annual basis, revise the plan to update the plan.

(ii) REVIEW AND COMMENT.—In revising the plan, the Tribal Council shall provide the members of the Tribe opportunity to review and comment on any proposed revision to the plan.

(C) CONSULTATION.—In preparing the plan and any revisions to update the plan, the Tribal Council shall consult with the Secretary and the Secretary of Health and Human Services.

(4) AUDIT.—

(A) IN GENERAL.—The activities of the Tribe in carrying out the plan shall be audited as part of the annual single-agency audit that the Tribe is required to prepare pursuant to the Office of Management and Budget circular numbered A–133.

(B) DETERMINATION BY AUDITORS.—The auditors that conduct the audit under subparagraph (A) shall—

(i) determine whether funds received by the Tribe under this section for the period covered by the audit were expended to carry out the plan in a manner consistent with this section; and

(ii) include in the written findings of the audit the determination made under clause (i).

(C) INCLUSION OF FINDINGS WITH PUBLICATION OF PROCEEDINGS OF TRIBAL COUNCIL.—A copy of the written findings of the audit described in subparagraph (A) shall be inserted in the published minutes of the Tribal Council proceedings for the session at which the audit is presented to the Tribal Council.

(g) PROHIBITION OF PER CAPITA PAYMENTS.—No portion of any payment made under this title may be distributed to any member of the Tribe on a per capita basis.

SEC. 202. ELIGIBILITY OF TRIBE FOR CERTAIN PROGRAMS AND SERVICES.

No payment made to the Tribe under this title shall result in the reduction or denial of any service or program with respect to which, under Federal law—

(1) the Tribe is otherwise entitled because of the status of the Tribe as a federally recognized Indian tribe; or

(2) any individual who is a member of the Tribe is entitled because of the status of the individual as a member of the Tribe.

SEC. 203. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated such sums as are necessary to pay the administrative expenses of the Fund.

By Mr. BYRD (for himself, Mr. BAYH, and Mr. ROCKEFELLER):

S. 1997. A bill to reinstate the safeguard measures imposed on imports of certain steel products, as in effect on December 4, 2003; to the Committee on Finance.

Mr. BYRD. Mr. President, last week, the Bush administration—in what has become its normal pattern—ignored the pleas of thousands of hardworking Americans. It lifted the steel tariffs it had promised the U.S. steel industry and imposed on foreign imports back in March of 2002.

Despite its earlier pledge to stand by America's steelworkers, the White House, in typical fashion, decided to turn its back on our highest valued workers and most vulnerable retirees. In a fit of pique and hard-hearted hubris, the White House decided to lift U.S. tariffs on foreign steel imports 15

months ahead of time, instead of letting the tariffs stay in place until March 2005, as is permitted by U.S. law.

Why? Why would the White House betray America's steel industry—the backbone of America's industrial base—particularly during this time of war? Of national emergency? No. Because the President feared retaliation from America's trading partners, he quivered at the threat that they would retaliate against U.S. exports if he did not lift the 201 tariffs. He cowered in the face of exactly those nations whose steel exports to the United States have driven 42 U.S. steel companies to their knees and into bankruptcy. His resolve collapsed in the face of retaliatory threats from America's most virulent competitors, whose illegal trade against the United States has already cost nearly 50,000 steelworkers their jobs.

America's foreign trade opponents gambled that this President lacked the resolve to stand up to them and to the WTO. Do you know? They were right. They were sadly correct.

But this President, George W. Bush, did not need to cave like a ''weak willy'' in the face of belligerent foreign bullies. Instead, he could have invoked Article XXI of the GATT, a viable trade tool that has been legitimately and successfully employed by the United States in the past to exempt itself from the GATT, now the WTO, in a time of war or national emergency. The President on July 31, 2003, formally proclaimed our Nation to be in a continued state of emergency. As a result of the President's own misguided and ill-advised actions, we remain engaged militarily in Iraq.

On July 31, 2003, President Bush formally declared that, in accordance with section 202(d) of the National Emergencies Act, he was ''continuing for one year the national emergency with respect to Iraq.'' We also continue to face an ongoing war against terrorism, both here at home and abroad.

So, President Bush had—and has—ample authority to invoke a provision of GATT 1994, negotiated by the United States and available to all WTO Members, that would permit him to exempt protections for the U.S. steel industry from retaliation by foreign countries.

But this President has so far lacked the foresight or the fortitude to take that step. Confronted with real threats of economic retaliation by determined competitors, the President folds like a house of cards astride the San Andreas fault.

That is why, today, I am introducing a bill that will do what the President refused to do. It will reinstate the 201 relief and reimpose the 201 tariffs against foreign steel imports. Under my bill, the 201 tariffs will be put back in place to stop foreign import surges, just as they did before the President so ill-advisedly lifted the tariffs last Thursday. And the tariffs will remain in place through March 5, 2005.

This administration should not have been bullied into abandoning the U.S. steel industry. Our steel industry is key to the national economic security of our Nation. Without steel, we cannot guarantee America's national security. Without steel, we could not have rebuilt after September 11. And I am not the only one who thinks that steel is integral to America's economic and national security. Just a few days before that fateful September day, on August 26, 2001, President Bush told America's steelworkers: ''If you're worried about the security of the country and you become over reliant upon foreign sources of steel, it can easily affect the capacity of our military to be well supplied. Steel is an important jobs issue; it is also an important national security issue.''

With an annual take deficit of almost $500 billion, Americans have a right to expect that international trade rules with work for them; not against them. They also have a right to know that the United States can respond as it must to the type of trade crises that have been suffered by America's steel industry for years.

There was absolutely no reason to lift the steel 201 tariffs. They are fully consistent with both U.S. law and our international agreements—regardless of the view of the WTO. The purpose of 201 relief is to give the domestic industry time to adjust to import competition. Our valiant steel industry is doing just that by pursuing unprecedented restructuring and new investment. Since the 201 tariffs were imposed, flat-rolled steel producers alone have invested more than $3 billion to enhance their productivity.

Critics of the 201 relief have been proved wrong on every significant fact concerning that relief. They said that once the tariffs were imposed, steel prices would go through the roof. Yet, prices have risen only modestly, and much less than abroad. The critics claimed that U.S. steel companies would do nothing to improve their competitiveness. But our Nation is witnessing the most dramatic restructuring in the industry's history. The critics also claimed that the tariffs would be bad for the U.S. economy, but the non-partisan U.S. International Trade Commission, ITC, recently found that the potential costs are minuscule—only about 2 percent of what Americans spend each month at McDonald's—and not even a drop in the bucket compared to the value we gain by restoring a critical U.S. industry to long-term competitiveness.

Other nations' actions in this Section 201 dispute have been truly disgraceful. The European Union originally threatened to retaliate against the United States immediately upon the President's application of the safeguard measures in March 2002. In the end, it hesitated. But its threat was sufficient to extort from the administration nearly unlimited exclusions from the tariffs to benefit foreign producers.

Acquiescing to this type of bullying jeopardizes the future of the U.S. steel industry, and it undermines the integrity of, and support for, the entire international trading system. Americans cannot be expected to support a system that works against them, rather than for them.

By lifting the tariffs, the administration is allowing Brazil, the European Union, Japan, and other nations, once again, to flood the U.S. market with imports. The Bush administration could have stood up for America's steelworkers like those at Weirton, WV, and Wheeling-Pittsburgh Steel in West Virginia, and demanded that other countries respect the legitimate rights of the United States in the world trading system. But this administration chose to back down, to lose face, to sit back and watch, once more, while thousands of additional U.S. steel jobs are destroyed by wave after wave of foreign imports.

The administration does not seem to care if the U.S. steel industry is destroyed at a time of war and in the midst of a national emergency. President Bush did not even care enough to personally inform the U.S. steel industry, its workers, and their families of his decision to lift the tariffs. No!! Instead, he sent a trade negotiator, Mr. Zoellick, to do his dirty work. Ambassador Zoellick had the audacity to tell us that the tariffs are ''no longer necessary.'' No longer necessary. And why did he say that they are no longer necessary? They are no longer necessary because, he said, ''these safeguard measures have achieved their purpose.''

The only purpose that I can see in this decision to shut the tariff program down is to succumb to threats and demands from abroad. The only effect will be the loss of more steel manufacturing jobs here at home.

On October 27, 2000, Mr. DICK CHENEY—do you know him? He is now Vice President of the United States—just a few days before the elections he came to Weirton, WV, to campaign for the Bush-Cheney ticket. During that visit, Mr. CHENEY forcefully pledged to help America's steelworkers. He said, ''We will never lie to you. If our trading partners violate our trading laws, we will respond swiftly and firmly.''

Promise made, promise broken. Unfortunately, like so many commitments this administration has made, its pledge to help America's steel industry got off to a headline-grabbing start, but has now been discarded, out of the glare of the campaign spotlight.

So now, only 3 years after Mr. CHENEY's campaign-season vow of honesty to America's steelworkers, this White House has taken an axe to the 201 tariffs and betrayed the trust of thousands of American families whose paychecks depend on the U.S. steel industry.

Mr. President, the Bush White House has absolutely failed the working families across this country. This White House has traded the best interests of the American people for the big special interests of corporate campaign contributors. It is no surprise that the Bush Administration would turn its back on steelworkers.

When the Bush-Cheney ticket needed West Virginia's votes in 2000, it pledged to help our steel industry. At first, it appeared as though the administration would follow through on that promise. The White House applied the steel tariffs, for which West Virginia was thankful and for which I and other Senators congratulated, commended and thanked the administration. But then the President exempted import after import from those tariffs. Now the President has eliminated the tariffs completely.

The Bush White House may have forgotten the promise made to the steel industry in West Virginia, but thousands of West Virginians and other steelworkers across the Nation will not forget. The recognize a fair-weather friend when they seen one.

By Mr. BINGAMAN (for himself, Ms. SNOWE, Mr. SCHUMER, Mr. LEAHY, Mrs. CLINTON, Mr. NELSON of Nebraska, Mrs. LINCOLN, Mr. HAGEL, Mr. JEFFORDS, Mr. DOMENICI, Mr. HARKIN, and Mr. PRYOR):

S. 1998. A bill to amend title 49, United States Code, to preserve the essential air service program; to the Committee on Commerce, Science, and Transportation.

Mr. BINGAMAN. Mr. President, I rise today to introduce the bipartisan Essential Air Service Preservation Act of 2003. I am pleased to have my colleague Senator SNOWE as the principal cosponsor of the bill. Senator SNOWE has been a long-time champion of commercial air service in rural areas, and I appreciate her continued leadership on this important legislation. Senators SHUMER, LEAHY, CLINTON, BEN NELSON, LINCOLN, HAGEL, JEFFORDS, DOMENICI, and HARKIN, are also cosponsors of the bill.

Congress established the Essential Air Service Program in 1978 to ensure that communities that had commercial air service before airline deregulation could continue to receive scheduled service. Without EAS, many rural communities would have no commercial air service at all.

Our bill is very simple. It preserves Congress's intent in the Essential Air Service program by repealing a provision in the FAA reauthorization bill that would for the first time require communities to pay for their commercial air service.

Congress has already barred the Department of Transportation from implementing any cost sharing requirements on Essential Air Service communities for one year. This bill would now make the ban permanent. I believe that implementing any mandatory cost sharing is the first step in the total elimination of scheduled air service for many rural communities.

It is indeed a sad commentary on this Congress that my colleagues and I have to introduce this bill at all. Time and again Congress has gone on record opposing mandatory cost sharing for EAS communities, yet it keeps coming back.

In June, during consideration of the FAA reauthorization bill, Senator INHOFE and I, with 13 bipartisan cosponsors, offered an amendment that struck out a provision in that bill imposing mandatory cost sharing on some EAS communities.

I was pleased the full Senate agreed and voted to eliminate mandatory cost sharing from the FAA reauthorization bill. In parallel, the full House of Representatives adopted a similar amendment to the FAA bill. Thus, the bills that were sent to conference required no cost sharing for EAS communities.

Most students of government would tell you that when a majority of both houses of Congress have voted against a particular measure, the conferees couldn't arbitrarily put it back in. Well, they did. In another example of this Congress's secret back room dealing, the conferees excluded the minority members, flagrantly ignored the will of the majority in the House and the Senate, and restored the very cost-sharing language both houses one month before had voted to reject. I believe adding this extraneous and objectionable provision was an egregious violation of the conference process.

When cost sharing showed up in the FAA conference report, Congress, with bipartisan support, stopped the Department of Transportation from implementing the measure for one year by barring the use of 2004 appropriations for that purpose. The bill we are introducing today permanently repeals the mandatory cost-sharing requirements that the conferees reinserted into the FAA reauthorization bill after both the House and Senate had voted not to include them. I hope both houses of Congress will again do the right thing by passing our bill.

All across America, small communities face ever-increasing hurdles to promoting their economic growth and development. Today, many rural areas lack access to interstate or even four-lane highways, railroads or broadband telecommunications. Business development in rural areas frequently hinges on the availability of scheduled air service. For small communities, commercial air service provides a critical link to the national and international transportation system.

The Essential Air Service Program currently ensures commercial air service to over 100 communities in 34 states. EAS supports an additional 33 communities in Alaska. Because of increasing costs and the current financial turndown in the aviation industry, particularly among commuter airlines, about 28 additional communities have been forced into the EAS program since the terrorist attacks in 2001.

In my State of New Mexico, five cities currently rely on EAS for their commercial air service. The communities are Clovis, Hobbs, Carlsbad, Alamogordo and my hometown of Silver City. In each case commercial service is provided to Albuquerque, the State's business center and largest city.

I believe this ill-conceived proposal requiring cities to pay to continue to have commercial air service could not come at a worse time for small communities already facing depressed economies and declining tax revenues.

As I understand it, the mandatory cost-sharing requirements in the FAA reauthorization bill could affect communities in as many as 22 states. Based an analyses by my staff, the individual cities that may be affected are as follows:

Alabama—Muscle Shoals; Arizona—Prescott, Kingman; Arkansas—Hot Springs, Harrison, Jonesboro; Colorado—Pueblo; Georgia—Athens; Iowa—Fort Dodge, Burlington; Kansas—Salina; Kentucky—Owensboro; Maine—Augusta, Rockland; Michigan—Iron Mt.; Mississippi—Laurel; Nebraska—Norfolk; New Hampshire—Lebanon; New Mexico—Hobbs, Alamogordo, Clovis; New York—Saranac Lake, Watertown, Jamestown, Plattsburgh; Oklahoma—Ponca City, Enid; Pennsylvania—Johnstown, Oil City, Bradford, Altoona; South Dakota—Brookings, Watertown; Tennessee—Jackson; Texas—Victoria; Vermont—Rutland; Washington—Moses Lake.

As I see it, the choice here is clear: If we do not preserve the Essential Air Service Program today, we could soon see the end of all commercial air service in rural areas. The EAS program provides vital resources that help link rural communities to the national and global aviation system. Our bill will preserve the essential air service program and help ensure affordable, reliable, and safe air service remains available in rural America. Congress is already on record opposing mandatory cost sharing. I hope all Senators will once again join us in opposing this attack on rural America.

I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 1998

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

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Essential Air Service Preservation Act of 2003''.

SEC. 2. REPEAL OF EAS LOCAL PARTICIPATION PROGRAM.

(a) IN GENERAL.—Subchapter II of chapter 417 of title 49, United States Code, is amended by striking section 41747, and such title shall be applied as if such section 41747 had not been enacted.

(b) CONFORMING AMENDMENT.—The analysis for subchapter II of chapter 417 of title 49, United States Code, is amended by striking the item relating to section 41747.

By Mr. DASCHLE (for himself, Ms. STABENOW, Mr. GRAHAM of Florida, Mr. KENNEDY, Mr. PRYOR, Mr. DORGAN, Mrs. BOXER, Mr. LAUTENBERG, Mr. BINGAMAN, Ms. MIKULSKI, Mr. JOHNSON, Mr. SCHUMER, Mr. KOHL, Ms. CANTWELL, and Mr. ROCKEFELLER):

S. 1999. A bill to amend part D of title XVIII of the Social Security Act, as added by the Medicare Prescription Drug, Improvement, and Modernization Act of 2003, to provide for negotiation of fair prices for medicare prescription drugs; to the Committee on Finance.

Mr. DASCHLE. Mr. President, yesterday, the President signed the Medicare Prescription Drug, Improvement, and Modernization Act of 2003. But the name of that Act is completely misleading. In fact, the Act fundamentally damages the successful and popular Medicare program—a long-term Republican goal. And this Act does more to ensure that drug prices remain high than it does to assist beneficiaries in paying for their drugs.

Why? Because drug companies want it that way. Republicans with financial ties to the industry are protecting drug company interests over the interests of seniors and people with disabilities.

America's seniors pay the highest drug prices in the world, even though American taxpayers subsidize the research that produces many of those drugs. The Medicare bill signed by the President squanders our chances of remedying that inequity. Not only does the bill effectively prohibit the reimportation of more affordable drugs from other countries, it actually prohibits Medicare from using its tremendous bargaining power to ensure that beneficiaries pay lower prices and that our scant resources are most effectively used.

Today, Senate Democrats are siding with the seniors. We are introducing legislation that would repeal the provision barring Medicare from negotiating for lower prices. The Medicare Prescription Drug Price Reduction Act would give Medicare the authority to negotiate with drug companies to obtain the lowest possible prices for seniors and people with disabilities. House Democrats introduced a companion bill yesterday. Together, we will fight for the goal of giving Medicare beneficiaries the drug benefit and lower prices they deserve.

By Mrs. CLINTON:

S. 2003. A bill to amend the Public Health Service Act to promote higher quality health care and better health by strengthening health information, information infrastructure, and the use of health information by providers and patients; to the Committee on Finance.

Mrs. CLINTON. Mr. President, today, I am introducing a bill that seeks to begin a dialogue on one of the most important yet neglected aspects of our health care system—health care quality. this is an enormous issue that affects every single one of us who has ever needed medical care, and it affects all taxpayers because quality care has such potential to avoid waste and save millions of dollars in health care costs. I have raised many of these ideas as amendments in other contexts, such as the Medicare debate on S. 1, and the debate over S. 720, the Patient Safety and Quality Improvement Act of 2003. I intend to continue working with my colleagues on improving these ideas and proposing additional concepts. But with this bill today, I seek to put forward a package of ideas, provoke conversation, and present this as a first step in making quality a focus of my health care efforts next year. My goal with these efforts is to both improve quality and outcomes, and reduce costs by encouraging care that is more effective.

There is no reason why we cannot achieve this. We have the most advanced medical system in human history—the finest medical institutions, the newest treatments, the best trained health care professionals. But in spite of the best intentions of clinicians and patients, our health care system is plagued with underuse, overuse, and misuse. currently, only about 50 percent of care that is known to be effective is provided, and the care given is supported by solid scientific evidence, and the pace of dissemination of new evidence is painfully slow. It may take up to 17 years for treatments found to be effective to become common practice.

Much of the overuse or misuse of health services stems from the fragmentation of our system. In a recent study in Santa Barbara, CA, 20 percent of lab tests and x-rays were conducted solely because previous results were unavailable. One in seven hospitalizations occurs because information is unavailable, and a shocking percentage of the time, physicians do not find patient information that had previously been recorded in a paper-based medical record.

Despite all of our Nation's medical advances, health quality is becoming even more endangered in some respects. Nursing care which is often shown to be a decisive factor for hospital patient outcomes, its in grave shortage, and a majority of U.S. physicians surveyed by the Commonwealth Fund perceive their ability to provide quality care as having worsened over the last 5 years.

Additionally, even as the quality of health care we purchase lags, our spending on inadequate and wasteful care is spiraling out of control. Premiums increased 13 percent last year, and health care costs are increasing at nearly 10 times the rate of inflation. To make matters worse, the public health system is straining to meet the challenges of bioterrorism or emerging infections, the number of uninsured Americans is rising, clinicians are leaving practice, and the older adult population is set to double by 2040.

The reason is not because doctors aren't trying hard enough, or hospitals are at fault. That we're able to get good health care at all is testament to the genius and heroism of doctors and nurses who deliver care, despite all the obstacles, despite every effort of the system to hinder them.

But what our medical system requires of providers is a little like asking pilots to routinely land planes without any information from the control tower. The best of them can do it—they could land a plane with one arm around their backs missing key information and confirmations, but why force them to do it? Why deny them critical information when it could be easily available? There is no plausible reason for denying needed information, especially when life and death are at stake.

That's unfortunately exactly what our health care system says to doctors, nurses, and hospitals. Physicians for example spend four years in medical school, and then several years more in their residency training, cramming medical information into their heads. Then we expect them to look at a patient taking four different drugs, with a heart condition, and immediately remember any drug-drug interactions that could occur. We ask them to do it without looking up any reference materials. We ask them to do it in the few minutes that they have with each patient given the ever-shorter visits, and ever-increasing patient and paperwork load. Moreover, in their free time, they are expected to keep up with all the new journal articles and learn about every new drug.

Yet hand-held computers can now allow the doctor to pull up up-to-date information immediately, right at the bedside, if he or she has any question. And NIH spends billions of dollars in research to generate that information. Shouldn't that investment reap results for the patient as quickly as possible? This bill seeks to provide the direction that would support such technology and make it widely available to physicians.

Right now, doctors, nurses, and hospitals are holding the health care system up, preventing utter collapse by sheer, heroic, force of will. Instead of the clinicians supporting the system, we should build a system that supports clinicians instead.

The premise of this legislation is that information, in the hands of the right people at the right time, drives quality and value. We need to empower patients and health care providers to make the right choices. And to do that, health care decisionsmakers—providers, payers, and patients—need to have access to the right information, where and when it is needed, securely and privately.

This legislation seeks to: 1. Generate information about health quality through increased research, increased public reporting along key quality measures, and standardization of those measures to assure comparability and usability of reported information; 2. Ensure that payers, providers and patients get information in a usable form so they can make effective decisions; and 3. Reduce barriers to the development of an IT infrastructure that is so critical to achieving those first 2 goals.

Eighty percent of the care delivered today is not backed by sound clinical

research. That is why we need to do more research, and see if the care we provide today has sound justification in science. But even where we know what to do, we don't always do it because the information is insufficiently disseminated and utilized. Studies have shown some procedures being performed even when they have not met accepted criteria for appropriateness: In one study, of all the non-emergent, noncancerous hysterectomies performed, only 30 percent had been properly worked up and met the full medical criteria for necessity. In another study, about one-fourth of coronary angiographies and upper gastrointestinal endoscopies did not meet standards of medical appropriateness.

On the flip side, in situations where the benefits of an intervention are clear, many patients do not receive the indicated care: Very few hospitalized patients at-risk for pneumococcal pneumonia who had not been previously vaccinated end up being vaccinated during their hospital stay. Routine peak flow measurements are conducted in only 28 percent of pediatric patients with asthma. And only one-half of diabetics receive an annual eye exam.

We know what good health care means in these areas, but we don't practice it, in part because that information may not be readily available, and regardless, there is no incentive for quality. We are suggesting—track the outcomes, share that information with patients, providers, and insurers, and ultimately, pay for performance.

This bill will help us become better purchasers of care, and help us take the first steps toward aligning the incentives so that higher quality is rewarded. I ask unanimous consent that the attached article from last week's New York Times be printed in the RECORD showing how our current reimbursement system is gravely misaligned. Under the current system, higher quality can be penalized, while worse care can ironically be more profitable.

Today, by introducing these ideas for the purpose of seeking feedback from my colleagues and experts in the field, I am taking the first step toward improving our health care system for everyone and saving money. I invite interested colleagues to join me in partnership on this important venture and look forward to taking strong, positive action next year to improve health quality for all Americans.

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

[From the New York Times, Dec. 5, 2003]

HOSPITALS SAY THEY'RE PENALIZED BY MEDICARE FOR IMPROVING CARE

(By Reed Abelson)

SALT LAKE CITY.—By better educating doctors about the most effective pneumonia treatments, Intermountain Health Care, a network of 21 hospitals in Utah and Idaho, say it saves at least 70 lives a year. By giving the right drugs at discharge time to more people with congestive heart failure, Intermountain saves another 300 lives annually and prevents almost 600 additional hospital stays.

But under Medicare, none of these good deeds go unpunished.

Intermountain says its initiatives have cost it millions of dollars in lost hospital admissions and lower Medicare reimbursements. In the mid-90's, for example, it made an average profit of 9 percent treating pneumonia patients; now, delivering better care, it loses an average of several hundred dollars on each case.

''The health care system is perverse,'' said a frustrated Dr. Brent C. James, who leads Intermountain's efforts to improve quality. ''The payments are perverse. It pays us to harm patients, and it punishes us when we don't.''

Intermountain's doctors and executives are in a swelling vanguard of critics who say that Medicare's payment system is fundamentally flawed.

Medicare, the nation's largest purchaser of health care, pays hospitals and doctors a fixed sum to treat a specific diagnosis or perform a given procedure, regardless of the quality of care they provide. Those who work to improve care are not paid extra, and poor care is frequently rewarded, because it creates the need for more procedures and services.

The Medicare legislation that President Bush is expected to sign on Monday calls for studies and a few pilot programs on quality improvement, but experts say that it does little to reverse financial disincentives to improving care.

''Right now, Medicare's payment system is at best neutral and, in some cases, negative, in terms of quality—we think that is an untenable situation,'' said Glenn M. Hackbarth, the chairman of the Medicare Payment Advisory Commission, an independent panel of economists, health care executives and doctors that advises Congress on such issues as access to care, quality and what to pay health care providers.

In a letter published in the current edition of Health Affairs, a scholarly journal, more than a dozen health care experts, including several former top Medicare officials, urged the program to take the lead in overhauling payment systems so that they reward good care.

''Despite a few initial successes, the inertia of the health system could easily overwhelm nascent efforts to raise average performance levels out of mediocrity,'' they wrote. ''Decisive change will occur only when Medicare, with the full support of the administration and Congress, creates financial incentives that promote pursuit of improved quality.''

Medicare's top official is quick to agree that the payment system needs to be fixed. ''It's one of the fundamental problems Medicare faces,'' said Thomas A. Scully, who as the administrator of the Centers for Medicare and Medicaid Services has encouraged better care by such steps as publicizing data about the quality of nursing home and home-health care and by experimenting with programs to reward hospitals for their efforts.

But the steps taken so far have been small, and many experts say that rather than paying for more studies, Congress should start making significant changes to the way doctors and hospitals are paid.

''They're splashing at the shallow end of the pool,'' said Dr. Arnold Milstein, a consultant for Mercer Human Resource Consulting and the medical director for the Pacific Business Group on Health, an association of large California employers. He would like to see as much as 20 percent of what Medicare pays doctors and hospitals linked to the quality of the care they provide and their efficiency in delivering treatment.

Two decades ago, Medicare led a revolution in health care. By setting fixed payments for various kinds of treatment—a coronary bypass surgery or curing a pneumonia or replacing a hip—rather than simply reimbursing doctors and hospitals for whatever it cost to deliver the care, it encouraged shorter hospital stays and less-expensive treatments.

But today, many health care executives say, Medicare's payment system hinders attempts to improve care. Dr. James, the Intermountain executive, said that he wrestled with the situation every day.

By making sure its doctors prescribe the most effective antibiotic for pneumonia patients, for example, and thereby avoiding complications, Intermountain forgoes roughly $1 million a year in Medicare payments, he estimated. When a pneumonia patient deteriorates so badly that the patient needs a ventilator, Intermountain collects about $19,000, compared with $5,000 for a typical pneumonia case. And while it makes money treating the sicker patient, Dr. James said, it loses money caring for the healthier one.

Nor is Intermountain rewarded for sparing someone a stay in the hospital—and for sparing Medicare the bill. Shirley Monson, 74, of Ephraim, Utah, said that she expected to be hospitalized when she developed pneumonia last year. Instead, Sanpete Valley Hospital, part of Intermountain, sent Mrs. Monson home with antibiotics, and she recovered over the next two weeks. Such visits produce just token payments for hospitals.

In addition to losing revenue each time it avoids an unnecessary hospital stay, Intermountain is penalized for treating only the sickest patients, Dr. James said. Medicare's payments for pneumonia are based on a rough estimate of the cost of an average case and assume a hospital will see a range of patients, some less sick—and therefore less expensive to treat—than others. But because Intermountain now admits only the sickest patients, its reimbursements fall short of its costs, Dr. James said, resulting in an average loss this year of a few hundred dollars a case.

Similarly, averting hospital stays for congestive heart patients by prescribing the right medicines costs Intermountain nearly $4 million a year in potential revenues, according to Dr. James. And every adverse drug reaction Intermountain avoids deprives it of the revenue from treating the case.

''We are really rewarded for episodic care and maximizing the care delivered in each episode,'' said Dr. Charles W. Sorenson Jr., Intermountain's chief operating officer.

Like the visit majority of the nation's hospitals, Intermountain is a nonprofit organization, and executives here say financial penalties do not damp their desire to provide the highest quality care, which they see as their central mission. But Intermountain, which operates health plans and outpatient clinics in addition to its hospitals, says it beds to keep hospital beds filled and make money where it can to subsidize unprofitable services and pay for charity care.

Outside of Medicare, Intermountain often benefits from its quality initiatives, executives said, because it gets to pocket much of the savings they produce. For example, Intermountain has generated about $2 million annually in savings by reducing the number of deliveries that women choose to induce before 39 weeks of pregnancy—and thereby reducing the risk of complications to the mother or baby. According to Dr. James, almost all that money has been spent on other kinds of care.

Hospital executives elsewhere say that they, too, have come up against the cold reality of the Medicare payment system. Partners HealthCare, the Boston system that includes Massachusetts General and Brigham

and Women's Hospitals, has taken steps to reduce the number of unnecessary diagnostic tests it conducts at outpatient radiology centers, though executives know that smarter care will cut into their revenues.

''That's where you're smack up against the perverseness of the system,'' said Dr. James J. Mongan, chief executive of Partners.

Medicare's payment policies have stymied efforts in the private sector to improve care, as well.

For example, the Leapfrog Group, a national organization of large employers concerned about health issues, has tried to encourage more hospitals to employ intensivists—specialists who oversee the care provided in intensive-care units. Though studies show that such doctors significantly improve care, Medicare does not pay for them, and employers and insurers are having difficulty persuading some hospitals to take on the added expense.

''It's going to be very hard to compete with the incentives and disincentives in Medicare,'' said Suzanne Delbanco, the group's executive director.

Others argue that hospitals and doctors should not be paid extra for doing what they should be doing in the first place.

Helen Darling, the executive director of the National Business Group on Health, a national employer group, said Medicare instead should take a firmer stance in demanding quality. The program had a significant effect, she noted, when it said that only hospitals meeting a minimum set of standards could be reimbursed by Medicare for heart transplants.

''The payment system drove quality,'' Ms. Darling said.

Medicare itself is taking some other tentative steps, including an experiment that pays certain hospitals an extra 2 percent for delivering the highest-quality care, as measured, for example, by administering antibiotics to pneumonia patients quickly and giving heart attack patients aspirin. But some hospital industry executives question whether that is enough money to offset the costs of improving care.

''It can only be a motivator if you really have an incentive,'' said Carmela Coyle, an executive with the American Hospital Association, who noted that hospitals on average are paid only 98 cents for each dollar of Medicare services they provide.

Mr. Scully, the Medicare administrator, defends the experiment, saying that the agency's goal is to determine if it is using the right measures to reward quality. ''If this works, we'll do a bigger demonstration,'' he said.

But many policy analysts and employer groups want Medicare to do more. ''Today, Medicare needs to step out front,'' said Peter V. Lee, chief executive of the Pacific Business Group on Health, who argues that how hospitals and doctors are paid is a critical component of motivating them to improve care. ''There needs to be money at play.''

SUBMITTED RESOLUTIONS

SENATE RESOLUTION 279—RECOGNIZING THE IMPORTANCE AND CONTRIBUTIONS OF SPORTSMEN TO AMERICAN SOCIETY, SUPPORTING THE TRADITIONS AND VALUES OF SPORTSMEN, AND RECOGNIZING THE MANY ECONOMIC BENEFITS ASSOCIATED WITH OUTDOOR SPORTING ACTIVITIES

Mr. COLEMAN submitted the following resolution; which was referred to the Committee on Environment and Public Works:

S. RES. 279

Whereas there are more than 38,000,000 sportsmen in the United States;

Whereas these sportsmen, who come from all walks of life, engage in a sport they love, while helping to stimulate the economy, especially in small, rural communities, and contributing to conservation efforts;

Whereas sportsmen demonstrate values of conservation, appreciation of the outdoors, and love of the natural beauty of the United States;

Whereas sporting activities have both physical and mental health benefits that allow Americans to escape from the fast pace of their lives and to spend time with their families and friends;

Whereas sportsmen pass down their love of the outdoors from generation to generation;

Whereas many sportsmen consider hunting, trapping, and fishing of tremendous importance to the American way of life;

Whereas sportsmen have a passion for learning about nature and have tremendous respect for the game pursued, other sportsmen, the non-hunting populace, and the natural resources upon which they depend;

Whereas the total economic contribution of sportsmen amounts to $70,000,000,000 annually, with a ripple effect amounting to $179,000,000,000;

Whereas sportsmen contribute $1,700,000,000 every year for conservation programs, and these funds constitute a significant portion of on-the-ground wildlife conservation funding;

Whereas anglers support 1,000,000 jobs and small businesses in communities in every part of the United States, and they purchase $3,200,000,000 in basic fishing equipment every year;

Whereas tens of millions of Americans hunt and are a substantial economic force, spending $21,000,000,000 every year;

Whereas a sportsman President, Theodore Roosevelt, established America's first National Wildlife Refuge 100 years ago, and with the committed support of sportsmen over the last century, the National Wildlife Refuge System includes more than 540 refuges spanning 95,000,000 acres throughout all 50 States;

Whereas the funds raised from sportsmen through purchases of Federal migratory bird hunting and conservation stamps under the Act of March 16, 1934 (commonly known as the Duck Stamp Act) (16 U.S.C. 718a et seq.), are used to purchase and restore vital wetlands in the refuge system;

Whereas the sale of those stamps has raised more than $500,000,000 which has been used to acquire approximately 5,000,000 acres of refuge lands;

Whereas in 1937, Congress passed the Pittman-Robertson Wildlife Restoration Act (16 U.S.C. 669 et seq.), under which sportsmen and the firearms and ammunition industries agreed to a self-imposed 10 percent excise tax on ammunition and firearms, the proceeds of which are distributed to the States for wildlife restoration;

Whereas the Pittman-Robertson Wildlife Restoration Act has created a source of permanent funding for State wildlife agencies that has been used to rebuild and expand the ranges of numerous species, including wild turkey, white-tailed deer, pronghorn antelope, wood duck, beaver, black bear, American elk, bison, desert bighorn sheep, bobcat, and mountain lion, and several non-game species, including bald eagles, sea otters, and numerous song birds;

Whereas in 1950, Congress passed the Dingell-Johnson Sport Fish Restoration Act (16 U.S.C. 777 et seq.), under which recreational anglers and the fishing and tackle manufacturing industries agreed to a self-imposed 10 percent excise tax on sport fishing equipment (including fishing rods, reels, lines, and hooks, artificial lures, baits and flies, and other fishing supplies and accessories), the proceeds of which are used for the purposes of constructing fish hatcheries, building boat access facilities, promoting fishing, and educating children about aquatic resources and fishing; and

Whereas the Dingell-Johnson Sport Fish Restoration Act was amended in 1984 to extend the excise tax to previously untaxed items of sport fishing equipment and to dedicate a portion of the existing Federal tax on motorboat fuels to those purposes, so that now approximately ⅓ of the funds expended by State fish and wildlife agencies for maintenance and development of sports fisheries are collected through the use of the excise tax: Now, therefore, be it

Resolved, That the Senate—

(1) recognizes the importance and contributions of sportsmen to American society;

(2) supports the traditions and values of sportsmen;

(3) supports the many conservation programs implemented by sportsmen;

(4) recognizes the many economic benefits associated with outdoor sporting activities; and

(5) recognizes the importance of encouraging the recruitment of, and teaching the traditions of hunting, trapping, and fishing to, future sportsmen.

SENATE RESOLUTION 280—CONGRATULATING THE SAN JOSE EARTHQUAKES FOR WINNING THE 2003 MAJOR LEAGUE SOCCER CUP

Mrs. BOXER (for herself and Mrs. FEINSTEIN) submitted the following resolution; which was considered and agreed to:

S. RES. 280

Whereas on November 23, 2003, the San Jose Earthquakes defeated the Chicago Fire to win the 2003 Major League Soccer Cup;

Whereas the San Jose Earthquakes achieved a 14–7–9 regular season record to finish first in the Major League Soccer Western Conference;

Whereas the San Jose Earthquakes finished an extraordinary season by overcoming injuries, adversity, and multiple-goal deficits to reach the Major League Soccer Cup championship match;

Whereas in the championship match, the San Jose Earthquakes and the Chicago Fire scored 6 goals combined, breaking the Major League Soccer Cup championship match scoring record;

Whereas head coach Frank Yallop led the San Jose Earthquakes to victory;

Whereas the San Jose Earthquakes is a team of world-class players, including Jeff Agoos, Arturo Alvarez, Brian Ching, Jon Conway, Ramiro Corrales, Troy Dayak, Dwayne De Rosario, Landon Donovan, Todd Dunivant, Ronnie Ekelund, Rodrigo Faria, Manny Lagos, Roger Levesque, Brain Mullan, Richard Mulrooney, Pat Onstad, Eddie Robinson, Chris Roner, Ian Russell, Josh Saunders, Craig Waibel, and Jamil Walker, all of whom contributed extraordinary performances throughout the regular season, playoffs and Major League Soccer Cup;

Whereas San Jose Earthquakes midfielder Ronnie Ekelund scored in the fifth minute of play, tying Eduardo Hurtado for the fastest goal scored in a Major League Soccer Cup championship match;

Whereas with the victory, San Jose Earthquakes captain Jeff Agoos won his second Major League Soccer Cup for the San Jose Earthquakes and his fifth Major League Soccer Cup overall;

Whereas San Jose Earthquakes forward Landon Donovan, who has been named United States National Team Player of the Year twice, scored 2 goals on 2 shots in the championship match, earning the Honda Major League Soccer Cup Most Valuable Player Award;

Whereas by winning the 2003 Major League Soccer Cup, the San Jose Earthquakes join DC United to become the second team in Major League Soccer history to win the Major League Soccer Cup more than once;

Whereas the San Jose Earthquakes have brought great pride to the City of San Jose and to the State of California;

Whereas Major League Soccer has become extremely popular in only 8 seasons; and

Whereas the success of Major League Soccer has contributed to the growing popularity of soccer in the United States in recent years: Now, therefore, be it

Resolved, That the Senate—

(1) congratulates the San Jose Earthquakes for winning the 2003 Major League Soccer Cup;

(2) recognizes the achievement of the players, coaches, staff, and supporters of the San Jose Earthquakes in bringing the 2003 Major League Soccer Cup to San Jose;

(3) commends the San Jose community for its enthusiastic support of the San Jose Earthquakes; and

(4) expresses the hope that Major League Soccer will continue to inspire fans and young players in the United States and around the world by producing teams of the high caliber of the San Jose Earthquakes.

SENATE RESOLUTION 281—RELATIVE TO THE DEATH OF THE HONORABLE PAUL SIMON, A FORMER SENATOR FROM THE STATE OF ILLINOIS

Mr. FITZGERALD (for himself, Mr. DURBIN, MR. FRIST, Mr. DASCHLE, and Mr. DEWINE) submitted the following resolution; which was considered and agreed to:

S. RES. 281

Whereas the Honorable Paul Simon at the age of 19 became the Nation's youngest editor-publisher when he accepted a Lion's Club challenge to save the Troy Tribute in Troy, Illinois, and built a chain of 13 newspapers in southern and central Illinois;

Whereas the Honorable Paul Simon used his newspaper to expose criminal activities, and in 1951, at age 22, was called as a key witness to testify before the U.S. Senate's Crime Investigating Committee;

Whereas the Honorable Paul Simon served in the Illinois legislature for 14 years, winning the Independent Voters of Illinois' ''Best Legislator Award'' every session;

Whereas the Honorable Paul Simon was elected lieutenant governor in 1968 and was the first in Illinois' history to be elected to that post with a governor of another party;

Whereas the Honorable Paul Simon served Illinois in the United States House of Representatives and the United States Senate with devotion and distinction;

Whereas the Honorable Paul Simon is the only individual to have served in both the Illinois House of Representatives and the Illinois Senate, and the U.S. House of Representatives and the U.S. Senate.

Whereas the Honorable Paul Simon was the founder and director of the Public Policy Institute at Southern Illinois University in Carbondale, Illinois, and taught there for more than six years in the service of the youth of our Nation;

Whereas the Honorable Paul Simon wrote over 20 books and held over 50 honorary degrees;

Whereas the Honorable Paul Simon was an unapologetic champion of the less fortunate and a constant example of caring and honesty in public service;

Whereas his efforts on behalf of Illinoisans and all Americans earned him the esteem and high regard of his colleagues; and

Whereas his tragic death has deprived his State and Nation of an outstanding lawmaker and public servant: Now, therefore, be it

Resolved, That the Senate has heard with profound sorrow and deep regret the announcement of the death of the Honorable Paul Simon, a former Senator from the State of Illinois.

Resolved, That the Secretary of the Senate communicate these resolutions to the House of Representatives and transmit an enrolled copy thereof to the family of the deceased.

Resolved, That when the Senate adjourns today, it stand adjourned as a further mark of respect to the memory of the deceased former Senator.

SENATE RESOLUTION 282—PROVIDING THE FUNDING TO ASSIST IN MEETING THE OFFICIAL EXPENSES OF A PRELIMINARY MEETING RELATIVE TO THE FORMATION OF A UNITED STATES SENATE–CHINA INTERPARLIAMENTARY GROUP

Mr. STEVENS submitted the following resolution; which was considered and agreed to:

S. RES. 282

Resolved, That—

(1) there is authorized within the contingent fund of the Senate under the appropriation account ''MISCELLANEOUS ITEMS'' $75,000 for fiscal year 2004 to assist in meeting the official expenses of a preliminary meeting relative to the formation of a United States Senate-China interparliamentary group including travel, per diem, conference room expenses, hospitality expenses, and food and food-related expenses;

(2) such expenses shall be paid on vouchers to be approved by the President pro tempore of the Senate; and

(3) the Secretary of the Senate is authorized to advance such sums as necessary to carry out this resolution.

SENATE RESOLUTION 283—AFFIRMING THE NEED TO PROTECT CHILDREN IN THE UNITED STATES FROM INDECENT PROGRAMMING

Mr. SESSIONS (for himself, Mr. SHELBY, Mr. INHOFE, Mr. BROWNBACK, Mr. NICKLES, Mr. BUNNING, Mr. TALENT, Mr. CHAMBLISS, Mr. CRAIG, Mr. DOMENICI, Mr. KYL, and Mr. HOLLINGS) submitted the following resolution; which was considered and agreed to:

S. RES. 283

Whereas millions of people in the United States are increasingly concerned with the patently offensive television and radio programming being sent into their homes;

Whereas millions of families in the United States are particularly concerned with the adverse impact of this programming on children;

Whereas indecent and offensive programming is contributing to a dramatic coarsening of civil society of the United States;

Whereas the Federal Communications Commission is charged with enforcing standards of decency in broadcast media;

Whereas the Federal Communications Commission established a standard defining what constitutes indecency in the declaratory order In the Matter of a Citizen's Complaint Against Pacifica Foundation Station WBAI(FM), 56 F.C.C.2d 94 (1975) (referred to in this Resolution as the ''Pacifica order'');

Whereas the Federal Communications Commission has not used all of its available authority to impose penalties on broadcasters that air indecent material even when egregious and repeated violations have been found in the cases of WKRK–FM, Detroit, MI, File No. EB–02–IH–0109 (Apr. 3, 2003) and WNEW–FM, New York, New York, EB–02–IH–0685 (Sept. 30, 2003);

Whereas the standard established in the Pacifica order focuses on protecting children from exposure to indecent language;

Whereas the standard established in the Pacifica order was upheld as constitutional by the United States Supreme Court in Federal Communications Commission v. Pacifica Foundation, 438 U.S. 726 (1978);

Whereas the Enforcement Bureau of the Federal Communications Commission has refused to sanction the airing of indecent language during the broadcast of the Golden Globe Awards, at a time when millions of children were in the potential audience; and

Whereas as of December 2003, an application for review is pending before the Federal Communications Commission, requesting that the full Commission review that decision of the Enforcement Bureau: Now, therefore, be it

Resolved, That it is the sense of the Senate that—

(1) the Federal Communications Commission should re-consider the Enforcement Bureau's decision in the Matter of Complaints Against Various Broadcast Licensees Regarding Their Airing of the ''Golden Globe Awards'' Program, File No. EB–03–IH–0110, 2003 FCC LEXIS 5382, (Oct. 3, 2003), in light of the public policy considerations in protecting children from indecent material;

(2) the Federal Communications Commission should return to vigorously and expeditiously enforcing its own United States Supreme Court-approved standard for indecency in broadcast media, as established in the declaratory order In the Matter of a Citizen's Complaint Against Pacifica Foundation Station WBAI(FM), 56 F.C.C.2d 94 (1975);

(3) the Federal Communications Commission should reassert its responsibility as defender of the public interest by undertaking new and serious efforts to sanction broadcast licensees that refuse to adhere to the standard established in that order;

(4) the Federal Communications Commission should make every reasonable and lawful effort to protect children from the degrading influences of indecent programming;

(5) the Federal Communications Commission should use all of its available authority to protect the public from indecent broadcasts including: (1) the discretion to impose fines up to a statutory maximum for each separate ''utterance'' or ''material'' found to be indecent; and (2) the initiation of license

revocation proceedings for repeated violations of its indecency rules;

(6) the Federal Communications Commission should resolve all indecency complaints expeditiously, and should consider reviewing such complaints at the full Commission level; and

(7) the Federal Communications Commission should aggressively investigate and enforce all indecency allegations.

AMENDMENTS SUBMITTED AND PROPOSED

SA 2227. Mr. FRIST (for Mr. GRASSLEY) proposed an amendment to the bill H.R. 743, to amend the Social Security Act and the Internal Revenue Code of 1986 to provide additional safeguards for Social Security and Supplemental Security Income beneficiaries with representative payees, to enhance program protections, and for other purposes.

SA 2228. Mr. FRIST (for Mr. ALEXANDER) proposed an amendment to the bill H.R. 2264, An act to authorize appropriations for fiscal year 2004 to carry out the Congo Basin Forest Partnership program, and for other purposes.

SA 2229. Mr. FRIST (for Mr. ALEXANDER) proposed an amendment to the bill H.R. 2264, supra.

SA 2230. Mr. FRIST (for Mr. LEVIN) proposed an amendment to the bill S. 1267, to amend the District of Columbia Home Rule Act to provide the District of Columbia with autonomy over its budgets, and for other purposes.

SA 2231. Mr. FRIST (for Mr. HATCH) proposed an amendment to the bill S. 1177, to prevent tobacco smuggling, to ensure the collection of all tobacco taxes, and for other purposes.

TEXT OF AMENDMENTS

SA 2227. Mr. FRIST (for Mr. GRASSLEY) proposed an amendment to the bill H.R. 743, to amend the Social Security Act and the Internal Revenue Code of 1986 to provide additional safeguards for Social Security and Supplemental Security Income beneficiaries with representative payees, to enhance program protections, and for other purposes; as follows:

On page 83, strike lines 14 through 16, and insert ''807(i) of the Social Security Act (42 U.S.C. 1007(i)) is amended further by inserting after the''.

Beginning on page 112, strike line 16 and all that follows through page 113, line 6, and insert the following:

''(c)(1) In addition to the amount otherwise appropriated in any other law to carry out subsection (a) for fiscal year 2004, up to $8,500,000 is authorized and appropriated and shall be used by the Commissioner of Social Security under this subsection for purposes of conducting a statistically valid survey to determine how payments made to individuals, organizations, and State or local government agencies that are representative payees for benefits paid under title II or XVI are being managed and used on behalf of the beneficiaries for whom such benefits are paid.

''(2) Not later than 18 months after the date of enactment of this subsection, the Commissioner of Social Security shall submit a report on the survey conducted in accordance with paragraph (1) to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate.''.

Beginning on page 118, strike line 19 and all that follows through page 123, line 12, and insert the following:

SEC. 203. DENIAL OF TITLE II BENEFITS TO PERSONS FLEEING PROSECUTION, CUSTODY, OR CONFINEMENT, AND TO PERSONS VIOLATING PROBATION OR PAROLE.

(a) IN GENERAL.—Section 202(x) of the Social Security Act (42 U.S.C. 402(x)) is amended—

(1) in the heading, by striking ''Prisoners'' and all that follows and inserting the following: ''Prisoners, Certain Other Inmates of Publicly Funded Institutions, Fugitives, Probationers, and Parolees'';

(2) in paragraph (1)(A)(ii)(IV), by striking ''or'' at the end;

(3) in paragraph (1)(A)(iii), by striking the period at the end and inserting a comma;

(4) by inserting after paragraph (1)(A)(iii) the following:

''(iv) is fleeing to avoid prosecution, or custody or confinement after conviction, under the laws of the place from which the person flees, for a crime, or an attempt to commit a crime, which is a felony under the laws of the place from which the person flees, or, in jurisdictions that do not define crimes as felonies, is punishable by death or imprisonment for a term exceeding 1 year regardless of the actual sentence imposed, or

''(v) is violating a condition of probation or parole imposed under Federal or State law.'';

(5) by adding at the end of paragraph (1)(B) the following:

''(iii) Notwithstanding subparagraph (A), the Commissioner shall, for good cause shown, pay the individual benefits that have been withheld or would otherwise be withheld pursuant to clause (iv) or (v) of subparagraph (A) if the Commissioner determines that—

''(I) a court of competent jurisdiction has found the individual not guilty of the criminal offense, dismissed the charges relating to the criminal offense, vacated the warrant for arrest of the individual for the criminal offense, or issued any similar exonerating order (or taken similar exonerating action), or

''(II) the individual was erroneously implicated in connection with the criminal offense by reason of identity fraud.

''(iv) Notwithstanding subparagraph (A), the Commissioner may, for good cause shown based on mitigating circumstances, pay the individual benefits that have been withheld or would otherwise be withheld pursuant to clause (iv) or (v) of subparagraph (A) if the Commissioner determines that—

''(I) the offense described in clause (iv) or underlying the imposition of the probation or parole described in clause (v) was nonviolent and not drug-related, and

''(II) in the case of an individual from whom benefits have been withheld or otherwise would be withheld pursuant to subparagraph (A)(v), the action that resulted in the violation of a condition of probation or parole was nonviolent and not drug-related.''; and

(6) in paragraph (3), by adding at the end the following:

''(C) Notwithstanding the provisions of section 552a of title 5, United States Code, or any other provision of Federal or State law (other than section 6103 of the Internal Revenue Code of 1986 and section 1106(c) of this Act), the Commissioner shall furnish any Federal, State, or local law enforcement officer, upon the written request of the officer, with the current address, Social Security number, and photograph (if applicable) of any beneficiary under this title, if the officer furnishes the Commissioner with the name of the beneficiary, and other identifying information as reasonably required by the Commissioner to establish the unique identity of the beneficiary, and notifies the Commissioner that—

''(i) the beneficiary is described in clause (iv) or (v) of paragraph (1)(A); and

''(ii) the location or apprehension of the beneficiary is within the officer's official duties.''.

(b) CONFORMING AMENDMENTS TO TITLE XVI.—Section 1611(e) of the Social Security Act (42 U.S.C. 1382(e)) is amended—

(1) in paragraph (4)—

(A) by redesignating subparagraphs (A) and (B) as clauses (i) and (ii), respectively;

(B) by inserting ''(A)'' after ''(4)'';

(C) in clause (i) of subparagraph (A) (as redesignated by subparagraph (A)), by striking ''or which, in the case of the State of New Jersey, is a high misdemeanor under the laws of such State'' and inserting ''or, in jurisdictions that do not define crimes as felonies, is punishable by death or imprisonment for a term exceeding 1 year regardless of the actual sentence imposed''; and

(D) by adding at the end the following:

''(B) Notwithstanding subparagraph (A), the Commissioner shall, for good cause shown, treat the person referred to in subparagraph (A) as an eligible individual or eligible spouse if the Commissioner determines that—

''(i) a court of competent jurisdiction has found the person not guilty of the criminal offense, dismissed the charges relating to the criminal offense, vacated the warrant for arrest of the person for the criminal offense, or issued any similar exonerating order (or taken similar exonerating action), or

''(ii) the person was erroneously implicated in connection with the criminal offense by reason of identity fraud.

''(C) Notwithstanding subparagraph (A), the Commissioner may, for good cause shown based on mitigating circumstances, treat the person referred to in subparagraph (A) as an eligible individual or eligible spouse if the Commissioner determines that—

''(i) the offense described in subparagraph (A)(i) or underlying the imposition of the probation or parole described in subparagraph (A)(ii) was nonviolent and not drug-related, and

''(ii) in the case of a person who is not considered an eligible individual or eligible spouse pursuant to subparagraph (A)(ii), the action that resulted in the violation of a condition of probation or parole was nonviolent and not drug-related.''; and

(2) in paragraph (5), by striking subparagraphs (A) and (B) and inserting the following:

''(A) the recipient is described in clause (i) or (ii) of paragraph (4)(A); and

''(B) the location or apprehension of the recipient is within the officer's official duties.''.

(c) CONFORMING AMENDMENT.—Section 804(a)(2) of the Social Security Act (42 U.S.C. 1004(a)(2)) is amended by striking ''or which, in the case of the State of New Jersey, is a high misdemeanor under the laws of such State'' and inserting ''or, in jurisdictions that do not define crimes as felonies, is punishable by death or imprisonment for a term exceeding 1 year regardless of the actual sentence imposed''.

(d) EFFECTIVE DATE.—The amendments made by this section shall take effect on the first day of the first month that begins on or after the date that is 9 months after the date of enactment of this Act.

On page 126, beginning on line 22, strike ''guilty of'' and all that follows through ''shall be'' on line 26, and insert ''fined not more than $5,000, imprisoned not more than 3 years, or both, except that if the offense is committed only by threats of force, the person shall be''.

Beginning on page 129, strike line 16 and all that follows through page 132, line 11, and insert the following:

SEC. 209. AUTHORITY FOR JUDICIAL ORDERS OF RESTITUTION.

(a) AMENDMENTS TO TITLE II.—Section 208 of the Social Security Act (42 U.S.C. 408) is amended—

(1) by redesignating subsections (b), (c), and (d) as subsections (c), (d), and (e), respectively;

(2) by inserting after subsection (a) the following:

''(b)(1) Any Federal court, when sentencing a defendant convicted of an offense under subsection (a), may order, in addition to or in lieu of any other penalty authorized by law, that the defendant make restitution to the victims of such offense specified in paragraph (4).

''(2) Sections 3612, 3663, and 3664 of title 18, United States Code, shall apply with respect to the issuance and enforcement of orders of restitution to victims of such offense under this subsection.

''(3) If the court does not order restitution, or orders only partial restitution, under this subsection, the court shall state on the record the reasons therefor.

''(4) For purposes of paragraphs (1) and (2), the victims of an offense under subsection (a) are the following:

''(A) Any individual who suffers a financial loss as a result of the defendant's violation of subsection (a).

''(B) The Commissioner of Social Security, to the extent that the defendant's violation of subsection (a) results in—

''(i) the Commissioner of Social Security making a benefit payment that should not have been made; or

''(ii) an individual suffering a financial loss due to the defendant's violation of subsection (a) in his or her capacity as the individual's representative payee appointed pursuant to section 205(j).

''(5)(A) Except as provided in subparagraph (B), funds paid to the Commissioner of Social Security as restitution pursuant to a court order shall be deposited in the Federal Old-Age and Survivors Insurance Trust Fund, or the Federal Disability Insurance Trust Fund, as appropriate.

''(B) In the case of funds paid to the Commissioner of Social Security pursuant to paragraph (4)(B)(ii), the Commissioner of Social Security shall certify for payment to the individual described in such paragraph an amount equal to the lesser of the amount of the funds so paid or the individual's outstanding financial loss, except that such amount may be reduced by the amount of any overpayments of benefits owed under this title, title VIII, or title XVI by the individual.''; and

(3) by amending subsection (c) (as redesignated by paragraph (1)), by striking the second sentence.

(b) AMENDMENTS TO TITLE VIII.—Section 811 of the Social Security Act (42 U.S.C. 1011) is amended—

(1) by striking subsection (b) and inserting the following:

''(b) COURT ORDER FOR RESTITUTION.—

''(1) IN GENERAL.—Any Federal court, when sentencing a defendant convicted of an offense under subsection (a), may order, in addition to or in lieu of any other penalty authorized by law, that the defendant make restitution to the Commissioner of Social Security, in any case in which such offense results in—

''(A) the Commissioner of Social Security making a benefit payment that should not have been made, or

''(B) an individual suffering a financial loss due to the defendant's violation of subsection (a) in his or her capacity as the individual's representative payee appointed pursuant to section 807(i).

''(2) RELATED PROVISIONS.—Sections 3612, 3663, and 3664 of title 18, United States Code, shall apply with respect to the issuance and enforcement of orders of restitution under this subsection. In so applying such sections, the Commissioner of Social Security shall be considered the victim.

''(3) STATED REASONS FOR NOT ORDERING RESTITUTION.—If the court does not order restitution, or orders only partial restitution, under this subsection, the court shall state on the record the reasons therefor.

''(4) RECEIPT OF RESTITUTION PAYMENTS.—

''(A) IN GENERAL.—Except as provided in subparagraph (B), funds paid to the Commissioner of Social Security as restitution pursuant to a court order shall be deposited as miscellaneous receipts in the general fund of the Treasury.

''(B) PAYMENT TO THE INDIVIDUAL.—In the case of funds paid to the Commissioner of Social Security pursuant to paragraph (1)(B), the Commissioner of Social Security shall certify for payment to the individual described in such paragraph an amount equal to the lesser of the amount of the funds so paid or the individual's outstanding financial loss as described in such paragraph, except that such amount may be reduced by any overpayment of benefits owed under this title, title II, or title XVI by the individual.''.

(c) AMENDMENTS TO TITLE XVI.—Section 1632 of the Social Security Act (42 U.S.C. 1383a) is amended—

(1) by redesignating subsection (b) as subsection (c); and

(2) by inserting after subsection (a) the following:

''(b)(1) Any Federal court, when sentencing a defendant convicted of an offense under subsection (a), may order, in addition to or in lieu of any other penalty authorized by law, that the defendant make restitution to the Commissioner of Social Security, in any case in which such offense results in—

''(A) the Commissioner of Social Security making a benefit payment that should not have been made, or

''(B) an individual suffering a financial loss due to the defendant's violation of subsection (a) in his or her capacity as the individual's representative payee appointed pursuant to section 1631(a)(2).

''(2) Sections 3612, 3663, and 3664 of title 18, United States Code, shall apply with respect to the issuance and enforcement of orders of restitution under this subsection. In so applying such sections, the Commissioner of Social Security shall be considered the victim.

''(3) If the court does not order restitution, or orders only partial restitution, under this subsection, the court shall state on the record the reasons therefor.

''(4)(A) Except as provided in subparagraph (B), funds paid to the Commissioner of Social Security as restitution pursuant to a court order shall be deposited as miscellaneous receipts in the general fund of the Treasury.

''(B) In the case of funds paid to the Commissioner of Social Security pursuant to paragraph (1)(B), the Commissioner of Social Security shall certify for payment to the individual described in such paragraph an amount equal to the lesser of the amount of the funds so paid or the individual's outstanding financial loss as described in such paragraph, except that such amount may be reduced by any overpayment of benefits owed under this title, title II, or title VIII by the individual.''; and

(3) by amending subsection (c) (as redesignated by paragraph (1)) by striking ''(1) If a person'' and all that follows through ''(2)''.

(d) EFFECTIVE DATE.—The amendments made by subsections (a), (b), and (c) shall apply with respect to violations occurring on or after the date of enactment of this Act.

Beginning on page 132, strike line 12 and all that follows through page 133, line 18.

On page 133, line 19, strike ''**211**'' and insert ''**210**''.

On page 138, line 17, strike ''**212**'' and insert ''**211**''.

On page 139, strike lines 5 through 11, and insert the following:

''(c) For purposes of subsections (a) and (b), the criterion specified in this subsection is that the individual, if not a United States citizen or national—

''(1) has been assigned a social security account number that was, at the time of assignment, or at any later time, consistent with the requirements of subclause (I) or (III) of section 205(c)(2)(B)(i); or

''(2) at the time any such quarters of coverage are earned—

''(A) is described in subparagraph (B) or (D) of section 101(a)(15) of the Immigration and Nationality Act,

''(B) is lawfully admitted temporarily to the United States for business (in the case of an individual described in such subparagraph (B)) or the performance as a crewman (in the case of an individual described in such subparagraph (D)), and

''(C) the business engaged in or service as a crewman performed is within the scope of the terms of such individual's admission to the United States.''.

On page 139, strike lines 18 through 22, and insert the following:

''(C) if not a United States citizen or national—

''(i) has been assigned a social security account number that was, at the time of assignment, or at any later time, consistent with the requirements of subclause (I) or (III) of section 205(c)(2)(B)(i); or

''(ii) at the time any quarters of coverage are earned—

''(I) is described in subparagraph (B) or (D) of section 101(a)(15) of the Immigration and Nationality Act,

''(II) is lawfully admitted temporarily to the United States for business (in the case of an individual described in such subparagraph (B)) or the performance as a crewman (in the case of an individual described in such subparagraph (D)), and

''(III) the business engaged in or service as a crewman performed is within the scope of the terms of such individual's admission to the United States.''.

On page 139, line 24, strike ''filed'' and insert ''based on social security account numbers issued''.

Beginning on page 141, strike line 9 and all that follows through page 143, line 23, and insert the following:

SEC. 302. TEMPORARY EXTENSION OF ATTORNEY FEE PAYMENT SYSTEM TO TITLE XVI CLAIMS.

(a) IN GENERAL.—Section 1631(d)(2) of the Social Security Act (42 U.S.C. 1383(d)(2)) is amended—

(1) in subparagraph (A), in the matter preceding clause (i)—

(A) by striking ''section 206(a)'' and inserting ''section 206'';

(B) by striking ''(other than paragraph (4) thereof)'' and inserting ''(other than subsections (a)(4) and (d) thereof)''; and

(C) by striking ''paragraph (2) thereof'' and inserting ''such section'';

(2) in subparagraph (A)(i)—

(A) by striking ''in subparagraphs (A)(ii)(I) and (C)(i),'' and inserting ''in subparagraphs (A)(ii)(I) and (D)(i) of subsection (a)(2)''; and

(B) by striking ''and'' at the end;

(3) by striking subparagraph (A)(ii) and inserting the following:

''(ii) by substituting, in subsections (a)(2)(B) and (b)(1)(B)(i), the phrase 'paragraph (7)(A) or (8)(A) of section 1631(a) or the requirements of due process of law' for the phrase 'subsection (g) or (h) of section 223';

''(iii) by substituting, in subsection (a)(2)(C)(i), the phrase 'under title II' for the phrase 'under title XVI';

''(iv) by substituting, in subsection (b)(1)(A), the phrase 'pay the amount of such fee' for the phrase 'certify the amount of such fee for payment' and by striking, in subsection (b)(1)(A), the phrase 'or certified for payment'; and

''(v) by substituting, in subsection (b)(1)(B)(ii), the phrase 'deemed to be such amounts as determined before any applicable reduction under section 1631(g), and reduced by the amount of any reduction in benefits under this title or title II made pursuant to section 1127(a)' for the phrase 'determined before any applicable reduction under section 1127(a))'.''; and

(4) by redesignating subparagraph (B) as subparagraph (D) and inserting after subparagraph (A) the following:

''(B) Subject to subparagraph (C), if the claimant is determined to be entitled to past-due benefits under this title and the person representing the claimant is an attorney, the Commissioner of Social Security shall pay out of such past-due benefits to such attorney an amount equal to the lesser of—

''(i) so much of the maximum fee as does not exceed 25 percent of such past-due benefits (as determined before any applicable reduction under section 1631(g) and reduced by the amount of any reduction in benefits under this title or title II pursuant to section 1127(a)), or

''(ii) the amount of past-due benefits available after any applicable reductions under sections 1631(g) and 1127(a).

''(C)(i) Whenever a fee for services is required to be paid to an attorney from a claimant's past-due benefits pursuant to subparagraph (B), the Commissioner shall impose on the attorney an assessment calculated in accordance with clause (ii).

''(ii)(I) The amount of an assessment under clause (i) shall be equal to the product obtained by multiplying the amount of the representative's fee that would be required to be paid by subparagraph (B) before the application of this subparagraph, by the percentage specified in subclause (II), except that the maximum amount of the assessment may not exceed $75. In the case of any calendar year beginning after the amendments made by section 302 of the Social Security Protection Act of 2003 take effect, the dollar amount specified in the preceding sentence (including a previously adjusted amount) shall be adjusted annually under the procedures used to adjust benefit amounts under section 215(i)(2)(A)(ii), except such adjustment shall be based on the higher of $75 or the previously adjusted amount that would have been in effect for December of the preceding year, but for the rounding of such amount pursuant to the following sentence. Any amount so adjusted that is not a multiple of $1 shall be rounded to the next lowest multiple of $1, but in no case less than $75.

''(II) The percentage specified in this subclause is such percentage rate as the Commissioner determines is necessary in order to achieve full recovery of the costs of determining and approving fees to attorneys from the past-due benefits of claimants, but not in excess of 6.3 percent.

''(iii) The Commissioner may collect the assessment imposed on an attorney under clause (i) by offset from the amount of the fee otherwise required by subparagraph (B) to be paid to the attorney from a claimant's past-due benefits.

''(iv) An attorney subject to an assessment under clause (i) may not, directly or indirectly, request or otherwise obtain reimbursement for such assessment from the claimant whose claim gave rise to the assessment.

''(v) Assessments on attorneys collected under this subparagraph shall be deposited as miscellaneous receipts in the general fund of the Treasury.

''(vi) The assessments authorized under this subparagraph shall be collected and available for obligation only to the extent and in the amount provided in advance in appropriations Acts. Amounts so appropriated are authorized to remain available until expended, for administrative expenses in carrying out this title and related laws.''.

(b) CONFORMING AMENDMENTS.—Section 1631(a) of the Social Security Act (42 U.S.C. 1383(a)) is amended—

(1) in paragraph (2)(F)(i)(II), by inserting ''and payment of attorney fees under subsection (d)(2)(B)'' after ''subsection (g)''; and

(2) in paragraph (10)(A)—

(A) in the matter preceding clause (i), by inserting ''and payment of attorney fees under subsection (d)(2)(B)'' after ''subsection (g)''; and

(B) in the matter following clause (ii), by inserting ''and payment of attorney fees under subsection (d)(2)(B)'' after ''State''.

(c) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by this section shall apply with respect to fees for representation of claimants which are first required to be paid under section 1631(d)(2) of the Social Security Act on or after the date of the submission by the Commissioner of Social Security to each House of Congress pursuant to section 303(d) of this Act of written notice of completion of full implementation of the requirements for operation of the demonstration project under section 303 of this Act.

(2) SUNSET.—Such amendments shall not apply with respect to fees for representation of claimants in the case of any claim for benefits with respect to which the agreement for representation is entered into after 5 years after the date described in paragraph (1).

SEC. 303. NATIONWIDE DEMONSTRATION PROJECT PROVIDING FOR EXTENSION OF FEE WITHHOLDING PROCEDURES TO NON-ATTORNEY REPRESENTATIVES.

(a) IN GENERAL.—The Commissioner of Social Security (hereafter in this section referred to as the ''Commissioner'') shall develop and carry out a nationwide demonstration project under this section with respect to agents and other persons, other than attorneys, who represent claimants under titles II and XVI of the Social Security Act before the Commissioner. The demonstration project shall be designed to determine the potential results of extending to such representatives the fee withholding procedures and assessment procedures that apply under sections 206 and section 1631(d)(2) of such Act to attorneys seeking direct payment out of past due benefits under such titles and shall include an analysis of the effect of such extension on claimants and program administration.

(b) STANDARDS FOR INCLUSION IN DEMONSTRATION PROJECT.—Fee-withholding procedures may be extended under the demonstration project carried out pursuant to subsection (a) to any non-attorney representative only if such representative meets at least the following prerequisites:

(1) The representative has been awarded a bachelor's degree from an accredited institution of higher education, or has been determined by the Commissioner to have equivalent qualifications derived from training and work experience.

(2) The representative has passed an examination, written and administered by the Commissioner, which tests knowledge of the relevant provisions of the Social Security Act and the most recent developments in agency and court decisions affecting titles II and XVI of such Act.

(3) The representative has secured professional liability insurance, or equivalent insurance, which the Commissioner has determined to be adequate to protect claimants in the event of malpractice by the representative.

(4) The representative has undergone a criminal background check to ensure the representative's fitness to practice before the Commissioner.

(5) The representative demonstrates ongoing completion of qualified courses of continuing education, including education regarding ethics and professional conduct, which are designed to enhance professional knowledge in matters related to entitlement to, or eligibility for, benefits based on disability under titles II and XVI of such Act. Such continuing education, and the instructors providing such education, shall meet such standards as the Commissioner may prescribe.

(c) ASSESSMENT OF FEES.—

(1) IN GENERAL.—The Commissioner may assess representatives reasonable fees to cover the cost to the Social Security Administration of administering the prerequisites described in subsection (b).

(2) DISPOSITION OF FEES.—Fees collected under paragraph (1) shall be credited to the Federal Old-Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust Fund, or deposited as miscellaneous receipts in the general fund of the Treasury, based on such allocations as the Commissioner of Social Security determines appropriate.

(3) AUTHORIZATION OF APPROPRIATIONS.—The fees authorized under this subparagraph shall be collected and available for obligation only to the extent and in the amount provided in advance in appropriations Acts. Amounts so appropriated are authorized to remain available until expended for administering the prerequisites described in subsection (b).

(d) NOTICE TO CONGRESS AND APPLICABILITY OF FEE WITHHOLDING PROCEDURES.—Not later than 1 year after the date of enactment of this Act, the Commissioner shall complete such actions as are necessary to fully implement the requirements for full operation of the demonstration project and shall submit to each House of Congress a written notice of the completion of such actions. The applicability under this section to non-attorney representatives of the fee withholding procedures and assessment procedures under sections 206 and 1631(d)(2) of the Social Security Act shall be effective with respect to fees for representation of claimants in the case of claims for benefits with respect to which the agreement for representation is entered into by such non-attorney representatives during the period beginning with the date of the submission of such notice by the Commissioner to Congress and ending with the termination date of the demonstration project.

(e) REPORTS BY THE COMMISSIONER; TERMINATION.—

(1) INTERIM REPORTS.—On or before the date which is 1 year after the date of enactment of this Act, and annually thereafter, the Commissioner shall transmit to the Committee on Ways and Means of the House of Representatives and to the Committee on Finance of the Senate an annual interim report on the progress of the demonstration project carried out under this section, together with any related data and materials that the Commissioner may consider appropriate.

(2) TERMINATION DATE AND FINAL REPORT.—The termination date of the demonstration project under this section is the date which

is 5 years after the date of the submission of the notice by the Commissioner to each House of Congress pursuant to subsection (d). The authority under the preceding provisions of this section shall not apply in the case of claims for benefits with respect to which the agreement for representation is entered into after the termination date. Not later than 90 days after the termination date, the Commissioner shall submit to the Committee on Ways and Means of the House of Representatives and to the Committee on Finance of the Senate a final report with respect to the demonstration project.

SEC. 304. GAO STUDY REGARDING THE FEE PAYMENT PROCESS FOR CLAIMANT REPRESENTATIVES.

(a) STUDY.—

(1) IN GENERAL.—The Comptroller General of the United States shall study and evaluate the appointment and payment of claimant representatives appearing before the Commissioner of Social Security in connection with benefit claims under titles II and XVI of the Social Security Act (42 U.S.C. 401 et seq., 1381 et seq.) in each of the following groups:

(A) Attorney claimant representatives who elect fee withholding under section 206 or 1631(d)(2) of such Act.

(B) Attorney claimant representatives who do not elect such fee withholding.

(C) Non-attorney claimant representatives who are eligible for, and elect, such fee withholding.

(D) Non-attorney claimant representatives who are eligible for, but do not elect, such fee withholding.

(E) Non-attorney claimant representatives who are not eligible for such fee withholding.

(2) MATTERS TO BE STUDIED.—In conducting the study under this subsection, the Comptroller General shall, for each of group of claimant representatives described in paragraph (1)—

(A) conduct a survey of the relevant characteristics of such claimant representatives including—

(i) qualifications and experience;

(ii) the type of employment of such claimant representatives, such as with an advocacy group, State or local government, or insurance or other company;

(iii) geographical distribution between urban and rural areas;

(iv) the nature of claimants' cases, such as whether the cases are for disability insurance benefits only, supplemental security income benefits only, or concurrent benefits;

(v) the relationship of such claimant representatives to claimants, such as whether the claimant is a friend, family member, or client of the claimant representative; and

(vi) the amount of compensation (if any) paid to the claimant representatives and the method of payment of such compensation;

(B) assess the quality and effectiveness of the services provided by such claimant representatives, including a comparison of claimant satisfaction or complaints and benefit outcomes, adjusted for differences in claimant representatives' caseload, claimants' diagnostic group, level of decision, and other relevant factors;

(C) assess the interactions between fee withholding under sections 206 and 1631(d)(2) of such Act (including under the amendments made by section 302 of this Act and under the demonstration project conducted under section 303 of this Act), the windfall offset under section 1127 of such Act, and interim assistance reimbursements under section 1631(g) of such Act;

(D) assess the potential results of making permanent the fee withholding procedures under sections 206 and 1631(d)(2) of such Act under the amendments made by section 302 of this Act and under the demonstration project conducted under section 303 of this Act with respect to program administration and claimant outcomes, and assess whether the rules and procedures employed by the Commissioner of Social Security to evaluate the qualifications and performance of claimant representatives should be revised prior to making such procedures permanent; and

(E) make such recommendations for administrative and legislative changes as the Comptroller General of the United States considers necessary or appropriate.

(3) CONSULTATION REQUIRED.—The Comptroller General of the United States shall consult with beneficiaries under title II of such Act, beneficiaries under title XVI of such Act, claimant representatives of beneficiaries under such titles, and other interested parties, in conducting the study and evaluation required under paragraph (1).

(b) REPORT.—Not later than 3 years after the date of the submission by the Commissioner of Social Security to each House of Congress pursuant to section 303(d) of this Act of written notice of completion of full implementation of the requirements for operation of the demonstration project under section 303 of this Act, the Comptroller General of the United States shall submit to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate a report on the results of the study and evaluation conducted pursuant to subsection (a).

On page 144, strike lines 7 through 13, and insert the following:

SEC. 401. APPLICATION OF DEMONSTRATION AUTHORITY SUNSET DATE TO NEW PROJECTS.

Section 234 of the Social Security Act (42 U.S.C. 434) is amended—

(1) in the first sentence of subsection (c), by striking ''conducted under subsection (a)'' and inserting ''initiated under subsection (a) on or before December 17, 2005''; and

(2) in subsection (d)(2), by striking the first sentence and inserting the following: ''The authority to initiate projects under the preceding provisions of this section shall terminate on December 18, 2005.''.

On page 149, after line 21, add the following:

SEC. 407. REAUTHORIZATION OF APPROPRIATIONS FOR CERTAIN WORK INCENTIVES PROGRAMS.

(a) BENEFITS PLANNING, ASSISTANCE, AND OUTREACH.—Section 1149(d) of the Social Security Act (42 U.S.C. 1320b–20(d)) is amended by striking ''2004'' and inserting ''2009''.

(b) PROTECTION AND ADVOCACY.—Section 1150(h) of the Social Security Act (42 U.S.C. 1320b–21(h)) is amended by striking ''2004'' and inserting ''2009''.

Beginning on page 157, strike line 16 and all that follows through page 158, line 2, and insert the following:

SEC. 416. COVERAGE UNDER DIVIDED RETIREMENT SYSTEM FOR PUBLIC EMPLOYEES IN KENTUCKY AND LOUISIANA.

(a) IN GENERAL.—Section 218(d)(6)(C) of the Social Security Act (42 U.S.C. 418(d)(6)(C)) is amended by inserting ''Kentucky, Louisiana,'' after ''Illinois,''.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) takes effect on January 1, 2003.

Beginning on page 159, strike line 1 and all that follows through page 166, line 8, and insert the following:

SEC. 418. 60-MONTH PERIOD OF EMPLOYMENT REQUIREMENT FOR APPLICATION OF GOVERNMENT PENSION OFFSET EXEMPTION.

(a) IN GENERAL.—Section 202(k) of the Social Security Act (42 U.S.C. 402(k)) is amended by adding at the end the following:

''(5)(A) The amount of a monthly insurance benefit of any individual for each month under subsection (b), (c), (e), (f), or (g) (as determined after application of the provisions of subsection (q) and the preceding provisions of this subsection) shall be reduced (but not below zero) by an amount equal to two-thirds of the amount of any monthly periodic benefit payable to such individual for such month which is based upon such individual's earnings while in the service of the Federal Government or any State (or political subdivision thereof, as defined in section 218(b)(2)) if, during any portion of the last 60 months of such service ending with the last day such individual was employed by such entity—

''(i) such service did not constitute 'employment' as defined in section 210, or

''(ii) such service was being performed while in the service of the Federal Government, and constituted 'employment' as so defined solely by reason of—

''(I) clause (ii) or (iii) of subparagraph (G) of section 210(a)(5), where the lump-sum payment described in such clause (ii) or the cessation of coverage described in such clause (iii) (whichever is applicable) was received or occurred on or after January 1, 1988, or

''(II) an election to become subject to the Federal Employees' Retirement System provided in chapter 84 of title 5, United States Code, or the Foreign Service Pension System provided in subchapter II of chapter 8 of title I of the Foreign Service Act of 1980 made pursuant to law after December 31, 1987,

unless subparagraph (B) applies.

The amount of the reduction in any benefit under this subparagraph, if not a multiple of $0.10, shall be rounded to the next higher multiple of $0.10.

''(B)(i) Subparagraph (A)(i) shall not apply with respect to monthly periodic benefits based wholly on service as a member of a uniformed service (as defined in section 210(m)).

''(ii) Subparagraph (A)(ii) shall not apply with respect to monthly periodic benefits based in whole or in part on service which constituted 'employment' as defined in section 210 if such service was performed for at least 60 months in the aggregate during the period beginning January 1, 1988, and ending with the close of the first calendar month as of the end of which such individual is eligible for benefits under this subsection and has made a valid application for such benefits.

''(C) For purposes of this paragraph, any periodic benefit which otherwise meets the requirements of subparagraph (A), but which is paid on other than a monthly basis, shall be allocated on a basis equivalent to a monthly benefit (as determined by the Commissioner of Social Security) and such equivalent monthly benefit shall constitute a monthly periodic benefit for purposes of subparagraph (A). For purposes of this subparagraph, the term 'periodic benefit' includes a benefit payable in a lump sum if it is a commutation of, or a substitute for, periodic payments.''.

(b) CONFORMING AMENDMENTS.—

(1) WIFE'S INSURANCE BENEFITS.—Section 202(b) of the Social Security Act (42 U.S.C. 402(b)) is amended—

(A) in paragraph (2), by striking ''subsection (q) and paragraph (4) of this subsection'' and inserting ''subsections (k)(5) and (q)''; and

(B) by striking paragraph (4) and redesignating paragraph (5) as paragraph (4).

(2) HUSBAND'S INSURANCE BENEFITS.—Section 202(c) of the Social Security Act (42 U.S.C. 402(c)) is amended—

(A) by striking paragraph (2) and redesignating paragraphs (3) through (5) as paragraphs (2) through (4), respectively; and

(B) in paragraph (2) as so redesignated, by striking ''subsection (q) and paragraph (2) of this subsection'' and inserting ''subsections (k)(5) and (q)''.

(3) WIDOW'S INSURANCE BENEFITS.—Section 202(e) of the Social Security Act (42 U.S.C. 402(e)) is amended—

(A) in paragraph (2)(A), by striking ''subsection (q), paragraph (7) of this subsection,'' and inserting ''subsection (k)(5), subsection (q),''; and

(B) by striking paragraph (7) and redesignating paragraphs (8) and (9) as paragraphs (7) and (8), respectively.

(4) WIDOWER'S INSURANCE BENEFITS.—

(A) IN GENERAL.—Section 202(f) of the Social Security Act (42 U.S.C. 402(f)) is amended—

(i) by striking paragraph (2) and redesignating paragraphs (3) through (9) as paragraphs (2) through (8), respectively; and

(ii) in paragraph (2) as so redesignated, by striking ''subsection (q), paragraph (2) of this subsection,'' and inserting ''subsection (k)(5), subsection (q),''.

(B) CONFORMING AMENDMENTS.—

(i) Section 202(f)(1)(B) of the Social Security Act (42 U.S.C. 402(f)(1)(B)) is amended by striking ''paragraph (5)'' and inserting ''paragraph (4)''.

(ii) Section 202(f)(1)(F) of the Social Security Act (42 U.S.C. 402(f)(1)(F)) is amended by striking ''paragraph (6)'' and ''paragraph (5)'' (in clauses (i) and (ii)) and inserting ''paragraph (5)'' and ''paragraph (4)'', respectively.

(iii) Section 202(f)(5)(A)(ii) of the Social Security Act (as redesignated by subparagraph (A)(i)) is amended by striking ''paragraph (5)'' and inserting ''paragraph (4)''.

(iv) Section 202(k)(2)(B) of the Social Security Act (42 U.S.C. 402(k)(2)(B)) is amended by striking ''or (f)(4)'' each place it appears and inserting ''or (f)(3)''.

(v) Section 202(k)(3)(A) of the Social Security Act (42 U.S.C. 402(k)(3)(A)) is amended by striking ''or (f)(3)'' and inserting ''or (f)(2)''.

(vi) Section 202(k)(3)(B) of the Social Security Act (42 U.S.C. 402(k)(3)(B)) is amended by striking ''or (f)(4)'' and inserting ''or (f)(3)''.

(vii) Section 226(e)(1)(A)(i) of the Social Security Act (42 U.S.C. 426(e)(1)(A)(i)) is amended by striking ''and 202(f)(5)'' and inserting ''and 202(f)(4)''.

(5) MOTHER'S AND FATHER'S INSURANCE BENEFITS.—Section 202(g) of the Social Security Act (42 U.S.C. 402(g)) is amended—

(A) in paragraph (2), by striking ''Except as provided in paragraph (4) of this subsection, such'' and inserting ''Such''; and

(B) by striking paragraph (4).

(c) EFFECTIVE DATE AND TRANSITIONAL RULE.—

(1) IN GENERAL.—The amendments made by this section shall apply with respect to applications for benefits under title II of the Social Security Act filed on or after the first day of the first month that begins after the date of enactment of this Act, except that such amendments shall not apply in connection with monthly periodic benefits of any individual based on earnings while in service described in section 202(k)(5)(A) of the Social Security Act (in the matter preceding clause (i) thereof) if the last day of such service occurs before July 1, 2004.

(2) TRANSITIONAL RULE.—In the case of any individual whose last day of service described in subparagraph (A) of section 202(k)(5) of the Social Security Act (as added by subsection (a) of this section) occurs within 5 years after the date of enactment of this Act—

(A) the 60-month period described in such subparagraph (A) shall be reduced (but not to less than 1 month) by the number of months of such service (in the aggregate and without regard to whether such months of service were continuous) which—

(i) were performed by the individual under the same retirement system on or before the date of enactment of this Act, and

(ii) constituted ''employment'' as defined in section 210 of the Social Security Act; and

(B) months of service necessary to fulfill the 60-month period as reduced by subparagraph (A) of this paragraph must be performed after the date of enactment of this Act.

On page 166, strike line 9 and insert the following:

SEC. 419. DISCLOSURE TO WORKERS OF EFFECT OF WINDFALL ELIMINATION PROVISION AND GOVERNMENT PENSION OFFSET PROVISION.

(a) INCLUSION OF NONCOVERED EMPLOYEES AS ELIGIBLE INDIVIDUALS ENTITLED TO SOCIAL SECURITY ACCOUNT STATEMENTS.—Section 1143(a)(3) of the Social Security Act (42 U.S.C. 1320b–13(a)(3)) is amended—

(1) by striking ''who'' after ''an individual'' and inserting ''who'' before ''has'' in each of subparagraphs (A) and (B);

(2) by inserting ''(i) who'' after ''(C)''; and

(3) by inserting before the period the following: '', or (ii) with respect to whom the Commissioner has information that the pattern of wages or self-employment income indicate a likelihood of noncovered employment''.

(b) EXPLANATION IN SOCIAL SECURITY ACCOUNT STATEMENTS OF POSSIBLE EFFECTS OF PERIODIC BENEFITS UNDER STATE AND LOCAL RETIREMENT SYSTEMS ON SOCIAL SECURITY BENEFITS.—Section 1143(a)(2) of the Social Security Act (42 U.S.C. 1320b–13(a)(2)) is amended—

(1) in subparagraph (C), by striking ''and'' at the end;

(2) in subparagraph (D), by striking the period and inserting ''; and''; and

(3) by adding at the end the following:

''(E) in the case of an eligible individual described in paragraph (3)(C)(ii), an explanation, in language calculated to be understood by the average eligible individual, of the operation of the provisions under sections 202(k)(5) and 215(a)(7) and an explanation of the maximum potential effects of such provisions on the eligible individual's monthly retirement, survivor, and auxiliary benefits.''.

(c) TRUTH IN RETIREMENT DISCLOSURE TO GOVERNMENTAL EMPLOYEES OF EFFECT OF NONCOVERED EMPLOYMENT ON BENEFITS UNDER TITLE II.—Section 1143 of the Social Security Act (42 U.S..C. 1320b–13) is amended further by adding at the end the following:

''Disclosure to Governmental Employees of Effect of Noncovered Employment

''(d)(1) In the case of any individual commencing employment on or after January 1, 2005, in any agency or instrumentality of any State (or political subdivision thereof, as defined in section 218(b)(2)) in a position in which service performed by the individual does not constitute 'employment' as defined in section 210, the head of the agency or instrumentality shall ensure that, prior to the date of the commencement of the individual's employment in the position, the individual is provided a written notice setting forth an explanation, in language calculated to be understood by the average individual, of the maximum effect on computations of primary insurance amounts (under section 215(a)(7)) and the effect on benefit amounts (under section 202(k)(5)) of monthly periodic payments or benefits payable based on earnings derived in such service. Such notice shall be in a form which shall be prescribed by the Commissioner of Social Security.

''(2) The written notice provided to an individual pursuant to paragraph (1) shall include a form which, upon completion and signature by the individual, would constitute certification by the individual of receipt of the notice. The agency or instrumentality providing the notice to the individual shall require that the form be completed and signed by the individual and submitted to the agency or instrumentality and to the pension, annuity, retirement, or similar fund or system established by the governmental entity involved responsible for paying the monthly periodic payments or benefits, before commencement of service with the agency or instrumentality.''.

(d) EFFECTIVE DATES.—The amendments made by subsections (a) and (b) of this section shall apply with respect to social security account statements issued on or after January 1, 2007.

SEC. 420. POST-1956 MILITARY WAGE CREDITS.

On page 167, between lines 14 and 15, insert the following:

SEC. 420A. ELIMINATION OF DISINCENTIVE TO RETURN-TO-WORK FOR CHILDHOOD DISABILITY BENEFICIARIES.

(a) IN GENERAL.—Section 202(d)(6)(B) of the Social Security Act (42 U.S.C. 402(d)(6)(B)) is amended—

(1) by inserting ''(i)'' after ''began''; and

(2) by adding after ''such disability,'' the following: ''or (ii) after the close of the 84th month following the month in which his most recent entitlement to child's insurance benefits terminated because he ceased to be under such disability due to performance of substantial gainful activity,''.

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall be effective with respect to benefits payable for months beginning with the 7th month that begins after the date of enactment of this Act.

Beginning on page 173, strike line 3 and all that follows through page 174, line 10, and insert the following:

(e) TRANSFERS.—Section 15A(d)(2) of the Railroad Retirement Act of 1974 (45 U.S.C. 231n–1(d)(2)) is amended—

(1) by inserting ''or the Railroad Retirement Account'' after ''National Railroad Retirement Investment Trust'' the second place it appears;

(2) by inserting ''or the Railroad Retirement Board'' after ''National Railroad Retirement Investment Trust'' the third place it appears;

(3) by inserting ''(either directly or through a commingled account consisting only of such obligations)'' after ''United States'' the first place it appears; and

(4) in the third sentence, by inserting before the period at the end the following: ''or to purchase such additional obligations''.

Beginning on page 177, strike line 20 and all that follows through page 178, line 18.

On page 178, line 19, strike ''**433**'' and insert ''**432**''.

Beginning on page 179, strike line 5 and all that follows through page 181, line 3.

On page 181, line 4, strike ''**435**'' and insert ''**433**''.

On page 182, line 11, strike ''**436**'' and insert ''**434**''.

On page 183, line 3, strike ''**437**'' and insert ''**435**''.

On page 184, line 6, strike ''**438**'' and insert ''**436**''.

Beginning on page 184, strike line 21 and all that follows through page 186, line 22.

Conform the table of contents accordingly.

SA 2228. Mr. FRIST (for Mr. ALEXANDER) proposed an amendment to the bill H.R. 2264, An act to authorize appropriations for fiscal year 2004 to carry out the Congo Basin Forest Partnership program, and for other purposes; as follows:

Beginning on page 5, strike line 24 and all that follows through page 6, line 11, and insert the following:

(a) IN GENERAL.—There are authorized to be appropriated to the President to carry out the Congo Basin Forest Partnership (CBFP) program $18,600,000 for fiscal year 2004.

(b) CARPE.—Of the amounts appropriated pursuant to the authorization of appropriations in subsection (a), $16,000,000 is authorized to be made available to the Central Africa Regional Program for the Environment (CARPE) of the United States Agency for International Development.

(c) AVAILABILITY.—Amounts appropriated pursuant to the authorization of appropriations under subsection (a) are authorized to remain available until expended.

SA 2229. Mr. FRIST (for Mr. ALEXANDER) proposed an amendment to the bill H.R. 2264, An act to authorize appropriations for fiscal year 2004 to carry out the Congo Basin Forest Partnership program, and for other purposes; as follows:

Amend the title so as to read: ''To authorize appropriations for fiscal year 2004 to carry out the Congo Basin Forest Partnership program, and for other purposes.''.

SA 2230. Mr. FRIST (for Mr. LEVIN) proposed an amendment to the bill S. 1267, to amend the District of Columbia Home Rule Act to provide the District of Columbia with autonomy over its budgets, and for other purposes; as follows:

At the appropriate place, insert the following: (p. 10, after l. 2)

SEC. ___. METERED CABS IN THE DISTRICT OF COLUMBIA.

(a) IN GENERAL.—Except as provided in subsection (b) and not later than 1 year after the date of enactment of this Act, the District of Columbia shall require all cabs licensed in the District of Columbia to charge fares by a metered system.

(b) DISTRICT OF COLUMBIA OPT OUT.—The District of Columbia may cancel the requirements of subsection (a) by adopting an ordinance that specifically states that the District of Columbia opts out of the requirement to implement a metered system under subsection (a).

SA 2231. Mr. FRIST (for Mr. HATCH) proposed an amendment to the bill S. 1177, to prevent tobacco smuggling, to ensure the collection of all tobacco taxes, and for other purposes; as follows:

On page 17, between lines 23 and 24, insert the following:

(2) in paragraph (5)—

(A) by inserting '', local, or Tribal'' after ''the State'';

(B) by striking ''administer the cigarette tax law'' and inserting ''collect the tobacco tax or administer the tax law''; and

(C) by inserting '', locality, or Tribe, respectively'' after ''a State''.

On page 17, line 24, strike ''(2)'' and insert ''(3)''.

On page 18, line 17, strike ''(3)'' and insert ''(4)''.

On page 19, strike line 20 and insert the following:

of the United States.

''(13) The term 'Indian Country' has the meaning given that term in section 1151 of title 18, United States Code, except that within the State of Alaska that term applies only to the Metlakatla Indian Community, Annette Island Reserve.

''(14) The term 'Indian Tribe', 'Tribe', or 'Tribal' refers to an Indian tribe as defined in the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b(e)) or as listed pursuant to section 104 of the Federally Recognized Indian Tribe List Act of 1994 (Public Law 103–454; 25 U.S.C. 479a–1).

''(15) The term 'tobacco tax administrator', in the case of a State, local, or Tribal government, means the official of the government duly authorized to collect the tobacco tax or administer the tax law of the government.''.

On page 20, line 4, strike ''and''.

On page 20, between lines 4 and 5, insert the following:

(ii) by inserting '', locality, or Indian Country of an Indian Tribe'' after ''a State''; and

On page 20, line 5, strike ''(ii)'' and insert ''(iii)''.

On page 20, strike lines 8 through 14 and insert the following:

(B) in paragraph (1)—

(i) by striking ''administrator of the State'' and inserting ''administrators of the State and place''; and

(ii) by striking ''; and'' and inserting the following: '', as well as telephone numbers for each place of business, a principal electronic mail address, any website addresses, and the name, address, and telephone number of an agent in the State authorized to accept service on behalf of such person;'';

On page 20, strike lines 15 through 19, and insert the following:

(C) in paragraph (2), by striking ''and the quantity thereof.'' and inserting ''the quantity thereof, and the name, address, and phone number of the person delivering the shipment to the recipient on behalf of the delivery seller, with all invoice or memoranda information relating to specific customers to be organized by city or town and by zip code; and''; and

(D) by adding at the end the following new paragraph:

''(3) with respect to each memorandum or invoice filed with a State under paragraph (2), also file copies of such memorandum or invoice with the tobacco tax administrators and chief law enforcement officers of the local governments and Indian Tribes operating within the borders of the State that apply their own local or Tribal taxes on cigarettes or smokeless tobacco.''; and

On page 21, line 4, strike ''Each'' and insert ''With respect to delivery sales into a specific State and place, each''.

On page 21, line 9, insert '', local, Tribal,'' after ''all State''.

On page 21, beginning on line 10, strike ''that occur entirely within the State'' and insert ''as if such delivery sales occurred entirely within the specific State and place''.

On page 21, strike line 14.

On page 21, line 15, strike ''(C)'' and insert ''(B)''.

On page 21, line 17, strike ''(D)'' and insert ''(C)''.

On page 22, line 3, strike ''AND SALES''.

On page 22, line 14, strike ''by State'' and insert ''by the State, and within such State, by the city or town and by zip code,''.

On page 22, beginning on line 20, strike ''attorneys general'' and all that follows through ''United States'' and insert ''to local governments and Indian Tribes that apply their own local or Tribal taxes on cigarettes or smokeless tobacco, to the attorneys general of the States, to the chief law enforcement officers of such local governments and Indian Tribes, and to the Attorney General of the United States''.

On page 22, strike line 24 and all that follows through page 23, line 12, and insert the following:

''(d)(1) Except as provided in paragraph (2), no cigarettes or smokeless tobacco may be delivered pursuant to a delivery sale in interstate commerce unless in advance of the delivery—

''(A) any cigarette or smokeless tobacco excise tax that is imposed by the State in which the cigarettes or smokeless tobacco are to be delivered has been paid to the State;

''(B) any cigarette or smokeless tobacco excise tax that is imposed by the local government of the place in which the cigarette or smokeless tobacco are to be delivered has been paid to the local government; and

''(C) any required stamps or other indicia that such excise tax has been paid are properly affixed or applied to the cigarettes or smokeless tobacco.

''(2) Paragraph (1) does not apply to a delivery sale of smokeless tobacco if the law of the State or local government of the place where the smokeless tobacco is to be delivered requires or otherwise provides that delivery sellers collect the excise tax from the consumer and remit the excise tax to the State or local government, and the delivery seller complies with the requirement.

On page 23, line 13, insert after ''Each State'' the following: '', and each local government or Indian Tribal government that levies a tax subject to subsection (a)(3),''.

On page 23, line 15, strike ''such State. If a State'' and insert after ''such State, locality, or Indian Tribe. If a State, local government, or Indian Tribe''.

On page 23, line 18, insert after ''such State'' the following: ''or locality or in the Indian Country of such Indian Tribe''.

On page 23, line 20, insert after ''Each State'' the following: '', and each local government or Indian Tribal government that levies a tax subject to subsection (a)(3),''.

On page 23, line 22, insert '', locality, or Indian Tribe'' after ''such State''.

On page 23, line 23, insert after ''A State'' the following: '', locality, or Indian Tribal government''.

On page 24, line 4, insert after ''a State'' the following: '', local government, or Indian Tribal government''.

On page 24, line 8, insert after ''State'' the following: ''or locality or in the Indian Country of such Indian Tribe''.

On page 24, strike line 21 and all that follows through page 25, line 2, and insert the following:

(2) in subsection (a), as so designated—

(A) by inserting ''(except for a State, local, or Tribal government)'' after ''this Act''; and

(B) by striking ''shall be guilty of a misdemeanor and shall be fined not more than $1,000, or imprisoned not more than 6 months'' and inserting ''shall be guilty of a felony, fined under subchapter C of chapter 227 of title 18, United States Code, imprisoned not more than three years, or both''; and

On page 26, strike line 3 and all that follows through page 27, line 11, and insert the following:

''(b) The Attorney General of the United States shall administer and enforce the provisions of this Act.

''(c)(1)(A) A State, through its attorney general (or a designee thereof), or a local government or Indian Tribe that levies a tax subject to section 2A(a)(3), through its chief law enforcement officer (or a designee thereof), may bring an action in the United States district courts to prevent and restrain violations of this Act by any person (or by any person controlling such person) or to obtain any other appropriate relief from any person (or from any person controlling such person) for violations of this Act, including civil penalties, money damages, and injunctive or other equitable relief.

''(B) Nothing in this Act shall be deemed to abrogate or constitute a waiver of any sovereign immunity of a State or local government or Indian Tribe against any unconsented lawsuit under this Act, or otherwise to restrict, expand, or modify any

sovereign immunity of a State or local government or Indian Tribe.

''(2) A State, through its attorney general, or a local government or Indian Tribe that levies a tax subject to section 2A(a)(3), through its chief law enforcement officer (or a designee thereof), may provide evidence of a violation of this Act by any person not subject to State, local, or Tribal government enforcement actions for violations of this Act to the Attorney General of the United States or a United State Attorney, who shall take appropriate actions to enforce the provisions of this Act.

''(3)(A) Notwithstanding any other provision of law and subject to subparagraph (B), an amount equal to 50 percent of any criminal and civil penalties collected by the United States Government in enforcing the provisions of this Act shall be available to the Department of Justice for purposes of enforcing the provisions of this Act and other laws relating to contraband tobacco products.

''(B) Of the amount available to the Department under subparagraph (A), not less than 50 percent shall be made available only to the agencies and offices within the Department that were responsible for the enforcement actions in which the penalties concerned were imposed.

''(4) The remedies available under this subsection are in addition to any other remedies available under Federal, State, local, Tribal, or other law.

''(5) Nothing in this Act shall be construed to expand, restrict, or otherwise modify any right of an authorized State official to proceed in State court, or take other enforcement actions, on the basis of an alleged violation of State or other law.

''(6) Nothing in this Act shall be construed to expand, restrict, or otherwise modify any right of an authorized Indian Tribal government official to proceed in Tribal court, or take other enforcement actions, on the basis of an alleged violation of Tribal law.

''(7) Nothing in this Act shall be construed to expand, restrict, or otherwise modify any right of an authorized local government official to proceed in State court, or take other enforcement actions, on the basis of an alleged violation of local or other law.

''(d) Any person who holds a permit under section 5712 of the Internal Revenue Code of 1986 may bring an action in the United States district courts to prevent and restrain violations of this Act by any person (or by any person controlling such person) other than a State, local, or Tribal government.

''(e)(1) Any person who commences a civil action under subsection (d) shall inform the Attorney General of the United States of the action.

''(2) It is the sense of Congress that any attorney general of a State, or chief law enforcement officer of a locality or Tribe, who commences a civil action under this section should inform the Attorney General of the United States of the action.

''(f)(1) The Attorney General of the United States shall make available to the public, by posting such information on the Internet and by other means, information about all enforcement actions undertaken by the Attorney General or United States Attorneys, or reported to the Attorney General, under this section, including information on the resolution of such actions and, in particular, information on how the Attorney General and the United States Attorney have responded to referrals of evidence of violations pursuant to subsection (b)(2).

''(2) The Attorney General shall submit to Congress each year a report containing the information described in paragraph (1).''.

On page 27, line 20, strike ''The transmission'' and insert ''(1)'' Except as provided in paragraph (2), the transmission''.

On page 28, strike line 2 and insert the following:

shall not be deposited in or carried through the mails.

''(2) Paragraph (1) shall apply only to States that are contiguous with at least one other State of the United States.''.

On page 29, line 4, strike ''and''.

On page 29, line 25, insert before the semicolon the following: ''or, for smokeless tobacco found in Indian Country, is licensed or otherwise authorized by the Tribal government of such Indian Country to account for and pay smokeless tobacco taxes imposed by the Tribal government''.

On page 30, line 6, insert ''or a Tribe'' after ''a State''.

On page 30, beginning on line 8, strike ''or a State (including any political subdivision of a State)'' and insert ''a State (including any political subdivision of a State), or a Tribe (including any political subdivision of a Tribe)''.

On page 30, line 11, strike ''duties.'' and insert ''duties;''.

On page 30, after line 24, add the following:

(c) ADDITIONAL DEFINITIONAL MATTERS.—Section 2341 of such title is further amended—

(1) in paragraph (2), as amended by subsection (a)(1) of this section—

(A) in the matter preceding subparagraph (A), by striking ''State cigarette taxes in the State where such cigarettes are found, if the State'' and inserting ''State, local, or Tribal cigarette taxes in the State, locality, or Indian Country where such cigarettes are found, if the State, local or Tribal government'';

(B) in subparagraph (C)(i), by inserting before the semicolon the following: '', or, for cigarettes found in Indian County, is licensed or otherwise authorized by the Tribal government of such Indian Country to account for and pay cigarette taxes imposed by the Tribal government''; and

(C) in subparagraph (D)—

(i) by inserting ''or a Tribe'' after ''a State'' the first place it appears; and

(ii) by striking ''or a State (or any political subdivision of a State)'' and inserting '', a State (or any political subdivision of a State), or a Tribe (including any political subdivision of a Tribe)'';

(2) in paragraph (3), by inserting before the semicolon the following: '', or, for a carrier making a delivery entirely within Indian Country, under equivalent operating authority from the Indian Tribal government of such Indian Country''; and

(3) by adding at the end the following new paragraphs:

''(8) the term 'Indian Country' has the meaning given that term in section 1151 of title 18, United States Code, except that within the State of Alaska that term applies only to the Metlakatla Indian Community, Annette Island Reserve; and

''(9) the term 'Indian Tribe', 'Tribe', or 'Tribal' refers to an Indian tribe as defined in the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b(e)) or as listed pursuant to section 104 of the Federally Recognized Indian Tribe List Act of 1994 (Public Law 103–454; 25 U.S.C. 479a–1).''.

On page 31, line 1, strike ''(c)'' and insert ''(d)''.

On page 32, line 20, insert before the period the following: '', and to the chief law enforcement officer and tax administrator of the Tribe for shipments, deliveries or distributions that originated or concluded on the Indian Country of the Indian Tribe''.

On page 33, line 19, strike ''(d)'' and insert ''(e)''.

On page 34, between lines 3 and 4, insert the following:

(f) EFFECT ON STATE, LOCAL, AND TRIBAL LAW.—Section 2345 of that title is amended—

(1) in subsection (a), by striking ''a State to enact and enforce'' and inserting ''a State, local government, or Tribe to enact and enforce its own''; and

(2) in subsection (b), by striking ''of States, through interstate compact or otherwise, to provide for the administration of State'' and inserting ''of State, local, or Tribal governments, through interstate compact or otherwise, to provide for the administration of State, local, or Tribal''.

On page 34, line 4, strike ''(e)'' and insert ''(g)''.

On page 34, line 10, insert after ''attorney general,'' the following: ''a local government or Indian Tribe, through its chief law enforcement officer (or a designee thereof),''.

On page 34, line 15, insert before the period the following: '', except that any person who holds a permit under section 5712 of the Internal Revenue Code of 1986 may not bring such an action against a State, local, or Tribal government''.

On page 34, line 16, insert after ''attorney general,'' the following: '', or a local government or Indian Tribe, through its chief law enforcement officer (or a designee thereof),''.

On page 34, line 21, add after the period the following: ''Nothing in this chapter shall be deemed to abrogate or constitute a waiver of any sovereign immunity of a State or local government or Indian Tribe against any unconsented lawsuit under this chapter, or otherwise to restrict, expand, or modify any sovereign immunity of a State or local government or Indian Tribe.''.

On page 34, line 23, insert ''local, Tribal,'' after ''State,''.

On page 35, strike lines 1 through 4 and insert the following:

''(4) Nothing in this chapter shall be construed to expand, restrict, or otherwise modify any right of an authorized State official to proceed in State court, or take other enforcement actions, on the basis of an alleged violation of State or other law.

''(5) Nothing in this chapter shall be construed to expand, restrict, or otherwise modify any right of an authorized Indian Tribal government official to proceed in Tribal court, or take other enforcement actions, on the basis of an alleged violation of Tribal law.

''(6) Nothing in this chapter shall be construed to expand, restrict, or otherwise modify any right of an authorized local government official to proceed in State court, or take other enforcement actions, on the basis of an alleged violation of local or other law.''.

On page 35, line 5, strike ''(f)'' and insert ''(h)''.

On page 35, between lines 8 and 9, insert the following:

(2) The section heading for section 2345 of such title is amended to read as follows:

''§ 2345. Effect on State, Tribal, and local law''.

On page 35, strike lines 9 through the matter preceding line 12 and insert the following:

(3) The table of sections at the beginning of chapter 114 of that title is amended—

(A) by striking the item relating to section 2343 and inserting the following new item:

''2343. Recordkeeping, reporting, and inspection.'';

and

(B) by striking the item relating to section 2345 and insert the following new item:

''2345. Effect on State, Tribal, and local law.''.

On page 35, line 12, strike ''(3)'' and insert ''(4)''.

On page 35, strike line 20 and all that follows through page 37, line 19, and insert the following:

SEC. 5. COMPLIANCE WITH MODEL STATUTE OR QUALIFYING STATUTE.

(a) IN GENERAL.—A Tobacco Product Manufacturer or importer may not sell in, deliver

to, or place for delivery sale, or cause to be sold in, delivered to, or placed for delivery sale in, a State that is a party to the Master Settlement Agreement any cigarette manufactured by a Tobacco Product Manufacturer that is not in full compliance with the terms of the Model Statute or Qualifying Statute enacted by such State requiring funds to be placed into a qualified escrow account under specified conditions, or any regulations promulgated pursuant to such terms.

(b) JURISDICTION TO PREVENT AND RESTRAIN VIOLATIONS.—(1) The United States district courts shall have jurisdiction to prevent and restrain violations of subsection (a) in accordance with this subsection.

(2) A State, through its attorney general, may bring an action in the United States district courts to prevent and restrain violations of subsection (a) by any person (or by any person controlling such person).

(3) In any action under paragraph (2), a State, through its attorney general, shall be entitled to reasonable attorney fees from a person found to have willfully and knowingly violated subsection (a).

(4) The remedy available under paragraph (2) is in addition to any other remedies available under Federal, State, or other law.

(5) Nothing in this subsection shall be construed to prohibit an authorized State official from proceeding in State court or taking other enforcement actions on the basis of an alleged violation of State or other law.

(6) The Attorney General may administer and enforce subsection (a).

(c) DEFINITIONS.—In this section:

On page 38, between lines 6 and 7, insert the following:

(3) IMPORTER.—The term ''importer'' means each of the following:

(A) Any person in the United States to whom non-tax-paid tobacco products manufactured in a foreign country, Puerto Rico, the Virgin Islands, or a possession of the United States are shipped or consigned.

(B) Any person who removes cigars or cigarettes for sale or consumption in the United States from a customs bonded manufacturing warehouse.

(C) Any person who smuggles or otherwise unlawfully brings tobacco products into the United States.

On page 38, line 7, strike ''(3)'' and insert ''(4)''.

On page 38, line 11, strike ''(4)'' and insert ''(5)''.

On page 39, line 1, strike ''(5)'' and insert ''(6)''.

On page 41, strike line 18 and insert the following:

SEC. 8. COMPLIANCE WITH TARIFF ACT OF 1930.

(a) INAPPLICABILITY OF EXEMPTIONS FROM REQUIREMENTS FOR ENTRY OF CERTAIN CIGARETTES.—Subsection (b)(1) of section 802 of the Tariff Act of 1930 (19 U.S.C. 1681a) is amended by adding at the end the following new sentence: ''The preceding sentence shall not apply to any cigarettes sold in connection with a delivery sale (as that term is defined in section 1 of the Act of October 19, 1949 (15 U.S.C. 375; commonly referred to as the 'Jenkins Act')).''.

(b) STATE AND TRIBAL ACCESS TO CUSTOMS CERTIFICATIONS.—Section 802 of that Act is further amended by adding at the end the following new subsection:

''(d) STATE AND TRIBAL ACCESS TO CUSTOMS CERTIFICATIONS.—A State, through its attorney general, and an Indian tribe (as that term is defined in the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b(e)) through its chief law enforcement officer, shall be entitled to obtain copies of any certification required pursuant to subsection (c) directly—

''(1) upon request to the agency of the United States responsible for collecting such certification; or

''(2) upon request to the importer, manufacturer, or authorized official of such importer or manufacturer.''.

(c) ENFORCEMENT PROVISIONS.—Section 803 of such Act (19 U.S.C. 1681b) is amended—

(1) in subsection (b)—

(A) in the first sentence—

(i) by inserting ''any of'' before ''the United States'' the first and second places it appears; and

(ii) by inserting before the period the following: '', to any State in which such tobacco product, cigarette papers, or tube was imported, or to the Indian Tribe of any Indian Country (as that term is defined in section 1151 of title 18, United States Code) in which such tobacco product, cigarette papers, or tube was imported''; and

(B) in the second sentence, by inserting '', or to any State or Indian Tribe,'' after ''the United States''; and

(2) by adding at the end the following new subsection:

''(c) ACTIONS BY STATES AND OTHERS.—

''(1) IN GENERAL.—Any person who holds a permit under section 5712 of the Internal Revenue Code of 1986 may bring an action in the United States district courts to prevent and restrain violations of this title by any person (or by any person controlling such person), other than by a State, local, or Tribal government.

''(2) RELIEF FOR STATE, LOCAL, AND TRIBAL GOVERNMENTS.—A State, through its attorney general, or a local government or Tribe Tribe, through its chief law enforcement officer (or a designee thereof), may in a civil action under this title to prevent and restrain violations of this title by any person (or by any person controlling such person) or to obtain any other appropriate relief for violations of this title by any person (or from any person controlling such person), including civil penalties, money damages, and injunctive or other equitable relief.

''(3) CONSTRUCTION GENERALLY.—

''(A) IN GENERAL.—Nothing in this subsection shall be deemed to abrogate or constitute a waiver of any sovereign immunity of a State or local government or Indian Tribe against any unconsented lawsuit under this title or to otherwise restrict, expand, of modify any sovereign immunity of a State local government or Indian Tribe.

''(B) CONSTRUCTION WITH OTHER RELIEF.—The remedies available under this subsection are in addition to any other remedies available under Federal, State, local, Tribal, or other law.

''(4) CONSTRUCTION WITH FORFEITURE PROVISIONS.—Nothing in this subsection shall be construed to require a State or Indian Tribe to first bring an action pursuant to paragraph (1) when pursuing relief under subsection (b).

''(d) CONSTRUCTION WITH OTHER AUTHORITIES.—

''(1) STATE AUTHORITIES.—Nothing in this title shall be construed to expand, restrict, or otherwise modify the right of an authorized State official from proceeding in State court, or taking other enforcement actions, on the basis of alleged violation of State or other law.

''(2) TRIBAL AUTHORITIES.—Nothing in this title shall be construed to expand, restrict, or otherwise modify the right of an authorized Indian Tribal government official from proceeding in Tribal court, or taking other enforcement actions, on the basis of alleged violation of Tribal law.

(d) INCLUSION OF SMOKELESS TOBACCO.—(1) Sections 802 and 803(a) of such Act are further amended by inserting ''or smokeless tobacco products'' after ''cigarettes'' each place it appears.

(2) Section 802 of such Act is further amended—

(A) in subsection (a)—

(i) in paragraph (1), by inserting ''or section 4 of the Comprehensive Smokeless Tobacco Health Education Act of 1986 (15 U.S.C. 4403), respectively'' after ''section 7 of the Federal Cigarette Labeling and Advertising Act (15 U.S.C. 1335a)'';

(ii) in paragraph (2), by inserting ''or section 3 of the Comprehensive Smokeless Tobacco Health Education Act of 1986 (15 U.S.C. 4402), respectively,'' after ''section 4 of the Federal Cigarette Labeling and Advertising Act (15 U.S.C. 1333)''; and

(iii) in paragraph (3), by inserting ''or section 3(c) of the Comprehensive Smokeless Tobacco Health Education Act of 1986 (15 U.S.C. 4402(c)), respectively,'' after ''section 4(c) of the Federal Cigarette Labeling and Advertising Act (15 U.S.C. 1333(c))'';

(B) in subsection (b)—

(i) in the paragraph caption of paragraph (1), by inserting ''OR SMOKELESS TOBACCO'' after ''CIGARETTES''; and

(ii) in the paragraph caption of paragraphs (2) and (3), by inserting ''OR SMOKELESS TOBACCO'' after ''CIGARETTES''; and

(C) in subsection (c)—

(i) in the subsection caption, by inserting ''OR SMOKELESS TOBACCO'' after ''CIGARETTE'';

(ii) in paragraph (1), by inserting ''or section 4 of the Comprehensive Smokeless Tobacco Health Education Act of 1986 (15 U.S.C. 4403), respectively'' after ''section 7 of the Federal Cigarette Labeling and Advertising Act (15 U.S.C. 1335a)'';

(iii) in paragraph (2)(A), ''or section 3 of the Comprehensive Smokeless Tobacco Health Education Act of 1986 (15 U.S.C. 4402), respectively,'' after ''section 4 of the Federal Cigarette Labeling and Advertising Act (15 U.S.C. 1333)''; and

(iv) in paragraph (2)(B), by inserting ''or section 3(c) of the Comprehensive Smokeless Tobacco Health Education Act of 1986 (15 U.S.C. 4402(c)), respectively'' after ''section 4(c) of the Federal Cigarette Labeling and Advertising Act (15 U.S.C. 1333(c))''.

(3) Section 803(c) of such Act, as amended by subsection (b)(1) of this section, is further amended by inserting '', or any smokeless tobacco product,'' after ''or tube'' the first place it appears.

(4)(A) The heading of title VIII of such Act is amended by inserting ''**AND SMOKELESS TOBACCO**'' after ''**CIGARETTES**''.

(B) The heading of section 802 of such Act is amended by inserting ''**AND SMOKELESS TOBACCO**'' after ''**CIGARETTES**''.

SEC. 9. EXCLUSIONS REGARDING INDIAN TRIBES AND TRIBAL MATTERS.

(a) IN GENERAL.—Nothing in this Act or the amendments made by this Act is intended nor shall be construed to affect, amend, or modify—

(1) any agreements, compacts, or other intergovernmental arrangements between any State or local government and any government of an Indian tribe (as that term is defined in the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b(e)) relating to the collection of taxes on cigarettes or smokeless tobacco sold in Indian Country (as that term is defined section 1151 of title 18, United States Code);

(2) any State laws that authorize or otherwise pertain to any such intergovernmental arrangements or create special rules or procedures for the collection of State, local, or tribal taxes on cigarettes or smokeless tobacco sold in Indian Country;

(3) any limitations under existing Federal law, including Federal common law and treaties, on State, local, and tribal tax and regulatory authority with respect to the sale, use, or distribution of cigarettes and smokeless tobacco by or to Indian Tribes or tribal members or in Indian Country;

(4) any existing Federal law, including Federal common law and treaties, regarding State jurisdiction, or lack thereof, over any Tribe, tribal members or tribal reservations; and

(5) any existing State or local government authority to bring enforcement actions against persons located in Indian Country.

(b) COORDINATION OF LAW ENFORCEMENT.—Nothing in this Act or the amendments made by this Act shall be construed to inhibit or otherwise affect any coordinated law enforcement effort by 1 or more States or other jurisdictions, including Indian Tribes, through interstate compact or otherwise, that—

(1) provides for the administration of tobacco product laws or laws pertaining to interstate sales or other sales of tobacco products;

(2) provides for the seizure of tobacco products or other property related to a violation of such laws; or

(3) establishes cooperative programs for the administration of such laws.

(c) TREATMENT OF STATE AND LOCAL GOVERNMENTS.—Notwithstanding any other provision of this Act, the provisions of this Act are not intended and shall not be construed to authorize, deputize, or commission States or local governments as instrumentalities of the United States.

(d) ENFORCEMENT WITHIN INDIAN COUNTRY.—Nothing in this Act or the amendments made by this Act is intended to prohibit, limit, or restrict enforcement by the Attorney General of the United States of the provisions herein within Indian Country.

(e) AMBIGUITY.—Any ambiguity between the language of this section or its application, and any other provision of this Act shall be resolved in favor of this section.

SEC. 10. EFFECTIVE DATE.

AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS

Mr. WARNER. Mr. President, I ask unanimous consent that the Committee on Banking, Housing, and Urban Affairs be authorized to meet during the session of the Senate on December 9, 2003, at 9:30 a.m., to conduct a hearing on the nominations of Ms. April H. Foley, of New York, to be first Vice President of the Export-Import Bank of the United States; and the Honorable Joseph Max Cleland, of Georgia, to be a member of the board of directors of the Export-Import Bank of the United States.

The PRESIDING OFFICER. Without objection it is so ordered.

SUBCOMMITTEE ON OVERSIGHT OF GOVERNMENT MANAGEMENT, THE FEDERAL WORKFORCE AND THE DISTRICT OF COLUMBIA

Mr. WARNER. Mr. President, I ask unanimous consent that the Committee on Governmental Affairs Subcommittee on Oversight of Government Management, the Federal Workforce and the District of Columbia, be authorized to meet on Tuesday, December 9, 2003, at 10 a.m. for a hearing entitled, ''Fair or Foul: The Challenge of Negotiating, Monitoring, and Enforcing U.S. Trade Laws.''

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

UNANIMOUS CONSENT AGREEMENT—H.R. 3108

Mr. FRIST. Mr. President, I ask unanimous consent that at a time to be determined by the majority leader, in consultation with the minority leader, the Senate proceed to consideration of H.R. 3108, the House-passed pensions bill, and that it be considered under the following limitations: That the only amendments in order be relating to the following topics: pension discount rate, deficit reduction contribution relief, multi-employer plan relief. I further ask that the following amendments be the only first-degree amendments in order and that any second-degree amendments be relevant to the first-degree amendment to which they are offered: No. 1, Frist-Daschle managers' amendment; three amendments by the majority leader or his designee; and three amendments by the minority leader or his designee.

The PRESIDING OFFICER. The minority leader.

Mr. DASCHLE. Mr. President, reserving the right to object—and I certainly will not—I just wish to indicate to the majority leader how pleased I am that at long last we have been able to get to this point. This has been a very difficult negotiation involving many Members. I think it is very important that we ultimately accomplish the passage of this legislation. This obviously does not bring us to a point where we will finalize the bill, but I think it sets us up in a way that will allow the completion of our work shortly after we return. That is the message we need to send on a bipartisan basis, and I appreciate the majority leader's leadership in getting us to this point. I will work with him as we coordinate the amendment time and debate, but I hope we can do this soon after we return. I expect we will complete our work at some point shortly after that. I thank him, and I have no objection.

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

Mr. FRIST. Mr. President, in the weeks leading up to the Thanksgiving holiday, and in the time since then, we have been trying to reach an agreement with respect to pension funding rules. As many of my colleagues are aware, the temporary pension discount rate relief we enacted in 2001 expires at the end of this year. There is virtually unanimous agreement that we need to replace the outdated 30 year treasury bill rate with a long-term corporate bond rate. However, absent some action by the House and the Senate, the statutory rate that pension plans must use to calculate their assets and liabilities will snap-back to the old 30-year rate. This will result in companies with pension plans having to assume that they will be making large contributions to their plans in the year to come.

Equally important, in my view, has been an effort to provide relief from the deficit reduction contribution, DRC, requirements that certain plans are now facing. Under the current pension funding rules, companies that offer defined benefit pension plans are required to make additional contributions to those plans when they are less than 90 percent funded. A pension plan's funding level is determined by comparing the plan's current assets to its promised benefits and then calculating whether the two will match up by the time the benefits promised are due.

The recent drop in the stock market, low interest rates, and generous pension benefits agreed to in better times have caused many defined benefit pension plans to fall well beneath this 90 percent threshold. As a result, many companies are being required to make substantial additional contributions at the time they can least afford them. The Finance Committee-reported bill, which I support, included 3 years of DRC relief.

Despite our best efforts, it is clear that we will not be able to reach an agreement before the end of the year. We have, however, entered into a unanimous consent agreement that gives us a plan for addressing this issue when we return early next year. It is my belief that this issue can be wrapped up with one or two days of debate and that a conference agreement should follow shortly thereafter.

Replacing the current 30-year Treasury rate with a long-term corporate bond rate is a critically important issue, not only to the companies themselves but their employees as well. Equally important, however, is the broader pension bill upon which Senator GRASSLEY and Senator BAUCUS have worked so hard. Resolution of this more immediate issue is but a precursor to consideration of the larger pension reform bill. And even this is but a prelude to an effort to take a broader look at our nation's pension funding rules with an eye toward making more systematic reforms. I look forward to a spirited debate next year as we take the first step in this broader undertaking.

UNANIMOUS CONSENT AGREEMENT—EXECUTIVE CALENDAR

Mr. FRIST. Mr. President, as in executive session, I ask unanimous consent that during the upcoming adjournment of the Senate, all nominations remain status quo, with the following exceptions which I send to the desk: Colonel Quelly, PN 273–108; Colonel Rubino, PN 299–108; Brigadier General Meyer, PN 750–108; Colonel Baldwin, PN 1035–108; Claude Allen, PN 92 and PN 534; Jeane Kirkpatrick, PN 788; Louise Oliver, PN 943; Peter Eide, PN 617 and PN 104; Neil McPhie, PN 103; Calendar Nos. 219, 233, 234, 235, 236, 480, and 484.

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

EXECUTIVE SESSION

EXECUTIVE CALENDAR

Mr. FRIST. Mr. President, I ask unanimous consent that the Senate immediately proceed to executive session to consider the following nominations on today's Executive Calendar: Calendar Nos. 132, 199, 200, 316, 410, 417, 419, 421, 434, 435, 451, 452, 453, 454, 456, 458, 459, 460, 462, 463, 464, 465, 466, 467, 468, 469, 470, 471, 472, 475, 476, 477, 479, 483, 485, 486, 487, 489, 491, 492, 493, 494, 510, 526, 527, 529, 532, and 474.

NOMINATIONS DISCHARGED

I further ask unanimous consent that the following nominations be discharged from the Foreign Relations Committee and the Senate proceed to the nominations en bloc: David Mulford, PN 1110; James Oberwetter, PN 1113; further, that the following nominations be discharged from the Banking Committee and the Senate proceed to their consideration: April Foley, PN 1155; Joseph Max Cleland, PN 1154.

I further ask unanimous consent that the nominations be confirmed en bloc, the motions to reconsider be laid upon the table, the President be immediately notified of the Senate's action, and the Senate then return to legislative session.

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

The nominations considered and confirmed en bloc are as follows:

THE JUDICIARY

Bruce E. Kasold, of Virginia, to be a Judge of the United States Court of Appeals for Veterans Claims for the term prescribed by law.

AFRICAN DEVELOPMENT FOUNDATION

Ephraim Batambuze, of Illinois, to be a Member of the Board of Directors of the African Development Foundation for a term expiring February 9, 2008.

John W. Leslie, Jr., of Connecticut, to be a Member of the Board of Directors of the African Development Foundation for a term expiring September 22, 2007.

DEPARTMENT OF LABOR

Howard Radzely, of Maryland, to be Solicitor for the Department of Labor.

THE JUDICIARY

George W. Miller, of Virginia, to be a Judge of the United States Court of Federal Claims for the term of fifteen years.

DEPARTMENT OF THE INTERIOR

David Wayne Anderson, of Minnesota, to be an Assistant Secretary of the Interior.

DEPARTMENT OF TRANSPORTATION

Karan K. Bhatia, of Maryland, to be an Assistant Secretary of Transportation.

METROPOLITAN WASHINGTON AIRPORTS AUTHORITY

Charles Darwin Snelling, of Pennsylvania, to be a Member of the Board of Directors of the Metropolitan Washington Airports Authority for the remainder of the term expiring May 30, 2006.

UNITED STATES SENTENCING COMMISSION

William K. Sessions III, of Vermont, to be a Member of the United States Sentencing Commission for a term expiring October 31, 2009.

DEPARTMENT OF JUSTICE

David L. Huber, of Kentucky, to be United States Attorney for the Western District of Kentucky for the term of four years.

ELECTION ASSISTANCE COMMISSION

Paul S. DeGregorio, of Missouri, to be a Member of the Election Assistance Commission for a term of two years.

Gracia M. Hillman, of the District of Columbia, to be a Member of the Election Assistance Commission for a term of two years.

Raymundo Martinez III, of Texas, to be a Member of the Election Assistance Commission for a term of four years.

Deforest B. Soaries, Jr., of New Jersey, to be a Member of the Election Assistance Commission for a term of four years.

THE JUDICIARY

D. Michael Fisher, of Pennsylvania, to be United States Circuit Judge for the Third Circuit.

DEPARTMENT OF STATE

Edward B. O'Donnell, Jr., of Tennessee, a Career Member of the Senior Foreign Service, Class of Counselor, for the rank of Ambassador during his tenure of service as Special Envoy for Holocaust Issues.

Jon R. Purnell, of Massachusetts, a Career Member of the Senior Foreign Service, Class of Counselor, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the Republic of Uzbekistan.

Margaret DeBardeleben Tutwiler, of Alabama, to be Under Secretary of State for Public Diplomacy.

Louise V. Oliver, of the District of Columbia, for the rank of Ambassador during her tenure of service as the United States Permanent Representative to the United Nations Educational, Scientific, and Cultural Organization.

William J. Hudson, of Virginia, a Career Member of the Senior Foreign Service, Class of Minister-Counselor, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the Republic of Tunisia.

Margaret Scobey, of Tennessee, a Career Member of the Senior Foreign Service, Class of Minister-Counselor, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the Syrian Arab Republic.

Thomas Thomas Riley, of California, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the Kingdom of Morocco.

Jackie Wolcott Sanders, for the rank of Ambassador during her tenure of service as United States Representative to the Conference on Disarmament and the Special Representative of the President of the United States for Non-Proliferation of Nuclear Weapons.

Mary Kramer, of Iowa, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to Barbados and to serve concurrently and without additional compensation as Ambassador Extraordinary and Plenipotentiary of the United States of America to St. Kitts and Nevis, Saint Lucia, Antigua and Barbuda, the Commonwealth of Dominica, Grenada, and Saint Vincent and the Grenadines.

Timothy John Dunn, of Illinois, a Career Member of the Senior Foreign Service, Class of Counselor, for the rank of Ambassador during his tenure of service as Deputy Permanent Representative to the Organization of American States.

James Curtis Struble, of California, a Career Member of the Senior Foreign Service, Class of Minister-Counselor, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the Republic of Peru.

INTER-AMERICAN DEVELOPMENT BANK

Hector E. Morales, of Texas, to be United States Alternate Executive Director of the Inter-American Development Bank.

DEPARTMENT OF STATE

Marguerita Dianne Ragsdale, of Virginia, a Career Member of the Senior Foreign Service, Class of Counselor, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the Republic of Djibouti.

Stuart W. Holliday, of Texas, to be Alternate Representative of the United States of America for Special Political Affairs in the United Nations, with the rank of Ambassador.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Jennifer Young, of Ohio, to be an Assistant Secretary of Health and Human Services.

Michael O'Grady, of Maryland, to be an Assistant Secretary of Health and Human Services.

CHEMICAL SAFETY AND HAZARD INVESTIGATION BOARD

Rixio Enrique Medina, of Oklahoma, to be a Member of the Chemical Safety and Hazard Investigation Board for a term of five years.

DEPARTMENT OF JUSTICE

James B. Comey, of New York, to be Deputy Attorney General.

Federico Lawrence Rocha, of California, to be United States Marshal for the Northern District of California for the term of four years.

DEPARTMENT OF TRANSPORTATION

Jeffrey A. Rosen, of Virginia, to be General Counsel of the Department of Transportation.

CORPORATION FOR PUBLIC BROADCASTING

Elizabeth Courtney, of Louisiana, to be a Member of the Board of Directors of the Corporation for Public Broadcasting for a term expiring January 31, 2010.

Elizabeth Courtney, of Louisiana, to be a Member of the Board of Directors of the Corporation for Public Broadcasting for the remainder of the term expiring January 31, 2004.

Cheryl Feldman Halpern, of New Jersey, to be a Member of the Board of Directors of the Corporation for Public Broadcasting for a term expiring January 31, 2008.

DEPARTMENT OF THE TREASURY

Arnold I. Havens, of Virginia, to be General Counsel for the Department of the Treasury.

OFFICE OF SPECIAL COUNSEL

Scott J. Bloch, of Kansas, to be Special Counsel, Office of Special Counsel, for the term of five years.

FEDERAL DEPOSIT INSURANCE CORPORATION

Thomas J. Curry, of Massachusetts, to be a Member of the Board of Directors of the Federal Deposit Insurance Corporation for a term of six years.

FEDERAL HOUSING FINANCE BOARD

Alicia R. Castaneda, of the District of Columbia, to be a Director of the Federal Housing Finance Board for a term expiring February 27, 2004.

Alicia R. Castaneda, of the District of Columbia, to be a Director of the Federal Housing Finance Board for a term expiring February 27, 2011.

THE JUDICIARY

Lawrence B. Hagel, of Virginia, to be a Judge of the United States Court of Appeals for Veterans Claims for the term prescribed by law.

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

David Eisner, of Maryland, to be Chief Executive Officer of the Corporation for National and Community Service.

Carol Kinsley, of Massachusetts, to be a Member of the Board of Directors of the Corporation for National and Community Service for a term expiring October 6, 2006.

Read Van de Water, of North Carolina, to be a Member of the National Medication Board for a term expiring July 1, 2006.

NATIONAL MEDIATION BOARD

Read Van de Water, of North Carolina, to be a Member of the National Medication Board for a term expiring July 1, 2006.

DEPARTMENT OF LABOR

Steven J. Law, of the District of Columbia, to be Deputy Secretary of Labor, vice Donald Cameron Findlay, resigned.

DEPARTMENT OF STATE

David C. Mulford, of Illinois, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to India.

James C. Oberwetter, of Texas, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the Kingdom of Saudi Arabia.

EXPORT-IMPORT BANK

Joseph Max Cleland, of Georgia, to be a Member of the Board of Directors of the Export-Import Bank of the United States for a term expiring January 20, 2007.

April H. Foley, of New York, to be First Vice President of the Export-Import Bank of the United States for the remainder of the term expiring January 20, 2005.

Mr. HATCH. Mr. President, I stand today in strong support of D. Michael Fisher, who has been nominated to serve for the U.S. Court of Appeals for the Third Circuit. Let me speak briefly about his background and the reasons I endorse his confirmation.

Attorney General Fisher has extensive legislative experience, having served for 22 years in the Pennsylvania General Assembly. He has also practiced in civil litigation for close to 20 years. Parenthetically, I would note my understanding that Attorney General Fisher's first law office was across the hall from my law office in Pittsburgh—the 9th floor of the Frick Building—in 1970. Since 1997, Attorney General Fisher has served as Pennsylvania Attorney General and he has been a great leader. He coauthored Pennsylvania's Megan's Law; he supported the passage of a State DNA postconviction statute; and he helped negotiate the landmark national tobacco settlement.

Attorney General Fisher's nomination is widely supported. His endorsers include Democratic Pennsylvania Governor Edward Rendell, the bipartisan 19-member Pennsylvania delegation to the U.S. House of Representatives, Pennsylvania State legislators, the Pennsylvania District Attorneys Association, and the Pennsylvania Trial Lawyers Association. He is also fully endorsed by serving attorneys general from across the country. The former attorney general of Tennessee, Charles W. Burson, who also served as legal counsel for former Vice President Gore, has written in support of Attorney General Fisher's nomination: ''While [Attorney General Fisher] and I may differ on particular issues, I am certain that as a Federal Appellate Judge, he will deliberately, and with an even hand, apply the law to the facts and render sound judgments.''

I cannot recall seeing such a range of support for a judicial nominee as Attorney General Fisher enjoys. It is truly impressive and speaks well of him.

I will support Attorney General Fisher's confirmation, and I urge my colleagues to do the same.

Mr. LEAHY. Mr. President, I am troubled today that the Senate is proceeding to a vote on the nomination of D. Michael Fisher to a lifetime appointment to the U.S. Court of Appeals for the Third Circuit, when there is an open verdict against him in a Federal civil rights case. While Mr. Fisher has considerable bipartisan support, it is unfortunate that the committee vote, and now the Senate vote, on his nomination could not have at least waited for the district court judge in the pending civil rights case to rule on Mr. Fisher's motion challenging the jury verdict against him.

Over the course of this year in the Judiciary Committee, we have seen a number of firsts. At the first nominations hearing of the year, for the first time ever, Republicans unilaterally scheduled three controversial circuit court nominees at one hearing contrary to a long-established agreement and practices of the committee. Then we saw Republicans declare that the longstanding committee rules protecting the rights of the minority would be broken when Rule IV was violated. A rule that was adopted 25 years ago—in order to balance the need to protect the minority members of the committee with the desire of the majority to proceed—was unilaterally reinterpreted to override the rights of the minority for the first time in our history. For the first time ever, this year, Republicans insisted on proceeding on nominations that the committee had previously voted upon and rejected after full and fair hearings and debate. Of course that followed the first ever resubmission by a President of the names of defeated nominees for appointment to those same judgeships.

Several other practices were reversed from when a Democratic President was making nominations in light of the Republican affiliation of the current President. This committee has proceeded on nominations that did not have the approval of both home-State Senators. Moreover, this committee altered its prior practice and overrode the objections of home-State Senators to vote on the nominations of Carolyn Kuhl in spite of the opposition of both home-State Senators. Then, in connection with a nomination to the circuit court from Michigan, this committee for the first time proceeded with a hearing in spite of the opposition of both home-State Senators.

The hearing on the nomination of Michael Fisher to the U.S. Court of Appeals for the Third Circuit was also unprecedented. Never before to my knowledge has a President nominated to a lifetime position on a Federal circuit court or this committee held a hearing on a judicial nominee with an outstanding jury verdict naming him as personally liable for civil rights violations. In February 2003, a Federal jury in the U.S. District Court for the Middle District of Pennsylvania found that Mr. Fisher and other high level officials of the Pennsylvania Office of the Attorney General violated the civil rights of two plaintiffs, former narcotics agents with the Bureau of Narcotics Investigation, BNI, in Philadelphia. Never before in the history of Federal judicial nominees of which I am aware, has a nominee ever come before this committee with an outstanding judgment against him for so serious a claim.

The jury verdict is so recent that the trial transcript was only delivered to the parties within the last several weeks, and so complex that even Mr. Fisher and his lawyers asked for extensions of time in order to complete their post-trial motions. Just 6 weeks ago, Mr. Fisher and the other defendants filed their brief in support of their motion for judgment as a matter of law or a new trial. Soon, the Federal district court trial judge will review the verdict against Mr. Fisher and make a decision on Mr. Fisher's motion. If the jury verdict is sustained by the district court judge, an appeal would lie to the very court to which Mr. Fisher has been nominated. Mr. Fisher has indicated that he intends to pursue all appellate options if the verdict is not reversed. These, too, appear to be unique circumstances.

Accordingly, this is a most unusual vote today. As the administration and Republican majority have abandoned traditional practices and standards, we are being confronted with more and more difficulties. The few judicial nominations on which the Senate has withheld a final vote this year have each presented extraordinary circumstances or nominees with extreme positions. During the years in which President Clinton was in the White House, Republicans attempted a number of filibusters and, when they were in the majority, successfully prevented votes on more than 60 judicial nominees, including a number of nominees to the Federal courts in Pennsylvania.

At Mr. Fisher's hearing, I indicated that I had not yet reached a determination about his nomination but was troubled by the jury verdict. I have now reviewed the trial transcript and materials from the civil rights case. Mr. Fisher has been found liable by a jury for violating the constitutional rights of his employees. Mr. Fisher testified at trial that he had knowledge of and approved of the actions found by the jury to be retaliatory. The jury found that he acted maliciously or wantonly and awarded the plaintiffs punitive damages. We should all be concerned about his ability to protect the constitutional rights of plaintiffs who may enter his courtroom. The trial court judgment is a significant piece of information in order for us to

evaluate Mr. Fisher's qualifications to a lifetime appointment on the federal bench. In all due respect to my friends on the other side of the aisle, I do not think that the courts or the American people gain by rushing the nomination through.

In addition to the pending civil rights judgment against him, I am concerned about other aspects of Mr. Fisher's record. He authored Pennsylvania's death penalty legislation as a State representative and has opposed placing a moratorium on the death penalty in Pennsylvania. He reiterated at his hearing and in response to my written questions that he does not believe that there is racial discrimination in the application of the death penalty in Pennsylvania or that innocent people are being sentenced in capital cases, despite repeated evidence to the contrary. I would like to take this opportunity to urge Mr. Fisher to take seriously the imposition of the death penalty and to do what he can to ensure that the death penalty is applied fairly.

Mr. Fisher has also indicated his opposition to gay rights and has advocated against benefits for same-sex partners. Mr. Fisher, however, has assured the committee that he would follow Supreme Court precedent recognizing that gays and lesbians have a constitutional right to be free from government intrusion into their private lives. I am hopeful that Mr. Fisher will be a person of his word: that he will follow the law and not seek out opportunities to overturn precedent or decide cases in accord with his private beliefs rather than his obligations as a judge. I also sincerely hope that Mr. Fisher will treat all those who appear before him with respect, and will not abuse the power and trust of his position.

The Senate has already confirmed two of President Bush's nominees to the Third Circuit, including one controversial circuit court nominee from Pennsylvania who had broken his promise to the committee about his membership in a discriminatory club. Yet, with Democratic support, the Senate has already confirmed 13 Federal district court nominees from Pennsylvania and 19 district court nominees in the Third Circuit.

A look at the Federal judiciary in Pennsylvania indicates that President Bush's nominees have been treated fairly and far better than President Clinton's. This treatment is in sharp contrast to the way vacancies in Pennsylvania were kept vacant during Republican control of the Senate when President Clinton was in the White House.

Despite the best efforts and diligence of the senior Senator from Pennsylvania, Senator SPECTER, to secure the confirmation of all of the judicial nominees from every part of his home state, there were 10 nominees by President Clinton to Pennsylvania vacancies who never got a vote: Patrick Toole, John Bingler, Robert Freedberg, Lynette Norton, Legrome Davis, David Fineman, David Cercone, Harry Litman, Stephen Lieberman, and Robert Cindrich to the Third Circuit. Despite how well-qualified these nominees were, they were never considered by the Senate, many waited more than a year for action.

Just last month, the Senate voted to confirm another nominee from Pennsylvania whose record raised serious concerns the nomination of Thomas Hardiman to the U.S. District Court for the Western District of Pennsylvania. That nominee came to us with no judicial experience, a relatively small amount of litigation experience and very low peer-review ratings by both the American Bar Association and the local Allegheny County Bar Association. Far too many of this President's judicial nominees seem to have similarly troubling records. In fact, 26 of this President's judicial nominees have earned partial or majority ''Not Qualified'' ratings from the ABA. Certainly, the citizens of Pennsylvania deserve a well-qualified judiciary to hear their important legal claims in federal court.

Unfortunately, Mr. Fisher's record—particularly the outstanding Federal civil rights verdict against him—raises concerns, just as the record of far too many of President Bush's judicial nominees. Yet, I have great respect for the senior Senator from Pennsylvania and appreciate his efforts to help shepherd the White House's nomination through the Senate. I have also heard from a number of other supporters of Mr. Fisher whose opinions I value that they believe him qualified to serve as a judge of the Third Circuit. He does have significant experience as an attorney, formerly serving as an Assistant District Attorney, as an attorney in private practice for over 27 years, and in the Pennsylvania General Assembly for 22 years. We are, again, treating this President's judicial nominees far more fairly than Republicans treated President Clinton's judicial nominees.

NOMINATION OF JAMES B. COMEY

Mr. HATCH. Mr. President, I am pleased that the Senate today confirmed James B. Comey as the Deputy Attorney General. James Comey brings a wealth of experience and perspective as a line prosecutor, as a manager in the U.S. Attorney's Office for the Eastern District of Virginia, and most recently as the U.S. attorney for the Southern District of New York. His record demonstrates that he is a leader, one who can inspire others to accomplish great things, and one who can oversee and manage an organization such as the Justice Department.

With the recent departure of Larry Thompson, who was a fine Deputy Attorney General, I am sure everyone shares my view that Mr. Comey has very big shoes to fill. However, I am confident that he is the right person for the job. His impressive background and past government service make me confident that he will be a great asset to the Department of Justice, the Judiciary Committee, and the American people.

The importance of the Deputy Attorney General within the Justice Department cannot be overstated. Over the years, the Deputy Attorney General's Office has played a greater role in overseeing the Department's operations, implementing new policy initiatives, and ensuring the effective enforcement of our criminal and civil laws.

A review of Mr. Comey's record establishes one simple fact—he is well qualified to serve as the Deputy Attorney General. Since January 2002, Mr. Comey has served as the U.S. attorney in the Southern District of New York, an office that many consider to be the premier U.S. Attorney's Office in the country. In the Southern District of New York, Mr. Comey has earned the respect of judges, defense counsel, and prosecutors for his professionalism, fairness and judgment. While serving as the U.S. attorney, Mr. Comey was responsible for leading his office in some of the more significant terrorism and white collar prosecutions.

Prior to assuming the position as the U.S. attorney, Mr. Comey served from 1996 to 2001, as managing assistant U.S. attorney, in charge of the Richmond Division of the U.S. Attorney's Office for the Eastern District of Virginia. From 1993 to 1996, Mr. Comey was an associate and later a partner at the law firm of McGuire Woods in Richmond, VA. Early in his career, from 1987 to 1993, Mr. Comey served as an assistant U.S. attorney in the Southern District of New York.

As a Federal prosecutor, Mr. Comey investigated and prosecuted a wide variety of cases, including firearms, narcotics, major frauds, violent crime, public corruption, terrorism, and organized crime. In the Eastern District of Virginia, he handled the Khobar Towers terrorist bombing case, arising out of the June 1996 attack of a U.S. military facility in Saudi Arabia in which 19 airmen were killed.

Mr. Comey was educated at William & Mary, B.S. with honors 1982, chemistry and religion majors, and the University of Chicago Law School, J.D. 1985. After law school, he clerked for then-U.S. District Judge John Walker in Manhattan.

Let me take one moment to highlight perhaps Mr. Comey's most important accomplishment. While serving his country in a variety of prosecutorial positions, he has demonstrated that he is a dedicated family man. He and his lovely wife, Patrice, are raising five wonderful children, ranging in age from 15 to as young as 3 years old.

Mr. Comey is a dedicated public servant, and a talented and well-respected prosecutor. He is uniquely qualified to lead as the Deputy Attorney General of the Justice Department.

Mr. DASCHLE. Mr. President, I am very pleased that we have been able to

make what I consider real progress on the Executive Calendar. There is still work to be done, but I think this represents a very important compromise in the effort to try to find the bipartisan balance in these nominations that is key to success, regardless of the session or regardless of the Congress itself.

There are still many Democrats whose nominations are languishing either in the White House or in committee. It is troubling that we have had the difficulty, in many cases, that has precluded greater progress on those and other nominations over the course of the last several months. I hope, as we begin the second session of the Congress, we can expedite many of these nominees. I certainly will redouble our efforts to work with the White House and to accommodate whatever concerns they may have with regard to some nominations, and certainly with regard to their own list of nominees who ought to be considered in an expeditious way. So we will continue to work.

I hope the White House in particular recognizes the importance of reciprocity and the fact that the nominations must be a two-way street. Democratic and Republican nominations deserve expeditious consideration, and it would be a real opportunity to set that tone and to send that message as we consider the Executive Calendar again early next year.

I yield the floor.

Mr. FRIST. Mr. President, I wish to comment very briefly on the nominations. We have made real progress as we were able to clear the degree of nominations that we did. There are several district judges I would like to have cleared, but the understanding is that when we come back we will be able to address those very early on. That is the understanding we reached this afternoon. These judges are very important for us to address. We will be addressing those as soon as we come back.

ACCOMPLISHMENTS IN THE FIRST SESSION OF THE 108TH CONGRESS

Mr. FRIST. Mr. President, I want to talk a little bit about the 108th Congress because we are about to draw to a close once we complete some of the final paperwork. I think it is a good time for me to review just a bit of what we have been able to accomplish and what has been really a truly exceptional legislative session. People have worked very hard; they have stayed very focused, and I believe anyone looking back will have to say that over the last 11 months we really have been able to serve the American people well and, in many ways, capped by the historic enactment of the Medicare prescription drug bill just yesterday.

For the first time in the 40-year history of the Medicare Program, with which I am very familiar because of my profession before coming to the Senate, Medicare will offer prescription drug coverage, which is the most powerful tool in American medicine today. That will be offered to America's 40 million seniors and individuals with disabilities through the Medicare Program. It is a monumental achievement that I can stand before this body today and say we have accomplished with the signing of that Medicare bill yesterday.

America's seniors will also have, for the first time, the option under Medicare of choosing a health care plan, or the type of coverage that can best suit their individual needs. Everybody's individual needs are very different. We have moved Medicare in the direction that allows this sort of flexibility, the individual attention, the responsiveness to individual needs. The seniors and the individuals on disability will now have that choice. These are reforms. This is a modernization, a strengthening and improving of Medicare, but they are indeed reforms.

That is why I say this is a monumental piece of legislation. It is the most significant reform since the beginning of that program in 1965. Although there was a lot of what I guess you could call partisanship expressed in the development of the bill, it was healthy debate on both sides; and ultimately the bill was generated by the hard work and dedication of both sides of the aisle.

I thank my fellow Senators, my colleagues, for their leadership and praise them for stepping forward and addressing an issue that so directly impacts the 40 million seniors and the almost 80 million baby boomers who will be coming through over the next 30 years.

It is that responsiveness, with action and with solutions, that indeed makes me proud as a Senator, and especially as majority leader of the Senate. It is an honor to be able to go back to the American people and say we delivered. It is not perfect. Everybody knows it is not perfect. But we delivered on what affects your lives in terms of your needs and in a way that is reflective of the tremendous talent in this body.

Back in January, we set an ambitious agenda. We said we needed to get the economy back on track; we needed to lend the critical support of this body to the war on terror; we needed to promote public health here as well as abroad. Most colleagues have heard me say that our mission under the current leadership is to move America forward and in a way that serves the cause of freedom and the cause of liberty. You can write it on a little card and carry it in your pocket. It is simple and easy to understand. That is what we collectively in this body set out to do—to expand freedom, to expand opportunity, to strengthen Americans' security.

Eleven months later, in looking back, we have done just that. We have made great strides on those goals, but it is sort of a halfway point. We set goals and we are moving toward them aggressively. We did so by respecting the longstanding Senate values of civility and trust—again, with healthy debate but civility and trust.

By building strong and reliable and dependable relationships, each of us is going to be able to go home and visit with our constituents and with the families, the people who elected us, and be proud of the accomplishments we have achieved over the last 11 months.

The year started out with us having to pass 12 of the 13 spending bills left undone by the previous Congress. We passed 11 of those bills in just the first 3 weeks. We also passed a budget to establish a blueprint of creating jobs, of investing in homeland security, of investing in education, of providing a Medicare prescription drug benefit and coverage, offering health insurance as well for America's children.

With that unfinished business of the last Congress complete, we turned our attention to the President's jobs and growth agenda. Indeed, working with the President and under the President's leadership and his vision, we passed $350 billion in tax relief this year which is the third largest tax relief package. The third largest tax cut in the history of this country this Congress passed. Everybody—all of my colleagues, people listening now, people who will read the CONGRESSIONAL RECORD in the next several days—everybody who is paying taxes pays less taxes today than they did 11 months ago.

It was across the board. Yes, it was capital gains; it was affecting the marginal rates as well across the board. Mr. President, 136 million hard-working taxpaying Americans had their taxes cut. It did focus on families as well. We increased the child tax credit from $600 per child to $1,000 per child. We accomplished that this year.

A lot of people don't realize those rebate checks were sent out immediately and, as a result, this summer 25 million families received checks from the U.S. Treasury of up to $400 per child, going from $600 to $1,000, and an additional check of $400. In total, we returned 13.7 billion tax dollars to families all across the country. That was just the start.

Under that Jobs and Growth Act of 2003, a family of 4 making $40,000 will see their taxes reduced by $1,130 this year. Of the overall $350 billion in tax cuts in fiscal relief, the bulk of it was moved forward, and nearly $200 billion, fully 60 percent, is provided this year and next.

There have been critics of the tax cut. Some say $1,300 is not a lot of money you are returning; $1,300 is just not a lot; that is not going to make a big difference in somebody's life; and it wouldn't make a big difference if the bureaucrats took it away again. Tell that to the families working hard every day to raise children in this day and time, those families who are working hard to pay those household expenses. They are working hard just to have a little bit of money to take their family on vacation.

I can almost guarantee that the U.S. Treasury didn't get a flurry of checks

in the mail from families who said: No, I don't need that check you just sent me; no, America's families can use it. And they did use it.

Small business owners, as well, got a major boost from the tax package. Mr. President, 23 million small business owners who pay taxes at the individual rates saw their taxes lowered. We quadrupled the expense deduction for small business investment. It had a huge impact. We receive e-mails and letters every week about the impact this single issue, this expense deduction has for small business investment.

I think we all know small business owners are the engine of growth; they are the heart of the American marketplace. Workers and consumers depend on that small business sector to generate jobs, products, and services. Small business innovators create as much as 60 percent to as high as 80 percent of new jobs nationwide, and they generate more than 50 percent of the gross domestic product of this country. By cutting taxes and by encouraging investment, we are helping unleash a tremendous economic power in this country: the economic power of individuals working together in their small businesses.

Taken together, this year's tax cut and the tax cuts of 2001 are providing an astonishing $1.7 trillion in tax relief over the next decade. We are beginning to see the results. We have already seen those results. We are right now in the midst of a strong economic recovery. Again, compared to 11 years ago, the jobs and growth package, the unleashing of the potential of small business and midsize and large business, of unleashing that individual hard work and spirit, we have an economic recovery.

Consumers today have more money in their pockets. Consumers' sentiment rose in November to the highest level since May 2002, and businesses, as well, are optimistic about the direction of the country, and with good cause.

Economic growth—again, I am comparing it to 11 months ago—economic growth in the third quarter soared—and that is the best word, ''soared''—at an incredible rate of 8.2 percent. That is the largest third quarter increase since 1984, in just about 20 years.

There is more money in one's pockets; disposable income is up 7.2 percent for the third quarter, and consumer spending is up a whopping 6.6 percent, the biggest third quarter growth since 1988. This November, sales of previously owned homes hit their third highest level on record. The National Association of Realtors reports that previously owned home sales rose 3.6 percent to a record annual rate of nearly 7 million units in September. Meanwhile, housing starts are nearing a 17-year high. I should repeat that. Housing starts are nearing a 17-year high.

The association credits the phenomenal growth in home sales to ''the powerful fundamentals that are driving housing markets: household growth, low interest rates, and an improving economy.''

This is great news for America's families and, incidentally, for America's businesses. When a family buys a home, their purchase not only benefits a community, it sets off a whole chain of purchases that help fuel the economy. They have to buy that living room furniture. They have to buy those kitchen appliances. They have to buy new beds and new curtains. They buy that washer and dryer. All of this is reflected in these new housing starts. Many related industries benefit from one family's momentous and gratifying decision to do what all of us envision as the American dream, and that is to buy a home.

Not only is individual consumption up, but the business sector is showing impressive signs of recovery. Nonresidential recovery is up 10 percent, business investment went up 11.1 percent in the third quarter, and productivity soared by 8.1 percent, its highest level in 20 years.

Businesses are rebuilding their inventories, and they are retooling their factories. And all of this economic activity ultimately leads to jobs. Indeed, the labor market appears to be stabilizing, and the economy is finally providing Americans with those much needed jobs.

Over the past 3 months, 286,000 new jobs came on line. In October alone, 126,000 jobs were added. Meanwhile, since the initial tax cut, initial claims for unemployment insurance have gone down more than 10 percent, and if we look just at the week ending November 1, unemployment claims hit a 34-month low.

Finally, there is good news for individual State treasuries. Their budget gap of nearly $20 billion at the beginning of the last fiscal year has now declined to a budget gap of less than $3 billion—$20 billion down to $3 billion for the beginning of this fiscal year. States are just beginning to see revenue surprises in their estimates.

Whether it is consumers or whether it is businesses, all are optimistic about America's economic direction. Inflation is low, interest rates are low, and American taxpayers have more of their hard-earned money to spend and to save as they choose. And they have more and more opportunities to secure the jobs they need.

This body will continue to champion fiscal policies that strengthen the economy and create jobs. We will also continue to pursue fair and free trade policies that increase consumer buying power, that stoke that economic furnace. I can list all sorts of examples, such as the free trade agreements we passed this year with Chile and Singapore. These and other policies, indeed, are maximizing freedom, are expanding the opportunity for every American—indeed, are moving America forward in a way that serves the cause of liberty.

That leads me to national security. Our mission to expand freedom and opportunity applies not just to our economy but to national security as well. We know that freedom cannot find its fullest expression under a threat of terror. Likewise, terror cannot spread where freedom reigns. This is why this year America took the extraordinary action of toppling Saddam Hussein and his terrorist-sponsoring regime.

In 3 short weeks, men and women of the United States military, with the support of 49 nations, swept into Baghdad, ending three decades of ruthless rule and terror. In the months since, our soldiers have worked tirelessly. Our thoughts and prayers are with them as we enter this new holiday season. They have worked and continue to work under dangerous conditions.

They are working with that focus of helping the Iraqi people build a democracy. Our soldiers have rebuilt schools. They have rebuilt hospitals. They have rebuilt electrical grids, pipelines, and roads. They are training the Iraqi police forces to patrol the streets and to hunt down terrorists. Every day our troops are helping the people of Iraq and Afghanistan move forward, becoming free and open societies. To support their efforts, this body acted. We passed the President's $87 billion war supplemental this year. We did so because we recognized that investing in the future of Iraq and Afghanistan is an investment in our security.

September 11 taught us a really cruel lesson. We learned that we cannot wait in this country while storms gather. As the President said, the Middle East region will either become a place of progress and peace or it will remain a source of violence and terror. I repeat that quotation: The Middle East region will either become a place of progress and peace or it will remain a source of violence and terror.

This year, we in the Senate took bold action to support the war on terror because we are determined that progress and peace take root. The Middle East is not the only region where we are working to bring stability. In this session, in this body, we passed the Burmese Freedom Act and the Clean Diamond Act to promote peace and freedom. We also took the historic action of dedicating $15 billion to drive back, to fight, and to eventually eradicate the HIV/AIDS virus. That little virus that I have talked a lot about on this floor did not exist, as far as we knew, until the early 1980s, which is not that long ago. Since that period in time, that little virus has killed a million people, killed 5 million people, killed 10 million people, killed 15 million people, killed 23 million people over the last 20 years.

As a physician, as one who participates in medical mission trips to Africa—indeed, around the world, but predominantly to Africa—on a regular basis, I am especially gratified by this body demonstrating its compassion on this issue. Millions of lives have been cut short by this scourge, and we responded. It is a new problem around

the world and it is a problem that we, following the leadership of the President of the United States, are addressing with the full might and power and boldness of this body.

Countries have lost whole midsections and swaths of their population. In my trip to parts of Africa, we took a Senate delegation into August and September of this year and we saw this whole midsection of a population where, yes, there are young people running around but they have lost their parents and there are older people who are typically grandparents but the whole midsection of a population has literally been wiped out. I have said it many times, and I will continue to say it because we need to make Americans aware, that to my mind HIV/AIDS is the greatest moral, humanitarian, and public health challenge of the last 100 years.

The good news is that this body has responded. By passing the global HIV/AIDS bill, we are helping to prevent 7 million new infections, provide antiretroviral drugs for 2 million HIV-infected people, care for 10 million HIV-infected people and AIDS orphans, and bring hope to millions of people around the world. Our leadership serves as an example for every government in the world today.

It is not just in Africa. Actually, the fastest growing rates are not in Africa. We see it in elements of the Caribbean and we see it in Russia. Just a few minutes ago, I had the opportunity to meet with the Premier of China, and we were talking about HIV/AIDS. It is really unprecedented. I cannot help but think that the President of the United States, with the leadership in this body and the House of Representatives, has contributed to that global understanding, that global leadership, which will allow us eventually to reverse the tide of destruction of this virus.

Our work in passing this critical legislation does demonstrate that the United States of America places a high value on life. We have responded. We have a lot more to do in this regard, but we have responded with that boldness. History will judge how we responded, and in this Congress we have responded in that bold fashion. We have taken the necessary actions.

We have also addressed other sorts of life-related issues in this Congress. We have made the right choice to end that morally reprehensible practice of partial-birth abortion. This body and the House and various administrations have talked about outlawing this objectionable—I would say abominable—procedure, but we delivered. This body delivered and no longer, as I stand here, is that practice of partial-birth abortion legal. Eleven months ago, it was legal; it was performed and unnecessary lives were taken. Today, it is against the law. We did it, I should say, with an overwhelming majority in this body. We voted to end this immoral and medically unnecessary procedure and say yes to life.

This Senate can be proud of many strides taken in the 108th Congress to protect those most vulnerable among us. Again, I add that partial-birth abortion really demonstrates that. In addition, there was other legislation, such as Amber Alert. In January, we passed legislation to establish the National Amber Alert. Law enforcement now—and they did not have it at the beginning of this year—has another tool to work with the public. Governments and law enforcement can now work together to be able to find missing children.

Another example: In June of this year, we passed legislation to protect the victims of child abuse. We also voted to extend welfare reform to help lift families out of poverty. There was Medicare reform, jobs and growth tax cuts, the Iraqi war supplemental, the global HIV/AIDS bill.

In January, we set our sights high, and I would argue that we exceeded expectation. We are moving America forward, and we will continue to do so in the coming months because there is a lot more to do.

I go through this sort of partial discussion of what we have accomplished in terms of jobs and growth, health care, the value of life issues, and global HIV/AIDS in part to reflect. It is important for our colleagues because we have been working pretty hard, we have been going pretty much nonstop, especially over the last couple of months, and I do want to encourage our colleagues to look back and say that, yes, we are making progress, but there is much to be done.

I do want to really just project out a little bit about where I think we will be going in the next Congress as we come back in January.

We will build on the success of this year's appropriations process and we will tackle all 13 appropriations bills so that Government can perform its basic function to serve the people. Beyond appropriations, we still must pass a comprehensive energy plan. We have been debating national energy and national energy policy for 3 years. During the last Congress, we spent a total of 7 weeks debating energy on the Senate floor. In this Congress we spent more time debating energy than any other bill. More time than any other bill we debated energy on this floor. Yet despite all this time devoted to debate, there still remains a small contingent, a minority in this body I should add, that continues to obstruct progress. While this small group insists on yet more debate, national gas prices keep rising to even higher levels.

U.S. chemical companies are closing plants. They are laying off workers. They are looking to expand production abroad because of high energy prices. The United States is expected to import approximately $9 billion more in chemicals than it exports this year. American consumers are getting hit with higher electric bills and small businesses are struggling to contain costs, all because of rising energy prices.

So we have to pass an energy plan, and we will pass an energy plan when we return. Not only will the energy plan lower prices, it will save jobs and it will create thousands more. It is estimated the energy package will create half a million jobs. The Alaskan pipeline alone will create at least 400,000. The hundreds of millions of dollars that will be invested in research and development of new technologies will not only benefit the environment but will create new jobs in engineering, math, chemistry, physics, and science. We simply cannot allow the obstruction of a few in the Senate to continue to harm the interests of millions of Americans.

I do use that word ''obstruction,'' and indeed I use it purposely because we saw it used to an alarming degree in this Congress, no more so than, as we demonstrated on this floor to the American people, now several weeks ago, in the consideration of the President's judicial nominees. Here obstruction has become a tool to undermine the democratic process itself. It, too, is a new problem.

For the last 200 years we have never seen the filibuster used to stop and to obstruct and to deny Senators an up-or-down vote on Presidential nominees. A minority of Senators in this body today, this year, unlike in previous Congresses, is denying all 100 of us their constitutional duty—it is spelled out in the Constitution—to give advice and consent.

We took that opportunity, now, several weeks ago, to make it plain to the American people. Yes, we worked around the clock. We had the 40-hour debate. We held it in October on three of the President's judicial nominees, and after 40 hours of debate to fully consider the eminently qualified candidates for the bench, the minority refused to allow us that very simple request—not approval of them all but simply an up-or-down vote.

Yes, this is obstruction. It really can't be described as anything but obstruction, and I would argue plain partisan obstruction. It is something we will continue to fight and we will not give up until we can break that partisan obstruction which is new to this wonderful institution, and it is something we must take back to what has been both the tradition and the culture of the last 200 years.

When we return in January we will continue to press for the fair consideration of the President's judicial nominees. Again, the fair consideration—advice and consent, a simple vote. People can vote against or they can vote for, but just allow us to vote. As we pointed out several weeks ago, the democratic process itself, as enshrined in the United States Constitution, is at stake.

We will also continue, as we look forward, to press for policies that expand and strengthen our economy. This session we did pass, as I outlined, smart,

progrowth fiscal policy, and we are already beginning to see those results. But there is still a lot more to do. We have to address, and we will address in the next year, the frivolous lawsuits that we all know are clogging our State courts. They are unnecessarily wasting our taxpayer dollars, and that gets reflected in inhibiting, almost straitjacketing businesses, especially small businesses. It straightjackets that entrepreneurial spirit that we know bubbles underneath here in the United States of America. It is that entrepreneurial spirit; it is that innovation and creativity that creates jobs. Yet we have a tort system, mainly reflected in these frivolous lawsuits, which keeps it contained, keeps it trapped.

In my own area of medicine, for the first time in a long period of time this past summer we addressed the medical liability issues with a freestanding bill. It is going to come back and it is going to keep coming back until we solve this unnecessary problem which affects access to care, to quality care, as we see trauma centers closing, as we see obstetricians no longer delivering babies. Again, it is a problem that can be reversed, and in this body we have a responsibility to reverse it. And we will. America is a country that values its citizens and we will return fairness to the litigation process.

We will also work to return fairness to the tax system. We will press for reforms to simplify the Tax Code. We will work to extend the tax credits passed in the Jobs and Growth Act. The work opportunity tax credit, for example, offers tax incentives to hire unemployed workers and welfare recipients. Not only is this smart, progrowth fiscal policy, it also is compassionate social action.

Fairness and compassion also demand that we permanently repeal the Federal death tax, the estate tax. Americans who work hard their whole lives, who save and who invest, who start those small businesses which become that engine of economic growth, those individuals who contribute to America's economic vibrancy, simply should not be punished for their success. That is what the death tax does. No son, no daughter should have to sell that family home to pay the death tax collector. It makes no sense, it is unfair, and it discourages productive economic activity. We will address it and ultimately we will win.

Compassion also demands that we turn our attention to fine-tuning the Personal Responsibility and Work Opportunity Reconciliation Act of 1996. Since it was enacted 7 years ago, welfare reform has helped to lift millions and millions of families out of poverty. There are over 3.5 million fewer people living in poverty now than in 1995, a year before welfare reform was passed. Welfare caseloads have declined to one-half. When we return next year, we will look for ways to build on this success so that more families can have a fair chance at the American dream.

We will also address that important issue, and an issue, again, I talk a lot about, and that is the problem of the uninsured. The increasing number—again, you will see this body is beginning to address those areas, those problems where the problem is getting worse over time, and the uninsured is just that area. It is an increasing number of uninsured, people without health insurance. Clearly, this problem represents one of the most daunting policy challenges facing our Nation.

As a physician, I saw firsthand how the lack of insurance, the lack of coverage, puts forth the significant barriers to quality health care, including such things as basic as preventive services. The lack of affordable health coverage is also one of the key factors contributing to health care disparities among minorities among other medically underserved populations. I asked my colleague the Senator from New Hampshire, Mr. JUDD GREGG, to lead the Senate Republican task force on this pressing issue, the uninsured. He will report back with a series of recommendations for modification, for strengthening, for reform next year.

Next year we will also continue our efforts to improve America's public educational system. We are committed to improving Head Start to make sure that Head Start children enter school with the same tools and the same skills as their economically advantaged peers. We are also committed to expanding access to college education for every American student who seeks it, and for special education students we will work to pass comprehensive legislation that protects their educational rights as well.

Education, as we all know, is the heart and soul of America's success. Our abundance, civic life, and democracy demand and depend directly on a thriving and educated citizenry.

Education, the uninsured, tax policy, welfare reform, litigation reform, judicial nominees, energy, and appropriations are just some of the challenging issues we will be addressing next year. I am confident that next year, just as this year, we will be able to meet ambitious goals.

In closing, each day that I have the opportunity to walk into this great institution, I am humbled. Indeed, I am inspired. I am humbled mostly by the great men and women who have come before and inspired by their example. In his 1862 address to Congress, President Lincoln told the assembled legislators that ''America is the world's last best hope.'' Those words have never ever been truer than they are today. I am confident that we will face the challenges ahead with honor and with courage for the simple reason that we are Americans.

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

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

INTELLECTUAL PROPERTY RIGHTS

Mr. FRIST. Mr. President, I had the opportunity to take my wife Karyn to the Kennedy Center Honors, which is an annual tradition here. It is really a remarkable evening—a 2-day event—where America celebrates cultural icons. Most of them have been recognized before. But in that special gathering and in that beautiful building, the Kennedy Center, it takes on a really special meaning I think for us in this body, in the U.S. Congress, for those of us here in Washington, but indeed for people around the world as they see it replayed just after, I think, December 26.

While I was there, I couldn't help but to reflect as I watched one of country music's greats, Loretta Lynn, receive her honor. An issue that affects the State of Tennessee but indeed which affects people throughout the United States of America deals with intellectual property rights.

The State of Tennessee is known the world over for its vibrant musical heritage. It is the home of the Grand Ole Opry and the Country Music Hall of Fame. Indeed, Tennessee has produced some of the greatest popular pioneers of all time. Indeed, Tennessee has produced Elvis Presley, Johnny Cash, Loretta Lynn, Dolly Parton, and the list goes on. Those who grew up in Nashville had that opportunity to go by on a regular basis and experience the music at the wonderful Ryman Auditorium, where the Grand Ole Opry was housed for so many years.

In the next few weeks, we will have the pleasure of hearing renditions of many of these artists with their Christmas carols played over the airwaves all across this country and even all across this globe, in shopping malls just about everywhere the holidays are celebrated.

The music community that creates these opportunities and this joy is being threatened. In these closing minutes, I bring that to the attention of my colleagues. It is being threatened by those who love it so much, who appreciate it so much; that is, the millions of people who are downloading billions of illegal music files.

I have had the privilege of meeting diverse groups of leaders from the music community on several occasions, but the focus has been to discuss the effects of piracy on the music industry. It is huge. It is far reaching. It is the artist, it is the record companies, it is the performing rights organizations, it is the publishers. The bottom line is clear: Piracy is greatly impacting the music community. The situation is, indeed, growing worse. Online music piracy is out of control.

Currently, every month, 2.6 billion music files are downloaded illegally

using peer-to-peer networks. It is not unusual for albums to show up on the Internet before they make it to the record stores. The music industry is losing $4 billion a year to piracy, and that dollar figure is growing every day. Most alarming, there is an entire generation of young Americans who believe that downloading online music is acceptable, it is the norm, it is legal, like being your own personal DJ without ever having to buy a CD.

Piracy affects more than just the music industry. It affects that larger element of intellectual property. It includes the movie industry, it includes the software industry. Indeed, the numbers are staggering. According to a report released by the International Intellectual Property Alliance, U.S. copyright industries—and that includes music, movies, books, and software—contributed $535 billion to the U.S. economy in 2001. They collectively employ over 4.7 million workers. They generate almost $900 billion in foreign sales, making intellectual property one of our largest exports.

Other countries often do not respect our copyright laws. They allow mass copying of music and other works. For example, it is estimated that an astounding 92 percent of business software used in China is pirated. In my travels to Asia several months ago, I directly stressed the importance of protecting our copyright laws to the leaders of China and Taiwan and Korea, the countries I visited. Copyright pirating is costing our economy billions. As leaders, we must educate the public that illegally downloading music or copyrighted material is stealing, straight and simple. Most people would never steal a CD from Wal-Mart, but they do not think twice before burning a CD from illegally downloaded music. People forget that an artist's song is just like a baker's loaf of bread; it is their creation; it is their livelihood.

While the future of the music industry lies with the merging technology, the industry simply cannot survive if Internet piracy steals its value any more than a shop owner can survive having their inventory stolen from under him or her every week or a restaurant owner can afford in some way to serve meals for free.

Eventually, unabated piracy will dry up income. It drives away the creative spirit. It drives away artists. It destroys the enterprise of making recorded music. Fewer artists, less music. It is that simple. Less music on our airwaves, on the Internet, in the public square, any place you can think of where recorded music is played and enjoyed, including on your own Walkman when you jog or run. Piracy ends up hurting us all, music lovers and music creators alike.

I ask my colleagues to watch this issue closely. We can help educate the public about both the illegality of piracy and its effect on our economy and our creative culture. It is our responsibility to do so. And we can encourage consumers to download music from legitimate online fee services. There are several sites that are up and running, and I encourage the industry to continue to work hard to improve their online products to meet consumer demand. There is no better time to reflect on the impact of American recorded music than during these holidays. When we hear Bing Crosby's ''White Christmas'' or Duke Ellington's ''Jingle Bells'' or Burl Ives's ''Rudolph the Red Nosed Reindeer,'' we are hearing not just another American Christmas classic but a part of America's creative legacy, the recorded music industry, one of our greatest exports to the world.

UNANIMOUS CONSENT AGREEMENT—EXECUTIVE CALENDAR

Mr. FRIST. As in executive session, I ask unanimous consent that the nomination of Rhonda Keenum of Mississippi to be Assistant Secretary of Commerce and Director General of the United States and Foreign Commercial Service, received on Tuesday, December 9, 2003, be jointly referred to the Committee on Commerce, Science, and Transportation and the Committee on Banking, Housing, and Urban Affairs.

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

REMOVAL OF INJUNCTION OF SECRECY—TREATY DOCUMENTS NOS. 108–113 and 108–114

Mr. FRIST. As in executive session, I ask unanimous consent that the injunction of secrecy be removed from the following treaties transmitted to the Senate on December 9, 2003, at 3:18 p.m., by the President of the United States: Additional Protocol to Investment Treaty with Romania (Treaty Document No. 108–113), and Taxation Convention with Japan (Treaty Document No. 108–14).

I further ask that the treaties be considered as having been read the first time, that they be referred with accompanying papers to the Committee on Foreign Relations in order to be printed, and that the President's messages be printed in the RECORD.

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

The messages of the President are as follows:

ADDITIONAL PROTOCOL TO INVESTMENT TREATY WITH ROMANIA—TREATY DOC. 108–13

To the Senate of the United States:

With a view to receiving the advice and consent of the Senate to ratification, I transmit herewith the Additional Protocol between the Government of the United States of America and the Government of Romania Concerning the Reciprocal Encouragement and Protection of Investment of May 28, 1992, signed at Brussels on September 22, 2003. I transmit also, for the information of the Senate, the report of the Department of State with respect to this Additional Protocol.

My Administration expects to forward to the Senate shortly analogous Additional Protocols for Bulgaria, the Czech Republic, Estonia, Latvia, Lithuania, Poland, and the Slovak Republic. Each of these Additional Protocols is the result of an understanding the United States reached with the European Commission and six countries that will join the European Union (EU) on May 1, 2004 (the Czech Republic, Estonia, Latvia, Lithuania, Poland, and the Slovak Republic), as well as with Bulgaria and Romania, which are expected to join the EU in 2007.

The understanding is designed to preserve U.S. bilateral investment treaties (BITs) with each of these countries after their accession to the EU by establishing a framework acceptable to the European Commission for avoiding or remedying present and possible future incompatibilities between their BIT obligations and their future obligations of EU membership. It expresses the U.S. intent to amend the U.S. BITs, including the BIT with Romania, in order to eliminate incompatibilities between certain BIT obligations and EU law. It also establishes a framework for addressing any future incompatibilities that may arise as European Union authority in the area of investment expands in the future, and endorses the principle of protecting existing U.S. investments from any future EU measures that may restrict foreign investment in the EU.

The United States has long championed the benefits of an open investment climate, both at home and abroad. It is the policy of the United States to welcome market-driven foreign investment and to permit capital to flow freely to seek its highest return. This Additional Protocol preserves the U.S. BIT with Romania, with which the United States has an expanding relationship, and the protections it affords U.S. investors even after Romania joins the EU. Without it, the European Commission would likely require Romania to terminate its U.S. BIT upon accession because of existing and possible future incompatibilities between our current BIT and EU law.

I recommend that the Senate consider this Additional Protocol as soon as possible, and give its advice and consent to ratification at an early date.

GEORGE W. BUSH.

THE WHITE HOUSE, *December 9, 2003.*

TAXATION CONVENTION WITH JAPAN—TREATY DOC. 108–14

To the Senate of the United States:

I transmit herewith, for Senate advice and consent to ratification, the Convention between the Government of the United States of America and the Government of Japan for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect

to Taxes on Income, signed at Washington on November 6, 2003, together with a Protocol and an exchange of notes (the ''Convention''). I also transmit, for the information of the Senate, the report of the Department of State concerning the Convention.

This Convention would replace the Convention between the United States of America and Japan for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income, signed at Tokyo on March 8, 1971.

This Convention, which is similar to tax treaties between the United States and other developed nations, provides rules specifying the circumstances under which income that arises in one of the countries and is derived by residents of the other country may be taxed by the country in which income arises, providing for maximum source-country withholding tax rates that may be applied to various types of income and providing for protection from double taxation of income. The proposed Convention also provides rules designed to ensure that the benefits of the Convention are not available to persons that are engaged in treaty shopping. Also included in the proposed Convention are rules necessary for administering the Convention.

I recommend that the Senate give early and favorable consideration to this Convention, and that the Senate give its advice and consent to the ratification of the Convention.

GEORGE W. BUSH.

THE WHITE HOUSE, *December 9, 2003.*

APPOINTMENTS

The PRESIDING OFFICER. The Chair, on behalf of the Majority Leader, in consultation with the Democratic Leader and pursuant to Public Law 108–79, appoint the following individual: Guastavus Adolphus Puryear, IV, of Tennessee, to the National Prison Rape Reduction Commission for a term of 2 years.

The Chair, on behalf of the Democratic Leader, after consultation with the Majority Leader and pursuant to Public Law 108–79, appoints the following individuals to the National Prison Rape Reduction Commission: James Evan Aiken, of North Carolina, and Cindy Struckman-Johnson of South Dakota.

The Chair, on behalf of the Democratic Leader, pursuant to Public Law 108–132, appoints the following individuals to the Commission on Review of Overseas Military Facility Structure of the United States: Al Cornella, of South Dakota, and James A Thomson, of California.

AUTHORIZING COMMITTEES TO REPORT LEGISLATIVE AND EXECUTIVE MATTERS

Mr. FRIST. Mr. President, I ask unanimous consent that notwithstanding the Senate's adjournment, committees be authorized to report legislative and executive matters on Friday, January 9, 2004, from 10 a.m. to 12 noon.

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

AUTHORIZING APPOINTMENTS BY THE PRESIDENT OF THE SENATE, THE PRESIDENT OF THE SENATE PRO TEMPORE, AND THE MAJORITY AND MINORITY LEADERS

Mr. FRIST. Mr. President, I ask unanimous consent that notwithstanding the recess or adjournment of the Senate, the President of the Senate, the President of the Senate pro tempore, and the majority and minority leaders be authorized to make appointments to commissions, committees, boards, conferences, or interparliamentary conferences authorized by law, by concurrent action of the two Houses, or by order of the Senate.

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

AUTHORIZING THE MAJORITY LEADER TO SIGN DULY ENROLLED BILLS OR JOINT RESOLUTIONS

Mr. FRIST. Mr. President, I ask unanimous consent that during the adjournment of the Senate, the majority leader be authorized to sign duly enrolled bills or joint resolutions.

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

EXTENDING THE SPECIAL POSTAGE STAMP FOR BREAST CANCER RESEARCH

Mr. FRIST. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of S. 2000, introduced earlier today by Senators FEINSTEIN and HUTCHISON.

The PRESIDING OFFICER. The clerk will report the bill by title.

The legislative clerk read as follows:

A bill (S. 2000) to extend the special postage stamp for breast cancer research for 2 years.

There being no objection, the Senate proceeded to consider the bill.

Mr. FRIST. Mr. President, I ask unanimous consent that the bill be read three times and passed, the motion to reconsider be laid upon the table, and that any statements relating to the bill be printed in the RECORD.

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

The bill (S. 2000) was read the third time and passed, as follows:

S. 2000

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

SECTION 1. 2-YEAR EXTENSION OF POSTAGE STAMP FOR BREAST CANCER RESEARCH.

Section 414(h) of title 39, United States Code, is amended by striking ''2003'' and inserting ''2005''.

SOCIAL SECURITY PROTECTION ACT OF 2003

Mr. FRIST. Mr. President, I ask unanimous consent that the Senate now proceed to the consideration of Calendar No. 349, H.R. 743.

The PRESIDING OFFICER. The clerk will report the bill by title.

The legislative clerk read as follows:

A bill (H.R. 743) to amend the Social Security Act and the Internal Revenue Code of 1986 to provide additional safeguards for Social Security and Supplemental Security Income beneficiaries with representative payees, to enhance program protections, and for other purposes.

There being no objection, the Senate proceeded to consider the bill, which had been reported from the Committee on Finance, with an amendment to strike all after the enacting clause and inserting in lieu thereof the following;

[Strike the part shown in black brackets and insert the part shown in italic.]

H.R. 743

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

[SECTION 1. SHORT TITLE AND TABLE OF CONTENTS.

[(a) SHORT TITLE.—This Act may be cited as the ''Social Security Protection Act of 2003''.

[(b) TABLE OF CONTENTS.—The table of contents is as follows:

[TITLE I—PROTECTION OF BENEFICIARIES

[Subtitle A—Representative Payees

[SEC. 101. AUTHORITY TO REISSUE BENEFITS MISUSED BY ORGANIZATIONAL REPRESENTATIVE PAYEES.

[(a) TITLE II AMENDMENTS.—

[(1) REISSUANCE OF BENEFITS.—Section 205(j)(5) of the Social Security Act (42 U.S.C. 405(j)(5)) is amended by inserting after the first sentence the following new sentences: ''In any case in which a representative payee that—

[''(A) is not an individual (regardless of whether it is a 'qualified organization' within the meaning of paragraph (4)(B)); or

[''(B) is an individual who, for any month during a period when misuse occurs, serves 15 or more individuals who are beneficiaries under this title, title VIII, title XVI, or any combination of such titles;

misuses all or part of an individual's benefit paid to such representative payee, the Commissioner of Social Security shall certify for payment to the beneficiary or the beneficiary's alternative representative payee an amount equal to the amount of such benefit so misused. The provisions of this paragraph are subject to the limitations of paragraph (7)(B).''.

[(2) MISUSE OF BENEFITS DEFINED.—Section 205(j) of such Act (42 U.S.C. 405(j)) is amended by adding at the end the following new paragraph:

[''(8) For purposes of this subsection, misuse of benefits by a representative payee occurs in any case in which the representative payee receives payment under this title for the use and benefit of another person and converts such payment, or any part thereof, to a use other than for the use and benefit of such other person. The Commissioner of Social Security may prescribe by regulation the meaning of the term 'use and benefit' for purposes of this paragraph.''.

[(b) TITLE VIII AMENDMENTS.—

[(1) REISSUANCE OF BENEFITS.—Section 807(i) of the Social Security Act (42 U.S.C. 1007(i)) (as amended by section 209(b)(1) of this Act) is amended further by inserting after the first sentence the following new sentences: ''In any case in which a representative payee that—

[''(A) is not an individual; or

[''(B) is an individual who, for any month during a period when misuse occurs, serves 15 or more individuals who are beneficiaries under this title, title II, title XVI, or any combination of such titles;

misuses all or part of an individual's benefit paid to such representative payee, the Commissioner of Social Security shall pay to the beneficiary or the beneficiary's alternative representative payee an amount equal to the amount of such benefit so misused. The provisions of this paragraph are subject to the limitations of subsection (l)(2).''.

[(2) MISUSE OF BENEFITS DEFINED.—Section 807 of such Act (42 U.S.C. 1007) is amended by adding at the end the following new subsection:

[''(j) MISUSE OF BENEFITS.—For purposes of this title, misuse of benefits by a representative payee occurs in any case in which the representative payee receives payment under this title for the use and benefit of another person under this title and converts such payment, or any part thereof, to a use other than for the use and benefit of such person. The Commissioner of Social Security may prescribe by regulation the meaning of the term 'use and benefit' for purposes of this subsection.''.

[(3) TECHNICAL AMENDMENT.—Section 807(a) of such Act (42 U.S.C. 1007(a)) is amended, in the first sentence, by striking ''for his or her benefit'' and inserting ''for his or her use and benefit''.

[(c) TITLE XVI AMENDMENTS.—

[(1) REISSUANCE OF BENEFITS.—Section 1631(a)(2)(E) of such Act (42 U.S.C. 1383(a)(2)(E)) is amended by inserting after the first sentence the following new sentences: ''In any case in which a representative payee that—

[''(i) is not an individual (regardless of whether it is a 'qualified organization' within the meaning of subparagraph (D)(ii)); or

[''(ii) is an individual who, for any month during a period when misuse occurs, serves 15 or more individuals who are beneficiaries under this title, title II, title VIII, or any combination of such titles;

misuses all or part of an individual's benefit paid to the representative payee, the Commissioner of Social Security shall pay to the beneficiary or the beneficiary's alternative representative payee an amount equal to the amount of the benefit so misused. The provisions of this subparagraph are subject to the limitations of subparagraph (H)(ii).''.

[(2) EXCLUSION OF REISSUED BENEFITS FROM RESOURCES.—Section 1613(a) of such Act (42 U.S.C. 1382b(a)) is amended—

[(A) in paragraph (12), by striking ''and'' at the end;

[(B) in paragraph (13), by striking the period and inserting ''; and''; and

[(C) by inserting after paragraph (13) the following new paragraph:

[''(14) for the 9-month period beginning after the month in which received, any amount received by such individual (or spouse) or any other person whose income is deemed to be included in such individual's (or spouse's) income for purposes of this title as restitution for benefits under this title, title II, or title VIII that a representative payee of such individual (or spouse) or such other person under section 205(j), 807, or 1631(a)(2) has misused.''.

[(3) MISUSE OF BENEFITS DEFINED.—Section 1631(a)(2)(A) of such Act (42 U.S.C. 1383(a)(2)(A)) is amended by adding at the end the following new clause:

[''(iv) For purposes of this paragraph, misuse of benefits by a representative payee occurs in any case in which the representative payee receives payment under this title for the use and benefit of another person and converts such payment, or any part thereof, to a use other than for the use and benefit of such other person. The Commissioner of Social Security may prescribe by regulation the meaning of the term 'use and benefit' for purposes of this clause.''.

[(d) EFFECTIVE DATE.—The amendments made by this section shall apply to any case of benefit misuse by a representative payee with respect to which the Commissioner makes the determination of misuse on or after January 1, 1995.

[SEC. 102. OVERSIGHT OF REPRESENTATIVE PAYEES.

[(a) CERTIFICATION OF BONDING AND LICENSING REQUIREMENTS FOR NONGOVERNMENTAL ORGANIZATIONAL REPRESENTATIVE PAYEES.—

[(1) TITLE II AMENDMENTS.—Section 205(j) of the Social Security Act (42 U.S.C. 405(j)) is amended—

[(A) in paragraph (2)(C)(v), by striking ''a community-based nonprofit social service agency licensed or bonded by the State'' in subclause (I) and inserting ''a certified community-based nonprofit social service agency (as defined in paragraph (9))'';

[(B) in paragraph (3)(F), by striking ''community-based nonprofit social service agencies'' and inserting ''certified community-based nonprofit social service agencies (as defined in paragraph (9))'';

[(C) in paragraph (4)(B), by striking ''any community-based nonprofit social service agency which is bonded or licensed in each State in which it serves as a representative

payee'' and inserting ''any certified community-based nonprofit social service agency (as defined in paragraph (9))''; and

[(D) by adding after paragraph (8) (as added by section 101(a)(2) of this Act) the following new paragraph:

[''(9) For purposes of this subsection, the term 'certified community-based nonprofit social service agency' means a community-based nonprofit social service agency which is in compliance with requirements, under regulations which shall be prescribed by the Commissioner, for annual certification to the Commissioner that it is bonded in accordance with requirements specified by the Commissioner and that it is licensed in each State in which it serves as a representative payee (if licensing is available in such State) in accordance with requirements specified by the Commissioner. Any such annual certification shall include a copy of any independent audit on such agency which may have been performed since the previous certification.''.

[(2) TITLE XVI AMENDMENTS.—Section 1631(a)(2) of such Act (42 U.S.C. 1383(a)(2)) is amended—

[(A) in subparagraph (B)(vii), by striking ''a community-based nonprofit social service agency licensed or bonded by the State'' in subclause (I) and inserting ''a certified community-based nonprofit social service agency (as defined in subparagraph (I))'';

[(B) in subparagraph (D)(ii)—

[(i) by striking ''or any community-based'' and all that follows through ''in accordance'' in subclause (II) and inserting ''or any certified community-based nonprofit social service agency (as defined in subparagraph (I)), if the agency, in accordance'';

[(ii) by redesignating items (aa) and (bb) as subclauses (I) and (II), respectively (and adjusting the margination accordingly); and

[(iii) by striking ''subclause (II)(bb)'' and inserting ''subclause (II)''; and

[(C) by adding at the end the following new subparagraph:

[''(I) For purposes of this paragraph, the term 'certified community-based nonprofit social service agency' means a community-based nonprofit social service agency which is in compliance with requirements, under regulations which shall be prescribed by the Commissioner, for annual certification to the Commissioner that it is bonded in accordance with requirements specified by the Commissioner and that it is licensed in each State in which it serves as a representative payee (if licensing is available in the State) in accordance with requirements specified by the Commissioner. Any such annual certification shall include a copy of any independent audit on the agency which may have been performed since the previous certification.''.

[(3) EFFECTIVE DATE.—The amendments made by this subsection shall take effect on the first day of the thirteenth month beginning after the date of the enactment of this Act.

[(b) PERIODIC ONSITE REVIEW.—

[(1) TITLE II AMENDMENT.—Section 205(j)(6) of such Act (42 U.S.C. 405(j)(6)) is amended to read as follows:

[''(6)(A) In addition to such other reviews of representative payees as the Commissioner of Social Security may otherwise conduct, the Commissioner shall provide for the periodic onsite review of any person or agency located in the United States that receives the benefits payable under this title (alone or in combination with benefits payable under title VIII or title XVI) to another individual pursuant to the appointment of such person or agency as a representative payee under this subsection, section 807, or section 1631(a)(2) in any case in which—

[''(i) the representative payee is a person who serves in that capacity with respect to 15 or more such individuals;

[''(ii) the representative payee is a certified community-based nonprofit social service agency (as defined in paragraph (9) of this subsection or section 1631(a)(2)(I)); or

[''(iii) the representative payee is an agency (other than an agency described in clause (ii)) that serves in that capacity with respect to 50 or more such individuals.

[''(B) Within 120 days after the end of each fiscal year, the Commissioner shall submit to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate a report on the results of periodic onsite reviews conducted during the fiscal year pursuant to subparagraph (A) and of any other reviews of representative payees conducted during such fiscal year in connection with benefits under this title. Each such report shall describe in detail all problems identified in such reviews and any corrective action taken or planned to be taken to correct such problems, and shall include—

[''(i) the number of such reviews;

[''(ii) the results of such reviews;

[''(iii) the number of cases in which the representative payee was changed and why;

[''(iv) the number of cases involving the exercise of expedited, targeted oversight of the representative payee by the Commissioner conducted upon receipt of an allegation of misuse of funds, failure to pay a vendor, or a similar irregularity;

[''(v) the number of cases discovered in which there was a misuse of funds;

[''(vi) how any such cases of misuse of funds were dealt with by the Commissioner;

[''(vii) the final disposition of such cases of misuse of funds, including any criminal penalties imposed; and

[''(viii) such other information as the Commissioner deems appropriate.''.

[(2) TITLE VIII AMENDMENT.—Section 807 of such Act (as amended by section 101(b)(2) of this Act) is amended further by adding at the end the following new subsection:

[''(k) PERIODIC ONSITE REVIEW.—(1) In addition to such other reviews of representative payees as the Commissioner of Social Security may otherwise conduct, the Commissioner may provide for the periodic onsite review of any person or agency that receives the benefits payable under this title (alone or in combination with benefits payable under title II or title XVI) to another individual pursuant to the appointment of such person or agency as a representative payee under this section, section 205(j), or section 1631(a)(2) in any case in which—

[''(A) the representative payee is a person who serves in that capacity with respect to 15 or more such individuals; or

[''(B) the representative payee is an agency that serves in that capacity with respect to 50 or more such individuals.

[''(2) Within 120 days after the end of each fiscal year, the Commissioner shall submit to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate a report on the results of periodic onsite reviews conducted during the fiscal year pursuant to paragraph (1) and of any other reviews of representative payees conducted during such fiscal year in connection with benefits under this title. Each such report shall describe in detail all problems identified in such reviews and any corrective action taken or planned to be taken to correct such problems, and shall include—

[''(A) the number of such reviews;

[''(B) the results of such reviews;

[''(C) the number of cases in which the representative payee was changed and why;

[''(D) the number of cases involving the exercise of expedited, targeted oversight of the representative payee by the Commissioner conducted upon receipt of an allegation of misuse of funds, failure to pay a vendor, or a similar irregularity;

[''(E) the number of cases discovered in which there was a misuse of funds;

[''(F) how any such cases of misuse of funds were dealt with by the Commissioner;

[''(G) the final disposition of such cases of misuse of funds, including any criminal penalties imposed; and

[''(H) such other information as the Commissioner deems appropriate.''.

[(3) TITLE XVI AMENDMENT.—Section 1631(a)(2)(G) of such Act (42 U.S.C. 1383(a)(2)(G)) is amended to read as follows:

[''(G)(i) In addition to such other reviews of representative payees as the Commissioner of Social Security may otherwise conduct, the Commissioner shall provide for the periodic onsite review of any person or agency that receives the benefits payable under this title (alone or in combination with benefits payable under title II or title VIII) to another individual pursuant to the appointment of the person or agency as a representative payee under this paragraph, section 205(j), or section 807 in any case in which—

[''(I) the representative payee is a person who serves in that capacity with respect to 15 or more such individuals;

[''(II) the representative payee is a certified community-based nonprofit social service agency (as defined in subparagraph (I) of this paragraph or section 205(j)(9)); or

[''(III) the representative payee is an agency (other than an agency described in subclause (II)) that serves in that capacity with respect to 50 or more such individuals.

[''(ii) Within 120 days after the end of each fiscal year, the Commissioner shall submit to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate a report on the results of periodic onsite reviews conducted during the fiscal year pursuant to clause (i) and of any other reviews of representative payees conducted during such fiscal year in connection with benefits under this title. Each such report shall describe in detail all problems identified in the reviews and any corrective action taken or planned to be taken to correct the problems, and shall include—

[''(I) the number of the reviews;

[''(II) the results of such reviews;

[''(III) the number of cases in which the representative payee was changed and why;

[''(IV) the number of cases involving the exercise of expedited, targeted oversight of the representative payee by the Commissioner conducted upon receipt of an allegation of misuse of funds, failure to pay a vendor, or a similar irregularity;

[''(V) the number of cases discovered in which there was a misuse of funds;

[''(VI) how any such cases of misuse of funds were dealt with by the Commissioner;

[''(VII) the final disposition of such cases of misuse of funds, including any criminal penalties imposed; and

[''(VIII) such other information as the Commissioner deems appropriate.''.

[SEC. 103. DISQUALIFICATION FROM SERVICE AS REPRESENTATIVE PAYEE OF PERSONS CONVICTED OF OFFENSES RESULTING IN IMPRISONMENT FOR MORE THAN 1 YEAR OR FLEEING PROSECUTION, CUSTODY, OR CONFINEMENT.

[(a) TITLE II AMENDMENTS.—Section 205(j)(2) of the Social Security Act (42 U.S.C. 405(j)(2)) is amended—

[(1) in subparagraph (B)(i)—

[(A) by striking ''and'' at the end of subclause (III);

[(B) by redesignating subclause (IV) as subclause (VI); and

[(C) by inserting after subclause (III) the following new subclauses:

[''(IV) obtain information concerning whether such person has been convicted of any other offense under Federal or State law which resulted in imprisonment for more than 1 year,

[''(V) obtain information concerning whether such person is a person described in section 202(x)(1)(A)(iv), and'';

[(2) in subparagraph (B), by adding at the end the following new clause:

[''(iii) Notwithstanding the provisions of section 552a of title 5, United States Code, or any other provision of Federal or State law (other than section 6103 of the Internal Revenue Code of 1986 and section 1106(c) of this Act), the Commissioner shall furnish any Federal, State, or local law enforcement officer, upon the written request of the officer, with the current address, social security account number, and photograph (if applicable) of any person investigated under this paragraph, if the officer furnishes the Commissioner with the name of such person and such other identifying information as may reasonably be required by the Commissioner to establish the unique identity of such person, and notifies the Commissioner that—

[''(I) such person is described in section 202(x)(1)(A)(iv),

[''(II) such person has information that is necessary for the officer to conduct the officer's official duties, and

[''(III) the location or apprehension of such person is within the officer's official duties.'';

[(3) in subparagraph (C)(i)(II), by striking ''subparagraph (B)(i)(IV),,'' and inserting ''subparagraph (B)(i)(VI)'' and striking ''section 1631(a)(2)(B)(ii)(IV)'' and inserting ''section 1631(a)(2)(B)(ii)(VI)''; and

[(4) in subparagraph (C)(i)—

[(A) by striking ''or'' at the end of subclause (II);

[(B) by striking the period at the end of subclause (III) and inserting a comma; and

[(C) by adding at the end the following new subclauses:

[''(IV) such person has previously been convicted as described in subparagraph (B)(i)(IV), unless the Commissioner determines that such certification would be appropriate notwithstanding such conviction, or

[''(V) such person is person described in section 202(x)(1)(A)(iv).''.

[(b) TITLE VIII AMENDMENTS.—Section 807 of such Act (42 U.S.C. 1007) is amended—

[(1) in subsection (b)(2)—

[(A) by striking ''and'' at the end of subparagraph (C);

[(B) by redesignating subparagraph (D) as subparagraph (F); and

[(C) by inserting after subparagraph (C) the following new subparagraphs:

[''(D) obtain information concerning whether such person has been convicted of any other offense under Federal or State law which resulted in imprisonment for more than 1 year;

[''(E) obtain information concerning whether such person is a person described in section 804(a)(2); and'';

[(2) in subsection (b), by adding at the end the following new paragraph:

[''(3) Notwithstanding the provisions of section 552a of title 5, United States Code, or any other provision of Federal or State law (other than section 6103 of the Internal Revenue Code of 1986 and section 1106(c) of this Act), the Commissioner shall furnish any Federal, State, or local law enforcement officer, upon the written request of the officer, with the current address, social security account number, and photograph (if applicable) of any person investigated under this subsection, if the officer furnishes the Commissioner with the name of such person and such other identifying information as may reasonably be required by the Commissioner to establish the unique identity of such person, and notifies the Commissioner that—

[''(A) such person is described in section 804(a)(2),

[''(B) such person has information that is necessary for the officer to conduct the officer's official duties, and

[''(C) the location or apprehension of such person is within the officer's official duties.''; and

[(3) in subsection (d)(1)—

[(A) by striking ''or'' at the end of subparagraph (B);

[(B) by striking the period at the end of subparagraph (C) and inserting a semicolon; and

[(C) by adding at the end the following new subparagraphs:

[''(D) such person has previously been convicted as described in subsection (b)(2)(D), unless the Commissioner determines that such payment would be appropriate notwithstanding such conviction; or

[''(E) such person is a person described in section 804(a)(2).''.

[(c) TITLE XVI AMENDMENTS.—Section 1631(a)(2)(B) of such Act (42 U.S.C. 1383(a)(2)(B)) is amended—

[(1) in clause (ii)—

[(A) by striking ''and'' at the end of subclause (III);

[(B) by redesignating subclause (IV) as subclause (VI); and

[(C) by inserting after subclause (III) the following new subclauses:

[''(IV) obtain information concerning whether the person has been convicted of any other offense under Federal or State law which resulted in imprisonment for more than 1 year;

[''(V) obtain information concerning whether such person is a person described in section 1611(e)(4)(A); and'';

[(2) in clause (iii)(II)—

[(A) by striking ''clause (ii)(IV)'' and inserting ''clause (ii)(VI)''; and

[(B) by striking ''section 205(j)(2)(B)(i)(IV)'' and inserting ''section 205(j)(2)(B)(i)(VI)'';

[(3) in clause (iii)—

[(A) by striking ''or'' at the end of subclause (II);

[(B) by striking the period at the end of subclause (III) and inserting a semicolon; and

[(C) by adding at the end the following new subclauses:

[''(IV) the person has previously been convicted as described in clause (ii)(IV) of this subparagraph, unless the Commissioner determines that the payment would be appropriate notwithstanding the conviction; or

[''(V) such person is a person described in section 1611(e)(4)(A).''; and

[(4) by adding at the end the following new clause:

[''(xiv) Notwithstanding the provisions of section 552a of title 5, United States Code, or any other provision of Federal or State law (other than section 6103 of the Internal Revenue Code of 1986 and section 1106(c) of this Act), the Commissioner shall furnish any Federal, State, or local law enforcement officer, upon the written request of the officer, with the current address, social security account number, and photograph (if applicable) of any person investigated under this subparagraph, if the officer furnishes the Commissioner with the name of such person and such other identifying information as may reasonably be required by the Commissioner to establish the unique identity of such person, and notifies the Commissioner that—

[''(I) such person is described in section 1611(e)(4)(A),

[''(II) such person has information that is necessary for the officer to conduct the officer's official duties, and

[''(III) the location or apprehension of such person is within the officer's official duties.''.

[(d) EFFECTIVE DATE.—The amendments made by this section shall take effect on the first day of the thirteenth month beginning after the date of the enactment of this Act.

[(e) REPORT TO THE CONGRESS.—The Commissioner of Social Security, in consultation with the Inspector General of the Social Security Administration, shall prepare a report evaluating whether the existing procedures and reviews for the qualification (including disqualification) of representative payees are sufficient to enable the Commissioner to protect benefits from being misused by representative payees. The Commissioner shall submit the report to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate no later than 270 days after the date of the enactment of this Act. The Commissioner shall include in such report any recommendations that the Commissioner considers appropriate.

[SEC. 104. FEE FORFEITURE IN CASE OF BENEFIT MISUSE BY REPRESENTATIVE PAYEES.

[(a) TITLE II AMENDMENTS.—Section 205(j)(4)(A)(i) of the Social Security Act (42 U.S.C. 405(j)(4)(A)(i)) is amended—

[(1) in the first sentence, by striking ''A'' and inserting ''Except as provided in the next sentence, a''; and

[(2) in the second sentence, by striking ''The Secretary'' and inserting the following: ''A qualified organization may not collect a fee from an individual for any month with respect to which the Commissioner of Social Security or a court of competent jurisdiction has determined that the organization misused all or part of the individual's benefit, and any amount so collected by the qualified organization for such month shall be treated as a misused part of the individual's benefit for purposes of paragraphs (5) and (6). The Commissioner''.

[(b) TITLE XVI AMENDMENTS.—Section 1631(a)(2)(D)(i) of such Act (42 U.S.C. 1383(a)(2)(D)(i)) is amended—

[(1) in the first sentence, by striking ''A'' and inserting ''Except as provided in the next sentence, a''; and

[(2) in the second sentence, by striking ''The Commissioner'' and inserting the following: ''A qualified organization may not collect a fee from an individual for any month with respect to which the Commissioner of Social Security or a court of competent jurisdiction has determined that the organization misused all or part of the individual's benefit, and any amount so collected by the qualified organization for such month shall be treated as a misused part of the individual's benefit for purposes of subparagraphs (E) and (F). The Commissioner''.

[(c) EFFECTIVE DATE.—The amendments made by this section shall apply to any month involving benefit misuse by a representative payee in any case with respect to which the Commissioner of Social Security or a court of competent jurisdiction makes the determination of misuse after 180 days after the date of the enactment of this Act.

[SEC. 105. LIABILITY OF REPRESENTATIVE PAYEES FOR MISUSED BENEFITS.

[(a) TITLE II AMENDMENTS.—Section 205(j) of the Social Security Act (42 U.S.C. 405(j)) (as amended by sections 101 and 102) is amended further—

[(1) by redesignating paragraphs (7), (8), and (9) as paragraphs (8), (9), and (10), respectively;

[(2) in paragraphs (2)(C)(v), (3)(F), and (4)(B), by striking ''paragraph (9)'' and inserting ''paragraph (10)'';

[(3) in paragraph (6)(A)(ii), by striking ''paragraph (9)'' and inserting ''paragraph (10)''; and

[(4) by inserting after paragraph (6) the following new paragraph:

[''(7)(A) If the Commissioner of Social Security or a court of competent jurisdiction determines that a representative payee that is not a Federal, State, or local government agency has misused all or part of an individual's benefit that was paid to such representative payee under this subsection, the representative payee shall be liable for the amount misused, and such amount (to the extent not repaid by the representative payee) shall be treated as an overpayment of benefits under this title to the representative payee for all purposes of this Act and related laws pertaining to the recovery of such overpayments. Subject to subparagraph (B), upon recovering all or any part of such amount, the Commissioner shall certify an amount equal to the recovered amount for payment to such individual or such individual's alternative representative payee.

[''(B) The total of the amount certified for payment to such individual or such individual's alternative representative payee under subparagraph (A) and the amount certified for payment under paragraph (5) may not exceed the total benefit amount misused by the representative payee with respect to such individual.''.

[(b) TITLE VIII AMENDMENT.—Section 807 of such Act (as amended by section 102(b)(2)) is amended further by adding at the end the following new subsection:

[''(l) LIABILITY FOR MISUSED AMOUNTS.—

[''(1) IN GENERAL.—If the Commissioner of Social Security or a court of competent jurisdiction determines that a representative payee that is not a Federal, State, or local government agency has misused all or part of a qualified individual's benefit that was paid to such representative payee under this section, the representative payee shall be liable for the amount misused, and such amount (to the extent not repaid by the representative payee) shall be treated as an overpayment of benefits under this title to the representative payee for all purposes of this Act and related laws pertaining to the recovery of such overpayments. Subject to paragraph (2), upon recovering all or any part of such amount, the Commissioner shall make payment of an amount equal to the recovered amount to such qualified individual or such qualified individual's alternative representative payee.

[''(2) LIMITATION.—The total of the amount paid to such individual or such individual's alternative representative payee under paragraph (1) and the amount paid under subsection (i) may not exceed the total benefit amount misused by the representative payee with respect to such individual.''.

[(c) TITLE XVI AMENDMENTS.—Section 1631(a)(2) of such Act (42 U.S.C. 1383(a)(2)) (as amended by section 102(b)(3)) is amended further—

[(1) in subparagraph (G)(i)(II), by striking ''section 205(j)(9)'' and inserting ''section 205(j)(10)''; and

[(2) by striking subparagraph (H) and inserting the following:

[''(H)(i) If the Commissioner of Social Security or a court of competent jurisdiction determines that a representative payee that is not a Federal, State, or local government agency has misused all or part of an individual's benefit that was paid to the representative payee under this paragraph, the representative payee shall be liable for the amount misused, and the amount (to the extent not repaid by the representative payee) shall be treated as an overpayment of benefits under this title to the representative payee for all purposes of this Act and related laws pertaining to the recovery of the overpayments. Subject to clause (ii), upon recovering all or any part of the amount, the Commissioner shall make payment of an amount equal to the recovered amount to such individual or such individual's alternative representative payee.

[''(ii) The total of the amount paid to such individual or such individual's alternative representative payee under clause (i) and the amount paid under subparagraph (E) may not exceed the total benefit amount misused by the representative payee with respect to such individual.''.

[(d) EFFECTIVE DATE.—The amendments made by this section shall apply to benefit misuse by a representative payee in any case with respect to which the Commissioner of Social Security or a court of competent jurisdiction makes the determination of misuse after 180 days after the date of the enactment of this Act.

[SEC. 106. AUTHORITY TO REDIRECT DELIVERY OF BENEFIT PAYMENTS WHEN A REPRESENTATIVE PAYEE FAILS TO PROVIDE REQUIRED ACCOUNTING.

[(a) TITLE II AMENDMENTS.—Section 205(j)(3) of the Social Security Act (42 U.S.C. 405(j)(3)) (as amended by sections 102(a)(1)(B) and 105(a)(2)) is amended—

[(1) by redesignating subparagraphs (E) and (F) as subparagraphs (F) and (G), respectively; and

[(2) by inserting after subparagraph (D) the following new subparagraph:

[''(E) In any case in which the person described in subparagraph (A) or (D) receiving payments on behalf of another fails to submit a report required by the Commissioner of Social Security under subparagraph (A) or (D), the Commissioner may, after furnishing notice to such person and the individual entitled to such payment, require that such person appear in person at a field office of the Social Security Administration serving the area in which the individual resides in order to receive such payments.''.

[(b) TITLE VIII AMENDMENTS.—Section 807(h) of such Act (42 U.S.C. 1007(h)) is amended—

[(1) by redesignating paragraphs (3) and (4) as paragraphs (4) and (5), respectively; and

[(2) by inserting after paragraph (2) the following new paragraph:

[''(3) AUTHORITY TO REDIRECT DELIVERY OF BENEFIT PAYMENTS WHEN A REPRESENTATIVE PAYEE FAILS TO PROVIDE REQUIRED ACCOUNTING.—In any case in which the person described in paragraph (1) or (2) receiving benefit payments on behalf of a qualified individual fails to submit a report required by the Commissioner of Social Security under paragraph (1) or (2), the Commissioner may, after furnishing notice to such person and the qualified individual, require that such person appear in person at a United States Government facility designated by the Social Security Administration as serving the area in which the qualified individual resides in order to receive such benefit payments.''.

[(c) TITLE XVI AMENDMENT.—Section 1631(a)(2)(C) of such Act (42 U.S.C. 1383(a)(2)(C)) is amended by adding at the end the following new clause:

[''(v) In any case in which the person described in clause (i) or (iv) receiving payments on behalf of another fails to submit a report required by the Commissioner of Social Security under clause (i) or (iv), the Commissioner may, after furnishing notice to the person and the individual entitled to the payment, require that such person appear in person at a field office of the Social Security Administration serving the area in which the individual resides in order to receive such payments.''.

[(d) EFFECTIVE DATE.—The amendment made by this section shall take effect 180 days after the date of the enactment of this Act.

[Subtitle B—Enforcement

[SEC. 111. CIVIL MONETARY PENALTY AUTHORITY WITH RESPECT TO WRONGFUL CONVERSIONS BY REPRESENTATIVE PAYEES.

[(a) IN GENERAL.—Section 1129(a) of the Social Security Act (42 U.S.C. 1320a–8) is amended by adding at the end the following new paragraph:

[''(3) Any person (including an organization, agency, or other entity) who, having received, while acting in the capacity of a representative payee pursuant to section 205(j), 807, or 1631(a)(2), a payment under title II, VIII, or XVI for the use and benefit of another individual, converts such payment, or any part thereof, to a use that such person knows or should know is other than for the use and benefit of such other individual shall be subject to, in addition to any other penalties that may be prescribed by law, a civil money penalty of not more than $5,000 for each such conversion. Such person shall also be subject to an assessment, in lieu of damages sustained by the United States resulting from the conversion, of not more than twice the amount of any payments so converted.''.

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

[TITLE II—PROGRAM PROTECTIONS

[SEC. 201. CIVIL MONETARY PENALTY AUTHORITY WITH RESPECT TO KNOWING WITHHOLDING OF MATERIAL FACTS.

[(a) TREATMENT OF WITHHOLDING OF MATERIAL FACTS.—

[(1) CIVIL PENALTIES.—Section 1129(a)(1) of the Social Security Act (42 U.S.C. 1320a–8(a)(1)) is amended—

[(A) by striking ''who'' in the first sentence and inserting ''who—'';

[(B) by striking ''makes'' in the first sentence and all that follows through ''shall be subject to,'' and inserting the following:

[''(A) makes, or causes to be made, a statement or representation of a material fact, for use in determining any initial or continuing right to or the amount of monthly insurance benefits under title II or benefits or payments under title VIII or XVI, that the person knows or should know is false or misleading,

[''(B) makes such a statement or representation for such use with knowing disregard for the truth, or

[''(C) omits from a statement or representation for such use, or otherwise withholds disclosure of, a fact which the person knows or should know is material to the determination of any initial or continuing right to or the amount of monthly insurance benefits under title II or benefits or payments under title VIII or XVI, if the person knows, or should know, that the statement or representation with such omission is false or misleading or that the withholding of such disclosure is misleading,

shall be subject to,'';

[(C) by inserting ''or each receipt of such benefits or payments while withholding disclosure of such fact'' after ''each such statement or representation'' in the first sentence;

[(D) by inserting ''or because of such withholding of disclosure of a material fact'' after ''because of such statement or representation'' in the second sentence; and

[(E) by inserting ''or such a withholding of disclosure'' after ''such a statement or representation'' in the second sentence.

[(2) ADMINISTRATIVE PROCEDURE FOR IMPOSING PENALTIES.—Section 1129A(a) of such Act (42 U.S.C. 1320a–8a(a)) is amended—

[(A) by striking ''who'' the first place it appears and inserting ''who—''; and

[(B) by striking ''makes'' and all that follows through ''shall be subject to,'' and inserting the following:

[''(1) makes, or causes to be made, a statement or representation of a material fact, for use in determining any initial or continuing right to or the amount of monthly insurance benefits under title II or benefits or payments under title XVI that the person knows or should know is false or misleading,

[''(2) makes such a statement or representation for such use with knowing disregard for the truth, or

[''(3) omits from a statement or representation for such use, or otherwise withholds disclosure of, a fact which the person knows or should know is material to the determination of any initial or continuing right to or the amount of monthly insurance benefits under title II or benefits or payments under title XVI, if the person knows, or should know, that the statement or representation with such omission is false or misleading or that the withholding of such disclosure is misleading,

shall be subject to,''.

[(b) CLARIFICATION OF TREATMENT OF RECOVERED AMOUNTS.—Section 1129(e)(2)(B) of such Act (42 U.S.C. 1320a–8(e)(2)(B)) is amended by striking ''In the case of amounts recovered arising out of a determination relating to title VIII or XVI,'' and inserting ''In the case of any other amounts recovered under this section,''.

[(c) CONFORMING AMENDMENTS.—

[(1) Section 1129(b)(3)(A) of such Act (42 U.S.C. 1320a–8(b)(3)(A)) is amended by striking ''charging fraud or false statements''.

[(2) Section 1129(c)(1) of such Act (42 U.S.C. 1320a–8(c)(1)) is amended by striking ''and representations'' and inserting '', representations, or actions''.

[(3) Section 1129(e)(1)(A) of such Act (42 U.S.C. 1320a–8(e)(1)(A)) is amended by striking ''statement or representation referred to in subsection (a) was made'' and inserting ''violation occurred''.

[(d) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to violations committed after the date on which the Commissioner implements the centralized computer file described in section 202.

[SEC. 202. ISSUANCE BY COMMISSIONER OF SOCIAL SECURITY OF RECEIPTS TO ACKNOWLEDGE SUBMISSION OF REPORTS OF CHANGES IN WORK OR EARNINGS STATUS OF DISABLED BENEFICIARIES.

[Effective as soon as possible, but not later than 1 year after the date of the enactment of this Act, until such time as the Commissioner of Social Security implements a centralized computer file recording the date of the submission of information by a disabled beneficiary (or representative) regarding a change in the beneficiary's work or earnings status, the Commissioner shall issue a receipt to the disabled beneficiary (or representative) each time he or she submits documentation, or otherwise reports to the Commissioner, on a change in such status.

[SEC. 203. DENIAL OF TITLE II BENEFITS TO PERSONS FLEEING PROSECUTION, CUSTODY, OR CONFINEMENT, AND TO PERSONS VIOLATING PROBATION OR PAROLE.

[(a) IN GENERAL.—Section 202(x) of the Social Security Act (42 U.S.C. 402(x)) is amended—

[(1) in the heading, by striking ''Prisoners'' and all that follows and inserting the following: ''Prisoners, Certain Other Inmates of Publicly Funded Institutions, Fugitives, Probationers, and Parolees'';

[(2) in paragraph (1)(A)(ii)(IV), by striking ''or'' at the end;

[(3) in paragraph (1)(A)(iii), by striking the period at the end and inserting a comma;

[(4) by inserting after paragraph (1)(A)(iii) the following:

[''(iv) is fleeing to avoid prosecution, or custody or confinement after conviction, under the laws of the place from which the person flees, for a crime, or an attempt to commit a crime, which is a felony under the laws of the place from which the person flees, or which, in the case of the State of New Jersey, is a high misdemeanor under the laws of such State, or

[''(v) is violating a condition of probation or parole imposed under Federal or State law.

In the case of an individual from whom such monthly benefits have been withheld pursuant to clause (iv) or (v), the Commissioner may, for good cause shown, pay such withheld benefits to the individual.''; and

[(5) in paragraph (3), by adding at the end the following new subparagraph:

[''(C) Notwithstanding the provisions of section 552a of title 5, United States Code, or any other provision of Federal or State law (other than section 6103 of the Internal Revenue Code of 1986 and section 1106(c) of this Act), the Commissioner shall furnish any Federal, State, or local law enforcement officer, upon the written request of the officer, with the current address, Social Security number, and photograph (if applicable) of any beneficiary under this title, if the officer furnishes the Commissioner with the name of the beneficiary, and other identifying information as reasonably required by the Commissioner to establish the unique identity of the beneficiary, and notifies the Commissioner that—

[''(i) the beneficiary—

[''(I) is described in clause (iv) or (v) of paragraph (1)(A); and

[''(II) has information that is necessary for the officer to conduct the officer's official duties; and

[''(ii) the location or apprehension of the beneficiary is within the officer's official duties.''.

[(b) REGULATIONS.—Not later than the first day of the first month that begins on or after the date that is 9 months after the date of the enactment of this Act, the Commissioner of Social Security shall promulgate regulations governing payment by the Commissioner, for good cause shown, of withheld benefits, pursuant to the last sentence of section 202(x)(1)(A) of the Social Security Act (as amended by subsection (a)).

[(c) EFFECTIVE DATE.—The amendments made by subsection (a) shall take effect on the first day of the first month that begins on or after the date that is 9 months after the date of the enactment of this Act.

[SEC. 204. REQUIREMENTS RELATING TO OFFERS TO PROVIDE FOR A FEE A PRODUCT OR SERVICE AVAILABLE WITHOUT CHARGE FROM THE SOCIAL SECURITY ADMINISTRATION.

[(a) IN GENERAL.—Section 1140 of the Social Security Act (42 U.S.C. 1320b–10) is amended—

[(1) in subsection (a), by adding at the end the following new paragraph:

[''(4)(A) No person shall offer, for a fee, to assist an individual to obtain a product or service that the person knows or should know is provided free of charge by the Social Security Administration unless, at the time the offer is made, the person provides to the individual to whom the offer is tendered a notice that—

[''(i) explains that the product or service is available free of charge from the Social Security Administration, and

[''(ii) complies with standards prescribed by the Commissioner of Social Security respecting the content of such notice and its placement, visibility, and legibility.

[''(B) Subparagraph (A) shall not apply to any offer—

[''(i) to serve as a claimant representative in connection with a claim arising under title II, title VIII, or title XVI; or

[''(ii) to prepare, or assist in the preparation of, an individual's plan for achieving self-support under title XVI.''; and

[(2) in the heading, by striking ''PROHIBITION OF MISUSE OF SYMBOLS, EMBLEMS, OR NAMES IN REFERENCE'' and inserting ''PROHIBITIONS RELATING TO REFERENCES''.

[(b) EFFECTIVE DATE.—The amendments made by this section shall apply to offers of assistance made after the sixth month ending after the Commissioner of Social Security promulgates final regulations prescribing the standards applicable to the notice required to be provided in connection with such offer. The Commissioner shall promulgate such final regulations within 1 year after the date of the enactment of this Act.

[SEC. 205. REFUSAL TO RECOGNIZE CERTAIN INDIVIDUALS AS CLAIMANT REPRESENTATIVES.

[Section 206(a)(1) of the Social Security Act (42 U.S.C. 406(a)(1)) is amended by inserting after the second sentence the following: ''Notwithstanding the preceding sentences, the Commissioner, after due notice and opportunity for hearing, (A) may refuse to recognize as a representative, and may disqualify a representative already recognized, any attorney who has been disbarred or suspended from any court or bar to which he or she was previously admitted to practice or who has been disqualified from participating in or appearing before any Federal program or agency, and (B) may refuse to recognize, and may disqualify, as a non-attorney representative any attorney who has been disbarred or suspended from any court or bar to which he or she was previously admitted to practice. A representative who has been disqualified or suspended pursuant to this section from appearing before the Social Security Administration as a result of collecting or receiving a fee in excess of the amount authorized shall be barred from appearing before the Social Security Administration as a representative until full restitution is made to the claimant and, thereafter, may be considered for reinstatement only under such rules as the Commissioner may prescribe.''.

[SEC. 206. PENALTY FOR CORRUPT OR FORCIBLE INTERFERENCE WITH ADMINISTRATION OF SOCIAL SECURITY ACT.

[Part A of title XI of the Social Security Act (42 U.S.C. 1301 et seq.) is amended by inserting after section 1129A the following new section:

[''ATTEMPTS TO INTERFERE WITH ADMINISTRATION OF SOCIAL SECURITY ACT

[''SEC. 1129B. Whoever corruptly or by force or threats of force (including any threatening letter or communication) attempts to intimidate or impede any officer, employee, or contractor of the Social Security Administration (including any State employee of a disability determination service or any other individual designated by the Commissioner of Social Security) acting in an official capacity to carry out a duty under this Act, or in any other way corruptly or by force or threats of force (including any threatening letter or communication) obstructs or impedes, or attempts to obstruct or impede, the due administration of this Act, shall be fined not more than $5,000, imprisoned not more than 3 years, or both, except that if the offense is committed only by threats of force, the person shall be fined not more than $3,000, imprisoned not more than 1 year, or both. In this subsection, the term 'threats of force' means threats of harm to the officer or employee of the United States or to a contractor of the

Social Security Administration, or to a member of the family of such an officer or employee or contractor.''.

[SEC. 207. USE OF SYMBOLS, EMBLEMS, OR NAMES IN REFERENCE TO SOCIAL SECURITY OR MEDICARE.

[(a) IN GENERAL.—Section 1140(a)(1) of the Social Security Act (42 U.S.C. 1320b–10(a)(1)) is amended—

[(1) in subparagraph (A), by inserting '' 'Centers for Medicare & Medicaid Services','' after '' 'Health Care Financing Administration','', by striking ''or 'Medicaid', '' and inserting '' 'Medicaid', 'Death Benefits Update', 'Federal Benefit Information', 'Funeral Expenses', or 'Final Supplemental Plan','' and by inserting '' 'CMS','' after '' 'HCFA','';

[(2) in subparagraph (B), by inserting ''Centers for Medicare & Medicaid Services,'' after ''Health Care Financing Administration,'' each place it appears; and

[(3) in the matter following subparagraph (B), by striking ''the Health Care Financing Administration,'' each place it appears and inserting ''the Centers for Medicare & Medicaid Services,''.

[(b) EFFECTIVE DATE.—The amendments made by this section shall apply to items sent after 180 days after the date of the enactment of this Act.

[SEC. 208. DISQUALIFICATION FROM PAYMENT DURING TRIAL WORK PERIOD UPON CONVICTION OF FRAUDULENT CONCEALMENT OF WORK ACTIVITY.

[(a) IN GENERAL.—Section 222(c) of the Social Security Act (42 U.S.C. 422(c)) is amended by adding at the end the following new paragraph:

[''(5) Upon conviction by a Federal court that an individual has fraudulently concealed work activity during a period of trial work from the Commissioner of Social Security by—

[''(A) providing false information to the Commissioner of Social Security as to whether the individual had earnings in or for a particular period, or as to the amount thereof;

[''(B) receiving disability insurance benefits under this title while engaging in work activity under another identity, including under another social security account number or a number purporting to be a social security account number; or

[''(C) taking other actions to conceal work activity with an intent fraudulently to secure payment in a greater amount than is due or when no payment is authorized,

no benefit shall be payable to such individual under this title with respect to a period of disability for any month before such conviction during which the individual rendered services during the period of trial work with respect to which the fraudulently concealed work activity occurred, and amounts otherwise due under this title as restitution, penalties, assessments, fines, or other repayments shall in all cases be in addition to any amounts for which such individual is liable as overpayments by reason of such concealment.''.

[(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply with respect to work activity performed after the date of the enactment of this Act.

[SEC. 209. AUTHORITY FOR JUDICIAL ORDERS OF RESTITUTION.

[(a) AMENDMENTS TO TITLE II.—Section 208 of the Social Security Act (42 U.S.C. 408) is amended—

[(1) by redesignating subsections (b), (c), and (d) as subsections (c), (d), and (e), respectively; and

[(2) by inserting after subsection (a) the following new subsection:

[''(b)(1) Any Federal court, when sentencing a defendant convicted of an offense under subsection (a), may order, in addition to or in lieu of any other penalty authorized by law, that the defendant make restitution to the Social Security Administration.

[''(2) Sections 3612, 3663, and 3664 of title 18, United States Code, shall apply with respect to the issuance and enforcement of orders of restitution under this subsection. In so applying such sections, the Social Security Administration shall be considered the victim.

[''(3) If the court does not order restitution, or orders only partial restitution, under this subsection, the court shall state on the record the reasons therefor.''.

[(b) AMENDMENTS TO TITLE VIII.—Section 807(i) of such Act (42 U.S.C. 1007(i)) is amended—

[(1) by striking ''(i) RESTITUTION.—In any case where'' and inserting the following:

[''(i) RESTITUTION.—

[''(1) IN GENERAL.—In any case where''; and

[(2) by adding at the end the following new paragraph:

[''(2) COURT ORDER FOR RESTITUTION.—

[''(A) IN GENERAL.—Any Federal court, when sentencing a defendant convicted of an offense under subsection (a), may order, in addition to or in lieu of any other penalty authorized by law, that the defendant make restitution to the Social Security Administration.

[''(B) RELATED PROVISIONS.—Sections 3612, 3663, and 3664 of title 18, United States Code, shall apply with respect to the issuance and enforcement of orders of restitution under this paragraph. In so applying such sections, the Social Security Administration shall be considered the victim.

[''(C) STATED REASONS FOR NOT ORDERING RESTITUTION.—If the court does not order restitution, or orders only partial restitution, under this paragraph, the court shall state on the record the reasons therefor.''.

[(c) AMENDMENTS TO TITLE XVI.—Section 1632 of such Act (42 U.S.C. 1383a) is amended—

[(1) by redesignating subsection (b) as subsection (c); and

[(2) by inserting after subsection (a) the following new subsection:

[''(b)(1) Any Federal court, when sentencing a defendant convicted of an offense under subsection (a), may order, in addition to or in lieu of any other penalty authorized by law, that the defendant make restitution to the Social Security Administration.

[''(2) Sections 3612, 3663, and 3664 of title 18, United States Code, shall apply with respect to the issuance and enforcement of orders of restitution under this subsection. In so applying such sections, the Social Security Administration shall be considered the victim.

[''(3) If the court does not order restitution, or orders only partial restitution, under this subsection, the court shall state on the record the reasons therefor.''.

[(d) SPECIAL ACCOUNT FOR RECEIPT OF RESTITUTION PAYMENTS.—Section 704(b) of such Act (42 U.S.C. 904(b)) is amended by adding at the end the following new paragraph:

[''(3)(A) Except as provided in subparagraph (B), amounts received by the Social Security Administration pursuant to an order of restitution under section 208(b), 807(i), or 1632(b) shall be credited to a special fund established in the Treasury of the United States for amounts so received or recovered. The amounts so credited, to the extent and in the amounts provided in advance in appropriations Acts, shall be available to defray expenses incurred in carrying out titles II, VIII, and XVI.

[''(B) Subparagraph (A) shall not apply with respect to amounts received in connection with misuse by a representative payee (within the meaning of sections 205(j), 807, and 1631(a)(2)) of funds paid as benefits under title II, VIII, or XVI. Such amounts received in connection with misuse of funds paid as benefits under title II shall be transferred to the Managing Trustee of the Federal Old-Age and Survivors Insurance Trust Fund or the Federal Disability Insurance Trust Fund, as determined appropriate by the Commissioner of Social Security, and such amounts shall be deposited by the Managing Trustee into such Trust Fund. All other such amounts shall be deposited by the Commissioner into the general fund of the Treasury as miscellaneous receipts.''.

[(e) EFFECTIVE DATE.—The amendments made by subsections (a), (b), and (c) shall apply with respect to violations occurring on or after the date of the enactment of this Act.

[TITLE III—ATTORNEY FEE PAYMENT SYSTEM IMPROVEMENTS

[SEC. 301. CAP ON ATTORNEY ASSESSMENTS.

[(a) IN GENERAL.—Section 206(d)(2)(A) of the Social Security Act (42 U.S.C. 406(d)(2)(A)) is amended—

[(1) by inserting '', except that the maximum amount of the assessment may not exceed the greater of $75 or the adjusted amount as provided pursuant to the following two sentences'' after ''subparagraph (B)''; and

[(2) by adding at the end the following new sentence: ''In the case of any calendar year beginning after the amendments made by section 301 of the Social Security Protection Act of 2003 take effect, the dollar amount specified in the preceding sentence (including a previously adjusted amount) shall be adjusted annually under the procedures used to adjust benefit amounts under section 215(i)(2)(A)(ii), except such adjustment shall be based on the higher of $75 or the previously adjusted amount that would have been in effect for December of the preceding year, but for the rounding of such amount pursuant to the following sentence. Any amount so adjusted that is not a multiple of $1 shall be rounded to the next lowest multiple of $1, but in no case less than $75.''.

[(b) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to fees for representation of claimants which are first required to be certified or paid under section 206 of the Social Security Act on or after the first day of the first month that begins after 180 days after the date of the enactment of this Act.

[SEC. 302. EXTENSION OF ATTORNEY FEE PAYMENT SYSTEM TO TITLE XVI CLAIMS.

[(a) IN GENERAL.—Section 1631(d)(2) of the Social Security Act (42 U.S.C. 1383(d)(2)) is amended—

[(1) in subparagraph (A), in the matter preceding clause (i)—

[(A) by striking ''section 206(a)'' and inserting ''section 206'';

[(B) by striking ''(other than paragraph (4) thereof)'' and inserting ''(other than subsections (a)(4) and (d) thereof)''; and

[(C) by striking ''paragraph (2) thereof'' and inserting ''such section'';

[(2) in subparagraph (A)(i), by striking ''in subparagraphs (A)(ii)(I) and (C)(i),'' and inserting ''in subparagraphs (A)(ii)(I) and (D)(i) of subsection (a)(2)'', and by striking ''and'' at the end;

[(3) by striking subparagraph (A)(ii) and inserting the following:

[''(ii) by substituting, in subsections (a)(2)(B) and (b)(1)(B)(i), the phrase 'section 1631(a)(7)(A) or the requirements of due process of law' for the phrase 'subsection (g) or (h) of section 223';

[''(iii) by substituting, in subsection (a)(2)(C)(i), the phrase 'under title II' for the phrase 'under title XVI';

[''(iv) by substituting, in subsection (b)(1)(A), the phrase 'pay the amount of such fee' for the phrase 'certify the amount of

such fee for payment' and by striking, in subsection (b)(1)(A), the phrase 'or certified for payment'; and

[''(v) by substituting, in subsection (b)(1)(B)(ii), the phrase 'deemed to be such amounts as determined before any applicable reduction under section 1631(g), and reduced by the amount of any reduction in benefits under this title or title II made pursuant to section 1127(a)' for the phrase 'determined before any applicable reduction under section 1127(a))'.''; and

[(4) by striking subparagraph (B) and inserting the following new subparagraphs:

[''(B) Subject to subparagraph (C), if the claimant is determined to be entitled to past-due benefits under this title and the person representing the claimant is an attorney, the Commissioner of Social Security shall pay out of such past-due benefits to such attorney an amount equal to the lesser of—

[''(i) so much of the maximum fee as does not exceed 25 percent of such past-due benefits (as determined before any applicable reduction under section 1631(g) and reduced by the amount of any reduction in benefits under this title or title II pursuant to section 1127(a)), or

[''(ii) the amount of past-due benefits available after any applicable reductions under sections 1631(g) and 1127(a).

[''(C)(i) Whenever a fee for services is required to be paid to an attorney from a claimant's past-due benefits pursuant to subparagraph (B), the Commissioner shall impose on the attorney an assessment calculated in accordance with clause (ii).

[''(ii)(I) The amount of an assessment under clause (i) shall be equal to the product obtained by multiplying the amount of the representative's fee that would be required to be paid by subparagraph (B) before the application of this subparagraph, by the percentage specified in subclause (II), except that the maximum amount of the assessment may not exceed $75. In the case of any calendar year beginning after the amendments made by section 302 of the Social Security Protection Act of 2003 take effect, the dollar amount specified in the preceding sentence (including a previously adjusted amount) shall be adjusted annually under the procedures used to adjust benefit amounts under section 215(i)(2)(A)(ii), except such adjustment shall be based on the higher of $75 or the previously adjusted amount that would have been in effect for December of the preceding year, but for the rounding of such amount pursuant to the following sentence. Any amount so adjusted that is not a multiple of $1 shall be rounded to the next lowest multiple of $1, but in no case less than $75.

[''(II) The percentage specified in this subclause is such percentage rate as the Commissioner determines is necessary in order to achieve full recovery of the costs of determining and approving fees to attorneys from the past-due benefits of claimants, but not in excess of 6.3 percent.

[''(iii) The Commissioner may collect the assessment imposed on an attorney under clause (i) by offset from the amount of the fee otherwise required by subparagraph (B) to be paid to the attorney from a claimant's past-due benefits.

[''(iv) An attorney subject to an assessment under clause (i) may not, directly or indirectly, request or otherwise obtain reimbursement for such assessment from the claimant whose claim gave rise to the assessment.

[''(v) Assessments on attorneys collected under this subparagraph shall be deposited in the Treasury in a separate fund created for this purpose.

[''(vi) The assessments authorized under this subparagraph shall be collected and available for obligation only to the extent and in the amount provided in advance in appropriations Acts. Amounts so appropriated are authorized to remain available until expended, for administrative expenses in carrying out this title and related laws.''.

[(b) EFFECTIVE DATE.—

[(1) IN GENERAL.—The amendments made by this section shall apply with respect to fees for representation of claimants which are first required to be certified or paid under section 1631(d)(2) of the Social Security Act on or after the first day of the first month that begins after 270 days after the date of the enactment of this Act.

[(2) SUNSET.—Such amendments shall not apply with respect to fees for representation of claimants in the case of any claim for benefits with respect to which the agreement for representation is entered into after 5 years after the date on which the Commissioner of Social Security first implements the amendments made by this section.

[(c) STUDY REGARDING FEE-WITHHOLDING FOR NON-ATTORNEY REPRESENTATIVES.—

[(1) STUDY.—As soon as practicable after the date of the enactment of this Act, the Comptroller General of the United States shall undertake a study regarding fee-withholding for non-attorney representatives representing claimants before the Social Security Administration.

[(2) MATTERS TO BE STUDIED.—In conducting the study under this subsection, the Comptroller General shall—

[(A) compare the non-attorney representatives who seek fee approval for representing claimants before the Social Security Administration to attorney representatives who seek such fee approval, with regard to—

[(i) their training, qualifications, and competency,

[(ii) the type and quality of services provided, and

[(iii) the extent to which claimants are protected through oversight of such representatives by the Social Security Administration or other organizations, and

[(B) consider the potential results of extending to non-attorney representatives the fee withholding procedures that apply under titles II and XVI of the Social Security Act for the payment of attorney fees, including the effect on claimants and program administration.

[(3) REPORT.—Not later than 1 year after the date of the enactment of this Act, the Comptroller General shall submit to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate a report detailing the results of the Comptroller General's study conducted pursuant to this subsection.

[TITLE IV—MISCELLANEOUS AND TECHNICAL AMENDMENTS

[Subtitle A—Amendments Relating to the Ticket to Work and Work Incentives Improvement Act of 1999

[SEC. 401. APPLICATION OF DEMONSTRATION AUTHORITY SUNSET DATE TO NEW PROJECTS.

[Section 234 of the Social Security Act (42 U.S.C. 434) is amended—

[(1) in the first sentence of subsection (c), by striking ''conducted under subsection (a)'' and inserting ''initiated under subsection (a) on or before December 17, 2004''; and

[(2) in subsection (d)(2), by amending the first sentence to read as follows: ''The authority to initiate projects under the preceding provisions of this section shall terminate on December 18, 2004.''.

[SEC. 402. EXPANSION OF WAIVER AUTHORITY AVAILABLE IN CONNECTION WITH DEMONSTRATION PROJECTS PROVIDING FOR REDUCTIONS IN DISABILITY INSURANCE BENEFITS BASED ON EARNINGS.

[Section 302(c) of the Ticket to Work and Work Incentives Improvement Act of 1999 (42 U.S.C. 434 note) is amended by striking ''(42 U.S.C. 401 et seq.),'' and inserting ''(42 U.S.C. 401 et seq.) and the requirements of section 1148 of such Act (42 U.S.C. 1320b–19) as they relate to the program established under title II of such Act,''.

[SEC. 403. FUNDING OF DEMONSTRATION PROJECTS PROVIDED FOR REDUCTIONS IN DISABILITY INSURANCE BENEFITS BASED ON EARNINGS.

[Section 302(f) of the Ticket to Work and Work Incentives Improvement Act of 1999 (42 U.S.C. 434 note) is amended to read as follows:

[''(f) EXPENDITURES.—Administrative expenses for demonstration projects under this section shall be paid from funds available for the administration of title II or XVIII of the Social Security Act, as appropriate. Benefits payable to or on behalf of individuals by reason of participation in projects under this section shall be made from the Federal Disability Insurance Trust Fund and the Federal Old-Age and Survivors Insurance Trust Fund, as determined appropriate by the Commissioner of Social Security, and from the Federal Hospital Insurance Trust Fund and the Federal Supplementary Medical Insurance Trust Fund, as determined appropriate by the Secretary of Health and Human Services, from funds available for benefits under such title II or XVIII.''.

[SEC. 404. AVAILABILITY OF FEDERAL AND STATE WORK INCENTIVE SERVICES TO ADDITIONAL INDIVIDUALS.

[(a) FEDERAL WORK INCENTIVES OUTREACH PROGRAM.—

[(1) IN GENERAL.—Section 1149(c)(2) of the Social Security Act (42 U.S.C. 1320b–20(c)(2)) is amended to read as follows:

[''(2) DISABLED BENEFICIARY.—The term 'disabled beneficiary' means an individual—

[''(A) who is a disabled beneficiary as defined in section 1148(k)(2) of this Act;

[''(B) who is receiving a cash payment described in section 1616(a) of this Act or a supplementary payment described in section 212(a)(3) of Public Law 93–66 (without regard to whether such payment is paid by the Commissioner pursuant to an agreement under section 1616(a) of this Act or under section 212(b) of Public Law 93–66);

[''(C) who, pursuant to section 1619(b) of this Act, is considered to be receiving benefits under title XVI of this Act; or

[''(D) who is entitled to benefits under part A of title XVIII of this Act by reason of the penultimate sentence of section 226(b) of this Act.''.

[(2) EFFECTIVE DATE.—The amendment made by this subsection shall apply with respect to grants, cooperative agreements, or contracts entered into on or after the date of the enactment of this Act.

[(b) STATE GRANTS FOR WORK INCENTIVES ASSISTANCE.—

[(1) DEFINITION OF DISABLED BENEFICIARY.—Section 1150(g)(2) of such Act (42 U.S.C. 1320b–21(g)(2)) is amended to read as follows:

[''(2) DISABLED BENEFICIARY.—The term 'disabled beneficiary' means an individual—

[''(A) who is a disabled beneficiary as defined in section 1148(k)(2) of this Act;

[''(B) who is receiving a cash payment described in section 1616(a) of this Act or a supplementary payment described in section 212(a)(3) of Public Law 93–66 (without regard to whether such payment is paid by the Commissioner pursuant to an agreement under

section 1616(a) of this Act or under section 212(b) of Public Law 93–66);

''(C) who, pursuant to section 1619(b) of this Act, is considered to be receiving benefits under title XVI of this Act; or

''(D) who is entitled to benefits under part A of title XVIII of this Act by reason of the penultimate sentence of section 226(b) of this Act.''.

(2) ADVOCACY OR OTHER SERVICES NEEDED TO MAINTAIN GAINFUL EMPLOYMENT.—Section 1150(b)(2) of such Act (42 U.S.C. 1320b–21(b)(2)) is amended by striking ''secure or regain'' and inserting ''secure, maintain, or regain''.

(3) EFFECTIVE DATE.—The amendments made by this subsection shall apply with respect to payments provided after the date of the enactment of this Act.

SEC. 405. TECHNICAL AMENDMENT CLARIFYING TREATMENT FOR CERTAIN PURPOSES OF INDIVIDUAL WORK PLANS UNDER THE TICKET TO WORK AND SELF-SUFFICIENCY PROGRAM.

(a) IN GENERAL.—Section 1148(g)(1) of the Social Security Act (42 U.S.C. 1320b–19) is amended by adding at the end, after and below subparagraph (E), the following new sentence:

''An individual work plan established pursuant to this subsection shall be treated, for purposes of section 51(d)(6)(B)(i) of the Internal Revenue Code of 1986, as an individualized written plan for employment under a State plan for vocational rehabilitation services approved under the Rehabilitation Act of 1973.''.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect as if included in section 505 of the Ticket to Work and Work Incentives Improvement Act of 1999 (Public Law 106–170; 113 Stat. 1921).

Subtitle B—Miscellaneous Amendments

SEC. 411. ELIMINATION OF TRANSCRIPT REQUIREMENT IN REMAND CASES FULLY FAVORABLE TO THE CLAIMANT.

(a) IN GENERAL.—Section 205(g) of the Social Security Act (42 U.S.C. 405(g)) is amended in the sixth sentence by striking ''and a transcript'' and inserting ''and, in any case in which the Commissioner has not made a decision fully favorable to the individual, a transcript''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply with respect to final determinations issued (upon remand) on or after the date of the enactment of this Act.

SEC. 412. NONPAYMENT OF BENEFITS UPON REMOVAL FROM THE UNITED STATES.

(a) IN GENERAL.—Paragraphs (1) and (2) of section 202(n) of the Social Security Act (42 U.S.C. 402(n)(1), (2)) are each amended by striking ''or (1)(E)''.

(b) EFFECTIVE DATE.—The amendment made by this section to section 202(n)(1) of the Social Security Act shall apply to individuals with respect to whom the Commissioner of Social Security receives a removal notice from the Attorney General after the date of the enactment of this Act. The amendment made by this section to section 202(n)(2) of the Social Security Act shall apply with respect to removals occurring after the date of the enactment of this Act.

SEC. 413. REINSTATEMENT OF CERTAIN REPORTING REQUIREMENTS.

Section 3003(a)(1) of the Federal Reports Elimination and Sunset Act of 1995 (31 U.S.C. 1113 note) shall not apply to any report required to be submitted under any of the following provisions of law:

(1)(A) Section 201(c)(2) of the Social Security Act (42 U.S.C. 401(c)(2)).

(B) Section 1817(b)(2) of the Social Security Act (42 U.S.C. 1395i(b)(2)).

(C) Section 1841(b)(2) of the Social Security Act (42 U.S.C. 1395t(b)(2)).

(2)(A) Section 221(c)(3)(C) of the Social Security Act (42 U.S.C. 421(c)(3)(C)).

(B) Section 221(i)(3) of the Social Security Act (42 U.S.C. 421(i)(3)).

SEC. 414. CLARIFICATION OF DEFINITIONS REGARDING CERTAIN SURVIVOR BENEFITS.

(a) WIDOWS.—Section 216(c) of the Social Security Act (42 U.S.C. 416(c)) is amended—

(1) by redesignating subclauses (A) through (C) of clause (6) as subclauses (i) through (iii), respectively;

(2) by redesignating clauses (1) through (6) as clauses (A) through (F), respectively;

(3) in clause (E) (as redesignated), by inserting ''except as provided in paragraph (2),'' before ''she was married'';

(4) by inserting ''(1)'' after ''(c)''; and

(5) by adding at the end the following new paragraph:

''(2) The requirements of paragraph (1)(E) in connection with the surviving wife of an individual shall be treated as satisfied if—

''(A) the individual had been married prior to the individual's marriage to the surviving wife,

''(B) the prior wife was institutionalized during the individual's marriage to the prior wife due to mental incompetence or similar incapacity,

''(C) during the period of the prior wife's institutionalization, the individual would have divorced the prior wife and married the surviving wife, but the individual did not do so because such divorce would have been unlawful, by reason of the prior wife's institutionalization, under the laws of the State in which the individual was domiciled at the time (as determined based on evidence satisfactory to the Commissioner of Social Security),

''(D) the prior wife continued to remain institutionalized up to the time of her death, and

''(E) the individual married the surviving wife within 60 days after the prior wife's death.''.

(b) WIDOWERS.—Section 216(g) of such Act (42 U.S.C. 416(g)) is amended—

(1) by redesignating subclauses (A) through (C) of clause (6) as subclauses (i) through (iii), respectively;

(2) by redesignating clauses (1) through (6) as clauses (A) through (F), respectively;

(3) in clause (E) (as redesignated), by inserting ''except as provided in paragraph (2),'' before ''he was married'';

(4) by inserting ''(1)'' after ''(g)''; and

(5) by adding at the end the following new paragraph:

''(2) The requirements of paragraph (1)(E) in connection with the surviving husband of an individual shall be treated as satisfied if—

''(A) the individual had been married prior to the individual's marriage to the surviving husband,

''(B) the prior husband was institutionalized during the individual's marriage to the prior husband due to mental incompetence or similar incapacity,

''(C) during the period of the prior husband's institutionalization, the individual would have divorced the prior husband and married the surviving husband, but the individual did not do so because such divorce would have been unlawful, by reason of the prior husband's institutionalization, under the laws of the State in which the individual was domiciled at the time (as determined based on evidence satisfactory to the Commissioner of Social Security),

''(D) the prior husband continued to remain institutionalized up to the time of his death, and

''(E) the individual married the surviving husband within 60 days after the prior husband's death.''.

(c) CONFORMING AMENDMENT.—Section 216(k) of such Act (42 U.S.C. 416(k)) is amended by striking ''clause (5) of subsection (c) or clause (5) of subsection (g)'' and inserting ''clause (E) of subsection (c)(1) or clause (E) of subsection (g)(1)''.

(d) EFFECTIVE DATE.—The amendments made by this section shall be effective with respect to applications for benefits under title II of the Social Security Act filed during months ending after the date of the enactment of this Act.

SEC. 415. CLARIFICATION RESPECTING THE FICA AND SECA TAX EXEMPTIONS FOR AN INDIVIDUAL WHOSE EARNINGS ARE SUBJECT TO THE LAWS OF A TOTALIZATION AGREEMENT PARTNER.

Sections 1401(c), 3101(c), and 3111(c) of the Internal Revenue Code of 1986 are each amended by striking ''to taxes or contributions for similar purposes under'' and inserting ''exclusively to the laws applicable to''.

SEC. 416. COVERAGE UNDER DIVIDED RETIREMENT SYSTEM FOR PUBLIC EMPLOYEES IN KENTUCKY.

(a) IN GENERAL.—Section 218(d)(6)(C) of the Social Security Act (42 U.S.C. 418(d)(6)(C)) is amended by inserting ''Kentucky,'' after ''Illinois,''.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) takes effect on January 1, 2003.

SEC. 417. COMPENSATION FOR THE SOCIAL SECURITY ADVISORY BOARD.

(a) IN GENERAL.—Subsection (f) of section 703 of the Social Security Act (42 U.S.C. 903(f)) is amended to read as follows:

''Compensation, Expenses, and Per Diem

''(f) A member of the Board shall, for each day (including traveltime) during which the member is attending meetings or conferences of the Board or otherwise engaged in the business of the Board, be compensated at the daily rate of basic pay for level IV of the Executive Schedule. While serving on business of the Board away from their homes or regular places of business, members may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5, United States Code, for persons in the Government employed intermittently.''.

(b) EFFECTIVE DATE.—The amendment made by this section shall be effective as of January 1, 2003.

SEC. 418. 60-MONTH PERIOD OF EMPLOYMENT REQUIREMENT FOR APPLICATION OF GOVERNMENT PENSION OFFSET EXEMPTION.

(a) WIFE'S INSURANCE BENEFITS.—Section 202(b)(4)(A) of the Social Security Act (42 U.S.C. 402(b)(4)(A)) is amended by striking ''if, on'' and inserting ''if, during any portion of the last 60 months of such service ending with''.

(b) HUSBAND'S INSURANCE BENEFITS.—Section 202(c)(2)(A) of such Act (42 U.S.C. 402(c)(2)(A)) is amended by striking ''if, on'' and inserting ''if, during any portion of the last 60 months of such service ending with''.

[(c) WIDOW'S INSURANCE BENEFITS.—Section 202(e)(7)(A) of such Act (42 U.S.C. 402(e)(7)(A)) is amended by striking ''if, on'' and inserting ''if, during any portion of the last 60 months of such service ending with''.

[(d) WIDOWER'S INSURANCE BENEFITS.—Section 202(f)(2)(A) of such Act (42 U.S.C. 402(f)(2)(A)) is amended by striking ''if, on'' and inserting ''if, during any portion of the last 60 months of such service ending with''.

[(e) MOTHER'S AND FATHER'S INSURANCE BENEFITS.—Section 202(g)(4)(A) of the such Act (42 U.S.C. 402(g)(4)(A)) is amended by striking ''if, on'' and inserting '''if, during any portion of the last 60 months of such service ending with''.

[(f) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to applications for benefits under title II of the Social Security Act filed on or after the first day of the first month that begins after the date of the enactment of this Act, except that such amendments shall not apply in connection with monthly periodic benefits of any individual based on earnings while in service described in section 202(b)(4)(A), 202(c)(2)(A), 202(e)(7)(A), or 202(f)(2)(A) of the Social Security Act (in the matter preceding clause (i) thereof)—

[(1) if the last day of such service occurs before the end of the 90-day period following the date of the enactment of this Act, or

[(2) in any case in which the last day of such service occurs after the end of such 90-day period, such individual performed such service during such 90-day period which constituted ''employment'' as defined in section 210 of such Act, and all such service subsequently performed by such individual has constituted such ''employment''.

[Subtitle C—Technical Amendments

[SEC. 421. TECHNICAL CORRECTION RELATING TO RESPONSIBLE AGENCY HEAD.

[Section 1143 of the Social Security Act (42 U.S.C. 1320b–13) is amended—

[(1) by striking ''Secretary'' the first place it appears and inserting ''Commissioner of Social Security''; and

[(2) by striking ''Secretary'' each subsequent place it appears and inserting ''Commissioner''.

[SEC. 422. TECHNICAL CORRECTION RELATING TO RETIREMENT BENEFITS OF MINISTERS.

[(a) IN GENERAL.—Section 211(a)(7) of the Social Security Act (42 U.S.C. 411(a)(7)) is amended by inserting '', but shall not include in any such net earnings from self-employment the rental value of any parsonage or any parsonage allowance (whether or not excluded under section 107 of the Internal Revenue Code of 1986) provided after the individual retires, or any other retirement benefit received by such individual from a church plan (as defined in section 414(e) of such Code) after the individual retires'' before the semicolon.

[(b) EFFECTIVE DATE.—The amendment made by this section shall apply to years beginning before, on, or after December 31, 1994.

SEC. 423. TECHNICAL CORRECTIONS RELATING TO DOMESTIC EMPLOYMENT.

[(a) AMENDMENT TO INTERNAL REVENUE CODE.—Section 3121(a)(7)(B) of the Internal Revenue Code of 1986 is amended by striking ''described in subsection (g)(5)'' and inserting ''on a farm operated for profit''.

[(b) AMENDMENT TO SOCIAL SECURITY ACT.—Section 209(a)(6)(B) of the Social Security Act (42 U.S.C. 409(a)(6)(B)) is amended by striking ''described in section 210(f)(5)'' and inserting ''on a farm operated for profit''.

[(c) CONFORMING AMENDMENT.—Section 3121(g)(5) of such Code and section 210(f)(5) of such Act (42 U.S.C. 410(f)(5)) are amended by striking ''or is domestic service in a private home of the employer''.

[SEC. 424. TECHNICAL CORRECTIONS OF OUTDATED REFERENCES.

[(a) CORRECTION OF TERMINOLOGY AND CITATIONS RESPECTING REMOVAL FROM THE UNITED STATES.—Section 202(n) of the Social Security Act (42 U.S.C. 402(n)) (as amended by section 412) is amended further—

[(1) by striking ''deportation'' each place it appears and inserting ''removal'';

[(2) by striking ''deported'' each place it appears and inserting ''removed'';

[(3) in paragraph (1) (in the matter preceding subparagraph (A)), by striking ''under section 241(a) (other than under paragraph (1)(C) thereof)'' and inserting ''under section 237(a) (other than paragraph (1)(C) thereof) or 212(a)(6)(A)'';

[(4) in paragraph (2), by striking ''under any of the paragraphs of section 241(a) of the Immigration and Nationality Act (other than under paragraph (1)(C) thereof)'' and inserting ''under any of the paragraphs of section 237(a) of the Immigration and Nationality Act (other than paragraph (1)(C) thereof) or under section 212(a)(6)(A) of such Act'';

[(5) in paragraph (3)—

[(A) by striking ''paragraph (19) of section 241(a)'' and inserting ''subparagraph (D) of section 237(a)(4)''; and

[(B) by striking ''paragraph (19)'' and inserting ''subparagraph (D)''; and

[(6) in the heading, by striking ''Deportation'' and inserting ''Removal''.

[(b) CORRECTION OF CITATION RESPECTING THE TAX DEDUCTION RELATING TO HEALTH INSURANCE COSTS OF SELF-EMPLOYED INDIVIDUALS.—Section 211(a)(15) of such Act (42 U.S.C. 411(a)(15)) is amended by striking ''section 162(m)'' and inserting ''section 162(l)''.

[(c) ELIMINATION OF REFERENCE TO OBSOLETE 20-DAY AGRICULTURAL WORK TEST.—Section 3102(a) of the Internal Revenue Code of 1986 is amended by striking ''and the employee has not performed agricultural labor for the employer on 20 days or more in the calendar year for cash remuneration computed on a time basis''.

[SEC. 425. TECHNICAL CORRECTION RESPECTING SELF-EMPLOYMENT INCOME IN COMMUNITY PROPERTY STATES.

[(a) SOCIAL SECURITY ACT AMENDMENT.—Section 211(a)(5)(A) of the Social Security Act (42 U.S.C. 411(a)(5)(A)) is amended by striking ''all of the gross income'' and all that follows and inserting ''the gross income and deductions attributable to such trade or business shall be treated as the gross income and deductions of the spouse carrying on such trade or business or, if such trade or business is jointly operated, treated as the gross income and deductions of each spouse on the basis of their respective distributive share of the gross income and deductions;''.

[(b) INTERNAL REVENUE CODE OF 1986 AMENDMENT.—Section 1402(a)(5)(A) of the Internal Revenue Code of 1986 is amended by striking ''all of the gross income'' and all that follows and inserting ''the gross income and deductions attributable to such trade or business shall be treated as the gross income and deductions of the spouse carrying on such trade or business or, if such trade or business is jointly operated, treated as the gross income and deductions of each spouse on the basis of their respective distributive share of the gross income and deductions; and''.]

SECTION 1. SHORT TITLE AND TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the ''Social Security Protection Act of 2003''.

(b) TABLE OF CONTENTS.—The table of contents is as follows:

(a) TITLE II AMENDMENTS.—

(1) REISSUANCE OF BENEFITS.—Section 205(j)(5) of the Social Security Act (42 U.S.C. 405(j)(5)) is amended by inserting after the first sentence the following: ''In any case in which a representative payee that—

''(A) is not an individual (regardless of whether it is a 'qualified organization' within the meaning of paragraph (4)(B)); or

''(B) is an individual who, for any month during a period when misuse occurs, serves 15 or more individuals who are beneficiaries under this title, title VIII, title XVI, or any combination of such titles;

misuses all or part of an individual's benefit paid to such representative payee, the Commissioner of Social Security shall certify for payment to the beneficiary or the beneficiary's alternative representative payee an amount equal to the amount of such benefit so misused. The provisions of this paragraph are subject to the limitations of paragraph (7)(B).''.

(2) MISUSE OF BENEFITS DEFINED.—Section 205(j) of such Act (42 U.S.C. 405(j)) is amended by adding at the end the following:

''(8) For purposes of this subsection, misuse of benefits by a representative payee occurs in any case in which the representative payee receives payment under this title for the use and benefit of another person and converts such payment, or any part thereof, to a use other than for the use and benefit of such other person. The Commissioner of Social Security may prescribe by regulation the meaning of the term 'use and benefit' for purposes of this paragraph.''.

(b) TITLE VIII AMENDMENTS.—

(1) REISSUANCE OF BENEFITS.—Section 807(i)(1) of the Social Security Act (42 U.S.C. 1007(i)) (as amended by section 209(b)(1) of this Act) is amended further by inserting after the first sentence the following: ''In any case in which a representative payee that—

''(A) is not an individual; or

''(B) is an individual who, for any month during a period when misuse occurs, serves 15 or more individuals who are beneficiaries under this title, title II, title XVI, or any combination of such titles;

misuses all or part of an individual's benefit paid to such representative payee, the Commissioner of Social Security shall pay to the beneficiary or the beneficiary's alternative representative payee an amount equal to the amount of such benefit so misused. The provisions of this paragraph are subject to the limitations of subsection (l)(2).''.

(2) MISUSE OF BENEFITS DEFINED.—Section 807 of such Act (42 U.S.C. 1007) is amended by adding at the end the following:

''(j) MISUSE OF BENEFITS.—For purposes of this title, misuse of benefits by a representative payee occurs in any case in which the representative payee receives payment under this title for the use and benefit of another person under this title and converts such payment, or any part thereof, to a use other than for the use and benefit of such person. The Commissioner of Social Security may prescribe by regulation the meaning of the term 'use and benefit' for purposes of this subsection.''.

(3) TECHNICAL AMENDMENT.—Section 807(a) of such Act (42 U.S.C. 1007(a)) is amended, in the first sentence, by striking ''for his or her benefit'' and inserting ''for his or her use and benefit''.

(c) TITLE XVI AMENDMENTS.—

(1) REISSUANCE OF BENEFITS.—Section 1631(a)(2)(E) of such Act (42 U.S.C. 1383(a)(2)(E)) is amended by inserting after the first sentence the following: ''In any case in which a representative payee that—

''(i) is not an individual (regardless of whether it is a 'qualified organization' within the meaning of subparagraph (D)(ii)); or

''(ii) is an individual who, for any month during a period when misuse occurs, serves 15 or more individuals who are beneficiaries under this title, title II, title VIII, or any combination of such titles;

misuses all or part of an individual's benefit paid to such representative payee, the Commissioner of Social Security shall pay to the beneficiary or the beneficiary's alternative representative payee an amount equal to the amount of such benefit so misused. The provisions of this subparagraph are subject to the limitations of subparagraph (H)(ii).''.

(2) EXCLUSION OF REISSUED BENEFITS FROM RESOURCES.—Section 1613(a) of such Act (42 U.S.C. 1382b(a)) is amended—

(A) in paragraph (12), by striking ''and'' at the end;

(B) in paragraph (13), by striking the period and inserting ''; and''; and

(C) by inserting after paragraph (13) the following:

''(14) for the 9-month period beginning after the month in which received, any amount received by such individual (or spouse) or any other person whose income is deemed to be included in such individual's (or spouse's) income for purposes of this title as restitution for benefits under this title, title II, or title VIII that a representative payee of such individual (or spouse) or such other person under section 205(j), 807, or 1631(a)(2) has misused.''.

(3) MISUSE OF BENEFITS DEFINED.—Section 1631(a)(2)(A) of such Act (42 U.S.C. 1383(a)(2)(A)) is amended by adding at the end the following:

''(iv) For purposes of this paragraph, misuse of benefits by a representative payee occurs in any case in which the representative payee receives payment under this title for the use and benefit of another person and converts such payment, or any part thereof, to a use other than for the use and benefit of such other person. The Commissioner of Social Security may prescribe by regulation the meaning of the term 'use and benefit' for purposes of this clause.''.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to any case of benefit misuse by a representative payee with respect to which the Commissioner of Social Security makes the determination of misuse on or after January 1, 1995.

SEC. 102. OVERSIGHT OF REPRESENTATIVE PAYEES.

(a) CERTIFICATION OF BONDING AND LICENSING REQUIREMENTS FOR NONGOVERNMENTAL ORGANIZATIONAL REPRESENTATIVE PAYEES.—

(1) TITLE II AMENDMENTS.—Section 205(j) of the Social Security Act (42 U.S.C. 405(j)) is amended—

(A) in paragraph (2)(C)(v), by striking ''a community-based nonprofit social service agency licensed or bonded by the State'' in subclause (I) and inserting ''a certified community-based nonprofit social service agency (as defined in paragraph (9))'';

(B) in paragraph (3)(F), by striking ''community-based nonprofit social service agencies'' and inserting ''certified community-based nonprofit social service agencies (as defined in paragraph (9))'';

(C) in paragraph (4)(B), by striking ''any community-based nonprofit social service agency which is bonded or licensed in each State in which it serves as a representative payee'' and inserting ''any certified community-based nonprofit social service agency (as defined in paragraph (9))''; and

(D) by adding after paragraph (8) (as added by section 101(a)(2) of this Act) the following:

''(9) For purposes of this subsection, the term 'certified community-based nonprofit social service agency' means a community-based nonprofit social service agency which is in compliance with requirements, under regulations which shall be prescribed by the Commissioner, for annual certification to the Commissioner that it is bonded in accordance with requirements specified by the Commissioner and that it is licensed in each State in which it serves as a representative payee (if licensing is available in the State) in accordance with requirements specified by the Commissioner. Any such annual certification shall include a copy of any independent

audit on the agency which may have been performed since the previous certification.''.

(2) TITLE XVI AMENDMENTS.—Section 1631(a)(2) of such Act (42 U.S.C. 1383(a)(2)) is amended—

(A) in subparagraph (B)(vii), by striking ''a community-based nonprofit social service agency licensed or bonded by the State'' in subclause (I) and inserting ''a certified community-based nonprofit social service agency (as defined in subparagraph (I))'';

(B) in subparagraph (D)(ii)—

(i) by striking ''or any community-based'' and all that follows through ''in accordance'' in subclause (II) and inserting ''or any certified community-based nonprofit social service agency (as defined in subparagraph (I)), if the agency, in accordance'';

(ii) by redesignating items (aa) and (bb) as subclauses (I) and (II), respectively (and adjusting the margins accordingly); and

(iii) by striking ''subclause (II)(bb)'' and inserting ''subclause (II)''; and

(C) by adding at the end the following:

''(I) For purposes of this paragraph, the term 'certified community-based nonprofit social service agency' means a community-based nonprofit social service agency which is in compliance with requirements, under regulations which shall be prescribed by the Commissioner, for annual certification to the Commissioner that it is bonded in accordance with requirements specified by the Commissioner and that it is licensed in each State in which it serves as a representative payee (if licensing is available in the State) in accordance with requirements specified by the Commissioner. Any such annual certification shall include a copy of any independent audit on the agency which may have been performed since the previous certification.''.

(3) EFFECTIVE DATE.—The amendments made by this subsection shall take effect on the first day of the thirteenth month beginning after the date of the enactment of this Act.

(b) PERIODIC ONSITE REVIEW.—

(1) TITLE II AMENDMENT.—Section 205(j)(6) of such Act (42 U.S.C. 405(j)(6)) is amended to read as follows:

''(6)(A) In addition to such other reviews of representative payees as the Commissioner of Social Security may otherwise conduct, the Commissioner shall provide for the periodic onsite review of any person or agency located in the United States that receives the benefits payable under this title (alone or in combination with benefits payable under title VIII or title XVI) to another individual pursuant to the appointment of such person or agency as a representative payee under this subsection, section 807, or section 1631(a)(2) in any case in which—

''(i) the representative payee is a person who serves in that capacity with respect to 15 or more such individuals;

''(ii) the representative payee is a certified community-based nonprofit social service agency (as defined in paragraph (9) of this subsection or section 1631(a)(2)(I)); or

''(iii) the representative payee is an agency (other than an agency described in clause (ii)) that serves in that capacity with respect to 50 or more such individuals.

''(B) Within 120 days after the end of each fiscal year, the Commissioner shall submit to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate a report on the results of periodic onsite reviews conducted during the fiscal year pursuant to subparagraph (A) and of any other reviews of representative payees conducted during such fiscal year in connection with benefits under this title. Each such report shall describe in detail all problems identified in such reviews and any corrective action taken or planned to be taken to correct such problems, and shall include—

''(i) the number of such reviews;

''(ii) the results of such reviews;

''(iii) the number of cases in which the representative payee was changed and why;

''(iv) the number of cases involving the exercise of expedited, targeted oversight of the representative payee by the Commissioner conducted upon receipt of an allegation of misuse of funds, failure to pay a vendor, or a similar irregularity;

''(v) the number of cases discovered in which there was a misuse of funds;

''(vi) how any such cases of misuse of funds were dealt with by the Commissioner;

''(vii) the final disposition of such cases of misuse of funds, including any criminal penalties imposed; and

''(viii) such other information as the Commissioner deems appropriate.''.

(2) TITLE VIII AMENDMENT.—Section 807 of such Act (as amended by section 101(b)(2) of this Act) is amended further by adding at the end the following:

''(k) PERIODIC ONSITE REVIEW.—

''(1) IN GENERAL.—In addition to such other reviews of representative payees as the Commissioner of Social Security may otherwise conduct, the Commissioner may provide for the periodic onsite review of any person or agency that receives the benefits payable under this title (alone or in combination with benefits payable under title II or title XVI) to another individual pursuant to the appointment of such person or agency as a representative payee under this section, section 205(j), or section 1631(a)(2) in any case in which—

''(A) the representative payee is a person who serves in that capacity with respect to 15 or more such individuals; or

''(B) the representative payee is an agency that serves in that capacity with respect to 50 or more such individuals.

''(2) REPORT.—Within 120 days after the end of each fiscal year, the Commissioner shall submit to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate a report on the results of periodic onsite reviews conducted during the fiscal year pursuant to paragraph (1) and of any other reviews of representative payees conducted during such fiscal year in connection with benefits under this title. Each such report shall describe in detail all problems identified in such reviews and any corrective action taken or planned to be taken to correct such problems, and shall include—

''(A) the number of such reviews;

''(B) the results of such reviews;

''(C) the number of cases in which the representative payee was changed and why;

''(D) the number of cases involving the exercise of expedited, targeted oversight of the representative payee by the Commissioner conducted upon receipt of an allegation of misuse of funds, failure to pay a vendor, or a similar irregularity;

''(E) the number of cases discovered in which there was a misuse of funds;

''(F) how any such cases of misuse of funds were dealt with by the Commissioner;

''(G) the final disposition of such cases of misuse of funds, including any criminal penalties imposed; and

''(H) such other information as the Commissioner deems appropriate.''.

(3) TITLE XVI AMENDMENT.—Section 1631(a)(2)(G) of such Act (42 U.S.C. 1383(a)(2)(G)) is amended to read as follows:

''(G)(i) In addition to such other reviews of representative payees as the Commissioner of Social Security may otherwise conduct, the Commissioner shall provide for the periodic onsite review of any person or agency that receives the benefits payable under this title (alone or in combination with benefits payable under title II or title VIII) to another individual pursuant to the appointment of the person or agency as a representative payee under this paragraph, section 205(j), or section 807 in any case in which—

''(I) the representative payee is a person who serves in that capacity with respect to 15 or more such individuals;

''(II) the representative payee is a certified community-based nonprofit social service agency (as defined in subparagraph (I) of this paragraph or section 205(j)(9)); or

''(III) the representative payee is an agency (other than an agency described in subclause (II)) that serves in that capacity with respect to 50 or more such individuals.

''(ii) Within 120 days after the end of each fiscal year, the Commissioner shall submit to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate a report on the results of periodic onsite reviews conducted during the fiscal year pursuant to clause (i) and of any other reviews of representative payees conducted during such fiscal year in connection with benefits under this title. Each such report shall describe in detail all problems identified in the reviews and any corrective action taken or planned to be taken to correct the problems, and shall include—

''(I) the number of the reviews;

''(II) the results of such reviews;

''(III) the number of cases in which the representative payee was changed and why;

''(IV) the number of cases involving the exercise of expedited, targeted oversight of the representative payee by the Commissioner conducted upon receipt of an allegation of misuse of funds, failure to pay a vendor, or a similar irregularity;

''(V) the number of cases discovered in which there was a misuse of funds;

''(VI) how any such cases of misuse of funds were dealt with by the Commissioner;

''(VII) the final disposition of such cases of misuse of funds, including any criminal penalties imposed; and

''(VIII) such other information as the Commissioner deems appropriate.''.

SEC. 103. DISQUALIFICATION FROM SERVICE AS REPRESENTATIVE PAYEE OF PERSONS CONVICTED OF OFFENSES RESULTING IN IMPRISONMENT FOR MORE THAN 1 YEAR OR FLEEING PROSECUTION, CUSTODY, OR CONFINEMENT.

(a) TITLE II AMENDMENTS.—Section 205(j)(2) of the Social Security Act (42 U.S.C. 405(j)(2)) is amended—

(1) in subparagraph (B)(i)—

(A) by striking ''and'' at the end of subclause (III);

(B) by redesignating subclause (IV) as subclause (VI); and

(C) by inserting after subclause (III) the following:

''(IV) obtain information concerning whether such person has been convicted of any other offense under Federal or State law which resulted in imprisonment for more than 1 year,

''(V) obtain information concerning whether such person is a person described in section 202(x)(1)(A)(iv), and'';

(2) in subparagraph (B), by adding at the end the following:

''(iii) Notwithstanding the provisions of section 552a of title 5, United States Code, or any other provision of Federal or State law (other than section 6103 of the Internal Revenue Code of 1986 and section 1106(c) of this Act), the Commissioner shall furnish any Federal, State, or local law enforcement officer, upon the written request of the officer, with the current address, social security account number, and photograph (if applicable) of any person investigated under this paragraph, if the officer furnishes the Commissioner with the name of such person and such other identifying information as may reasonably be required by the Commissioner to establish the unique identity of such person, and notifies the Commissioner that—

''(I) such person is described in section 202(x)(1)(A)(iv),

''(II) such person has information that is necessary for the officer to conduct the officer's official duties, and

''(III) the location or apprehension of such person is within the officer's official duties.'';

(3) in subparagraph (C)(i)(II)—

(A) by striking ''subparagraph (B)(i)(IV),,'' and inserting ''subparagraph (B)(i)(VI)''; and

(B) by striking ''section 1631(a)(2)(B)(ii)(IV)'' and inserting ''section 1631(a)(2)(B)(ii)(VI)''; and

(4) in subparagraph (C)(i)—

(A) by striking ''or'' at the end of subclause (II);

(B) by striking the period at the end of subclause (III) and inserting a comma; and

(C) by adding at the end the following:

''(IV) such person has previously been convicted as described in subparagraph (B)(i)(IV), unless the Commissioner determines that such certification would be appropriate notwithstanding such conviction, or

''(V) such person is person described in section 202(x)(1)(A)(iv).''.

(b) TITLE VIII AMENDMENTS.—Section 807 of such Act (42 U.S.C. 1007) is amended—

(1) in subsection (b)(2)—

(A) by striking ''and'' at the end of subparagraph (C);

(B) by redesignating subparagraph (D) as subparagraph (F); and

(C) by inserting after subparagraph (C) the following:

''(D) obtain information concerning whether such person has been convicted of any other offense under Federal or State law which resulted in imprisonment for more than 1 year;

''(E) obtain information concerning whether such person is a person described in section 804(a)(2); and'';

(2) in subsection (b), by adding at the end the following:

''(3) Notwithstanding the provisions of section 552a of title 5, United States Code, or any other provision of Federal or State law (other than section 6103 of the Internal Revenue Code of 1986 and section 1106(c) of this Act), the Commissioner shall furnish any Federal, State, or local law enforcement officer, upon the written request of the officer, with the current address, social security account number, and photograph (if applicable) of any person investigated under this subsection, if the officer furnishes the Commissioner with the name of such person and such other identifying information as may reasonably be required by the Commissioner to establish the unique identity of such person, and notifies the Commissioner that—

''(A) such person is described in section 804(a)(2),

''(B) such person has information that is necessary for the officer to conduct the officer's official duties, and

''(C) the location or apprehension of such person is within the officer's official duties.''; and

(3) in subsection (d)(1)—

(A) by striking ''or'' at the end of subparagraph (B);

(B) by striking the period at the end of subparagraph (C) and inserting a semicolon; and

(C) by adding at the end the following:

''(D) such person has previously been convicted as described in subsection (b)(2)(D), unless the Commissioner determines that such payment would be appropriate notwithstanding such conviction; or

''(E) such person is a person described in section 804(a)(2).''.

(c) TITLE XVI AMENDMENTS.—Section 1631(a)(2)(B) of such Act (42 U.S.C. 1383(a)(2)(B)) is amended—

(1) in clause (ii)—

(A) by striking ''and'' at the end of subclause (III);

(B) by redesignating subclause (IV) as subclause (VI); and

(C) by inserting after subclause (III) the following:

''(IV) obtain information concerning whether the person has been convicted of any other offense under Federal or State law which resulted in imprisonment for more than 1 year;

''(V) obtain information concerning whether such person is a person described in section 1611(e)(4)(A); and'';

(2) in clause (iii)(II)—

(A) by striking ''clause (ii)(IV)'' and inserting ''clause (ii)(VI)''; and

(B) by striking ''section 205(j)(2)(B)(i)(IV)'' and inserting ''section 205(j)(2)(B)(i)(VI)'';

(3) in clause (iii)—

(A) by striking ''or'' at the end of subclause (II);

(B) by striking the period at the end of subclause (III) and inserting a semicolon; and

(C) by adding at the end the following:

''(IV) the person has previously been convicted as described in clause (ii)(IV) of this subparagraph, unless the Commissioner determines that the payment would be appropriate notwithstanding the conviction; or

''(V) such person is a person described in section 1611(e)(4)(A).''; and

(4) by adding at the end the following:

''(xiv) Notwithstanding the provisions of section 552a of title 5, United States Code, or any other provision of Federal or State law (other than section 6103 of the Internal Revenue Code of 1986 and section 1106(c) of this Act), the Commissioner shall furnish any Federal, State, or local law enforcement officer, upon the written request of the officer, with the current address, social security account number, and photograph (if applicable) of any person investigated under this subparagraph, if the officer furnishes the Commissioner with the name of such person and such other identifying information as may reasonably be required by the Commissioner to establish the unique identity of such person, and notifies the Commissioner that—

''(I) such person is described in section 1611(e)(4)(A),

''(II) such person has information that is necessary for the officer to conduct the officer's official duties, and

''(III) the location or apprehension of such person is within the officer's official duties.''.

(d) EFFECTIVE DATE.—The amendments made by this section shall take effect on the first day of the thirteenth month beginning after the date of the enactment of this Act.

(e) REPORT TO CONGRESS.—The Commissioner of Social Security, in consultation with the Inspector General of the Social Security Administration, shall prepare a report evaluating whether the existing procedures and reviews for the qualification (including disqualification) of representative payees are sufficient to enable the Commissioner to protect benefits from being misused by representative payees. The Commissioner shall submit the report to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate no later than 270 days after the date of the enactment of this Act. The Commissioner shall include in such report any recommendations that the Commissioner considers appropriate.

SEC. 104. FEE FORFEITURE IN CASE OF BENEFIT MISUSE BY REPRESENTATIVE PAYEES.

(a) TITLE II AMENDMENTS.—Section 205(j)(4)(A)(i) of the Social Security Act (42 U.S.C. 405(j)(4)(A)(i)) is amended—

(1) in the first sentence, by striking ''A'' and inserting ''Except as provided in the next sentence, a''; and

(2) in the second sentence, by striking ''The Secretary'' and inserting the following: ''A qualified organization may not collect a fee from an individual for any month with respect to which the Commissioner of Social Security or a court of competent jurisdiction has determined that the organization misused all or part of the individual's benefit, and any amount so collected by the qualified organization for such month shall be treated as a misused part of the individual's benefit for purposes of paragraphs (5) and (6). The Commissioner''.

(b) TITLE XVI AMENDMENTS.—Section 1631(a)(2)(D)(i) of such Act (42 U.S.C. 1383(a)(2)(D)(i)) is amended—

(1) in the first sentence, by striking ''A'' and inserting ''Except as provided in the next sentence, a''; and

(2) in the second sentence, by striking ''The Commissioner'' and inserting the following: ''A qualified organization may not collect a fee from an individual for any month with respect to which the Commissioner of Social Security or a court of competent jurisdiction has determined that the organization misused all or part of the individual's benefit, and any amount so collected by the qualified organization for such month shall be treated as a misused part of the individual's benefit for purposes of subparagraphs (E) and (F). The Commissioner''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to any month involving benefit misuse by a representative payee in any case with respect to which the Commissioner of Social Security or a court of competent jurisdiction makes the determination of misuse after 180 days after the date of the enactment of this Act.

SEC. 105. LIABILITY OF REPRESENTATIVE PAYEES FOR MISUSED BENEFITS.

(a) TITLE II AMENDMENTS.—Section 205(j) of the Social Security Act (42 U.S.C. 405(j)) (as amended by sections 101 and 102) is amended further—

(1) by redesignating paragraphs (7), (8), and (9) as paragraphs (8), (9), and (10), respectively;

(2) in paragraphs (2)(C)(v), (3)(F), and (4)(B), by striking ''paragraph (9)'' and inserting ''paragraph (10)'';

(3) in paragraph (6)(A)(ii), by striking ''paragraph (9)'' and inserting ''paragraph (10)''; and

(4) by inserting after paragraph (6) the following:

''(7)(A) If the Commissioner of Social Security or a court of competent jurisdiction determines that a representative payee that is not a Federal, State, or local government agency has misused all or part of an individual's benefit that was paid to such representative payee under this subsection, the representative payee shall be liable for the amount misused, and such amount (to the extent not repaid by the representative payee) shall be treated as an overpayment of benefits under this title to the representative payee for all purposes of this Act and related laws pertaining to the recovery of such overpayments. Subject to subparagraph (B), upon recovering all or any part of such amount, the Commissioner shall certify an amount equal to the recovered amount for payment to such individual or such individual's alternative representative payee.

''(B) The total of the amount certified for payment to such individual or such individual's alternative representative payee under subparagraph (A) and the amount certified for payment under paragraph (5) may not exceed the total benefit amount misused by the representative payee with respect to such individual.''.

(b) TITLE VIII AMENDMENT.—Section 807 of such Act (as amended by section 102(b)(2)) is amended further by adding at the end the following:

''(l) LIABILITY FOR MISUSED AMOUNTS.—

''(1) IN GENERAL.—If the Commissioner of Social Security or a court of competent jurisdiction determines that a representative payee that is not a Federal, State, or local government agency has misused all or part of a qualified individual's benefit that was paid to such representative payee under this section, the representative payee shall be liable for the amount misused, and such amount (to the extent not repaid by the representative payee) shall be treated as an overpayment of benefits under this title to the representative payee for all purposes of this Act and related laws pertaining to the recovery of such overpayments. Subject to paragraph (2), upon recovering all or any part of such amount, the Commissioner shall make payment of an amount equal to the recovered amount to such qualified individual or such qualified individual's alternative representative payee.

''(2) LIMITATION.—The total of the amount paid to such individual or such individual's alternative representative payee under paragraph (1) and the amount paid under subsection (i) may not exceed the total benefit amount misused by the representative payee with respect to such individual.''.

(c) TITLE XVI AMENDMENTS.—Section 1631(a)(2) of such Act (42 U.S.C. 1383(a)(2)) (as amended by section 102(b)(3)) is amended further—

(1) in subparagraph (G)(i)(II), by striking ''section 205(j)(9)'' and inserting ''section 205(j)(10)''; and

(2) by striking subparagraph (H) and inserting the following:

''(H)(i) If the Commissioner of Social Security or a court of competent jurisdiction determines that a representative payee that is not a Federal, State, or local government agency has misused all or part of an individual's benefit that was paid to the representative payee under this paragraph, the representative payee shall be liable for the amount misused, and the amount (to the extent not repaid by the representative payee) shall be treated as an overpayment of benefits under this title to the representative payee for all purposes of this Act and related laws pertaining to the recovery of the overpayments. Subject to clause (ii), upon recovering all or any part of the amount, the Commissioner shall make payment of an amount equal to the recovered amount to such individual or such individual's alternative representative payee.

''(ii) The total of the amount paid to such individual or such individual's alternative representative payee under clause (i) and the amount paid under subparagraph (E) may not exceed the total benefit amount misused by the representative payee with respect to such individual.''.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to benefit misuse by a representative payee in any case with respect to which the Commissioner of Social Security or a court of competent jurisdiction makes the determination of misuse after 180 days after the date of the enactment of this Act.

SEC. 106. AUTHORITY TO REDIRECT DELIVERY OF BENEFIT PAYMENTS WHEN A REPRESENTATIVE PAYEE FAILS TO PROVIDE REQUIRED ACCOUNTING.

(a) TITLE II AMENDMENTS.—Section 205(j)(3) of the Social Security Act (42 U.S.C. 405(j)(3)) (as amended by sections 102(a)(1)(B) and 105(a)(2)) is amended—

(1) by redesignating subparagraphs (E) and (F) as subparagraphs (F) and (G), respectively; and

(2) by inserting after subparagraph (D) the following:

''(E) In any case in which the person described in subparagraph (A) or (D) receiving payments on behalf of another fails to submit a report required by the Commissioner of Social Security under subparagraph (A) or (D), the Commissioner may, after furnishing notice to such person and the individual entitled to such payment, require that such person appear in person at a field office of the Social Security Administration serving the area in which the individual resides in order to receive such payments.''.

(b) TITLE VIII AMENDMENTS.—Section 807(h) of such Act (42 U.S.C. 1007(h)) is amended—

(1) by redesignating paragraphs (3) and (4) as paragraphs (4) and (5), respectively; and

(2) by inserting after paragraph (2) the following:

''(3) AUTHORITY TO REDIRECT DELIVERY OF BENEFIT PAYMENTS WHEN A REPRESENTATIVE PAYEE FAILS TO PROVIDE REQUIRED ACCOUNTING.—In any case in which the person described in paragraph (1) or (2) receiving benefit payments on behalf of a qualified individual fails to submit a report required by the Commissioner of Social Security under paragraph (1) or (2), the Commissioner may, after furnishing notice to such person and the qualified individual, require that such person appear in person at a United States Government facility designated by the Social Security Administration as serving the area in which the qualified individual resides in order to receive such benefit payments.''.

(c) TITLE XVI AMENDMENT.—Section 1631(a)(2)(C) of such Act (42 U.S.C. 1383(a)(2)(C)) is amended by adding at the end the following:

''(v) In any case in which the person described in clause (i) or (iv) receiving payments on behalf of another fails to submit a report required by the Commissioner of Social Security under clause (i) or (iv), the Commissioner may, after furnishing notice to the person and the individual entitled to the payment, require that such person appear in person at a field office of the Social Security Administration serving the area in which the individual resides in order to receive such payments.''.

(d) EFFECTIVE DATE.—The amendments made by this section shall take effect 180 days after the date of the enactment of this Act.

SEC. 107. SURVEY OF USE OF PAYMENTS BY REPRESENTATIVE PAYEES.

(a) IN GENERAL.—Section 1110 of the Social Security Act (42 U.S.C. 1310) is amended by adding at the end the following:

''(c) Notwithstanding subsection (a)(1), of the amount appropriated to carry out that subsection for fiscal year 2004, $17,800,000 of such amount shall be transferred and made available to the Inspector General of the Social Security Administration for purposes of conducting a statistically significant survey to determine how payments made to individuals, organizations, and State or local government agencies that are representative payees for benefits paid under title II or XVI are being managed and used on behalf of the beneficiaries for whom such benefits are paid. Not later than February 1, 2005, the Inspector General of the Social Security Administration shall submit a report on the survey conducted in accordance with this subsection to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate.''.

Subtitle B—Enforcement

SEC. 111. CIVIL MONETARY PENALTY AUTHORITY WITH RESPECT TO WRONGFUL CONVERSIONS BY REPRESENTATIVE PAYEES.

(a) IN GENERAL.—Section 1129(a) of the Social Security Act (42 U.S.C. 1320a–8) is amended by adding at the end the following:

''(3) Any person (including an organization, agency, or other entity) who, having received, while acting in the capacity of a representative payee pursuant to section 205(j), 807, or 1631(a)(2), a payment under title II, VIII, or XVI for the use and benefit of another individual, converts such payment, or any part thereof, to a use that such person knows or should know is other than for the use and benefit of such other individual shall be subject to, in addition to any other penalties that may be prescribed by law, a civil money penalty of not more than $5,000 for each such conversion. Such person shall also be subject to an assessment, in lieu of damages sustained by the United States resulting from the conversion, of not more than twice the amount of any payments so converted.''.

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

TITLE II—PROGRAM PROTECTIONS

SEC. 201. CIVIL MONETARY PENALTY AUTHORITY WITH RESPECT TO WITHHOLDING OF MATERIAL FACTS.

(a) TREATMENT OF WITHHOLDING OF MATERIAL FACTS.—

(1) CIVIL PENALTIES.—Section 1129(a)(1) of the Social Security Act (42 U.S.C. 1320a–8(a)(1)) is amended—

(A) by striking ''who'' in the first sentence and inserting ''who—'';

(B) by striking ''makes'' in the first sentence and all that follows through ''shall be subject to,'' and inserting the following:

''(A) makes, or causes to be made, a statement or representation of a material fact, for use in determining any initial or continuing right to or the amount of monthly insurance benefits under title II or benefits or payments under title VIII or XVI, that the person knows or should know is false or misleading,

''(B) makes such a statement or representation for such use with knowing disregard for the truth, or

''(C) omits from a statement or representation for such use, or otherwise withholds disclosure of, a fact which the person knows or should know is material to the determination of any initial or continuing right to or the amount of monthly insurance benefits under title II or benefits or payments under title VIII or XVI, if the person knows, or should know, that the statement or representation with such omission is false or misleading or that the withholding of such disclosure is misleading,

shall be subject to,'';

(C) by inserting ''or each receipt of such benefits or payments while withholding disclosure of such fact'' after ''each such statement or representation'' in the first sentence;

(D) by inserting ''or because of such withholding of disclosure of a material fact'' after ''because of such statement or representation'' in the second sentence; and

(E) by inserting ''or such a withholding of disclosure'' after ''such a statement or representation'' in the second sentence.

(2) ADMINISTRATIVE PROCEDURE FOR IMPOSING PENALTIES.—Section 1129A(a) of such Act (42 U.S.C. 1320a–8a(a)) is amended—

(A) by striking ''who'' the first place it appears and inserting ''who—''; and

(B) by striking ''makes'' and all that follows through ''shall be subject to,'' and inserting the following:

''(1) makes, or causes to be made, a statement or representation of a material fact, for use in determining any initial or continuing right to or the amount of monthly insurance benefits under title II or benefits or payments under title XVI that the person knows or should know is false or misleading,

''(2) makes such a statement or representation for such use with knowing disregard for the truth, or

''(3) omits from a statement or representation for such use, or otherwise withholds disclosure of, a fact which the person knows or should know is material to the determination of any initial or continuing right to or the amount of monthly insurance benefits under title II or benefits or payments under title XVI, if the person knows, or should know, that the statement or representation with such omission is false or misleading or that the withholding of such disclosure is misleading,

shall be subject to,''.

(b) CLARIFICATION OF TREATMENT OF RECOVERED AMOUNTS.—Section 1129(e)(2)(B) of such Act (42 U.S.C. 1320a–8(e)(2)(B)) is amended by striking ''In the case of amounts recovered arising out of a determination relating to title VIII or XVI,'' and inserting ''In the case of any other amounts recovered under this section,''.

(c) CONFORMING AMENDMENTS.—

(1) Section 1129(b)(3)(A) of such Act (42 U.S.C. 1320a–8(b)(3)(A)) is amended by striking ''charging fraud or false statements''.

(2) Section 1129(c)(1) of such Act (42 U.S.C. 1320a–8(c)(1)) is amended by striking ''and representations'' and inserting '', representations, or actions''.

(3) Section 1129(e)(1)(A) of such Act (42 U.S.C. 1320a–8(e)(1)(A)) is amended by striking ''statement or representation referred to in subsection (a) was made'' and inserting ''violation occurred''.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to violations committed after the date on which the Commissioner of Social Security implements the centralized computer file described in section 202.

SEC. 202. ISSUANCE BY COMMISSIONER OF SOCIAL SECURITY OF RECEIPTS TO ACKNOWLEDGE SUBMISSION OF REPORTS OF CHANGES IN WORK OR EARNINGS STATUS OF DISABLED BENEFICIARIES.

Effective as soon as possible, but not later than 1 year after the date of the enactment of this Act, until such time as the Commissioner of Social Security implements a centralized computer file recording the date of the submission of information by a disabled beneficiary (or representative) regarding a change in the beneficiary's work or earnings status, the Commissioner shall issue a receipt to the disabled beneficiary (or representative) each time he or she submits documentation, or otherwise reports to the Commissioner, on a change in such status.

SEC. 203. DENIAL OF TITLE II BENEFITS TO PERSONS FLEEING PROSECUTION, CUSTODY, OR CONFINEMENT, AND TO PERSONS VIOLATING PROBATION OR PAROLE.

(a) IN GENERAL.—Section 202(x) of the Social Security Act (42 U.S.C. 402(x)) is amended—

(1) in the heading, by striking ''Prisoners'' and all that follows and inserting the following: ''Prisoners, Certain Other Inmates of Publicly Funded Institutions, Fugitives, Probationers, and Parolees'';

(2) in paragraph (1)(A)(ii)(IV), by striking ''or'' at the end;

(3) in paragraph (1)(A)(iii), by striking the period at the end and inserting a comma;

(4) by inserting after paragraph (1)(A)(iii) the following:

''(iv) is fleeing to avoid prosecution, or custody or confinement after conviction, under the laws of the place from which the person flees, for a crime, or an attempt to commit a crime, which is a felony under the laws of the place from which the person flees, or, in jurisdictions that do not define crimes as felonies, is punishable by death or imprisonment for a term exceeding 1 year regardless of the actual sentence imposed, and a Federal, State, or local law enforcement agency has notified the Commissioner that such agency intends to pursue the individual by seeking arrest, extradition, or prosecution, or

''(v) is violating a condition of probation or parole imposed under Federal or State law, and a Federal, State, or local law enforcement agency has notified the Commissioner that such agency intends to seek revocation of the individual's probation or parole.

In the case of an individual from whom such monthly benefits have been withheld pursuant to clause (iv) or (v), the Commissioner of Social Security may, for good cause shown, pay such withheld benefits to the individual.''; and

(5) in paragraph (3), by adding at the end the following:

''(C) Notwithstanding the provisions of section 552a of title 5, United States Code, or any other provision of Federal or State law (other than section 6103 of the Internal Revenue Code of 1986 and section 1106(c) of this Act), the Commissioner shall furnish any Federal, State, or local law enforcement officer, upon the written request of the officer, with the current address, Social Security number, and photograph (if applicable) of any beneficiary under this title, if the officer furnishes the Commissioner with the name of the beneficiary, and other identifying information as reasonably required by the Commissioner to establish the unique identity of the beneficiary, and notifies the Commissioner that—

''(i) the beneficiary is described in clause (iv) or (v) of paragraph (1)(A);

''(ii) the Commissioner has information with respect to the beneficiary that is necessary for the officer to conduct the officer's official duties; and

''(iii) the location or apprehension of the beneficiary is within the officer's official duties.''.

(b) CONFORMING AMENDMENTS TO TITLE XVI.—Section 1611(e) of the Social Security Act (42 U.S.C. 1382(e)) is amended—

(1) in paragraph (4)—

(A) in subparagraph (A), by striking ''or which, in the case of the State of New Jersey, is a high misdemeanor under the laws of such State'' and inserting ''or, in jurisdictions that do not define crimes as felonies, is punishable by death or imprisonment for a term exceeding 1 year regardless of the actual sentence imposed, and a Federal, State, or local law enforcement agency has notified the Commissioner of Social Security that the agency intends to pursue the person by seeking arrest, extradition, or prosecution'';

(B) in subparagraph (B), by inserting ''and a Federal, State, or local law enforcement agency has notified the Commissioner of Social Security that the agency intends to seek revocation of the person's probation or parole'' after ''law''; and

(C) by adding at the end the following sentence after and below subparagraph (B):

''In the case of an individual whose eligibility for a month or months has been suspended pursuant to subparagraph (A) or (B), the Commissioner of Social Security may, for good cause shown, restore such individual's eligibility for all such months.''; and

(2) in paragraph (5), by striking subparagraphs (A) and (B) and inserting the following:

''(A) the recipient is described in subparagraph (A) or (B) of paragraph (4);

''(B) the Commissioner has information with respect to the recipient that is necessary for the officer to conduct the officer's official duties; and

''(C) the location or apprehension of the recipient is within the officer's official duties.''.

(c) CONFORMING AMENDMENT.—Section 804(a)(2) of the Social Security Act (42 U.S.C. 1004(a)(2)) is amended by striking ''or which, in the case of the State of New Jersey, is a high misdemeanor under the laws of such State'' and inserting ''or, in jurisdictions that do not define crimes as felonies, is punishable by death or imprisonment for a term exceeding 1 year regardless of the actual sentence imposed''.

(d) REGULATIONS.—Not later than the first day of the first month that begins on or after the date that is 9 months after the date of the enactment of this Act, the Commissioner of Social Security shall promulgate regulations governing payment by the Commissioner, for good cause shown, of withheld benefits pursuant to the last sentences of sections 202(x)(1)(A) and 1611(e)(4) of the Social Security Act (as amended by subsections (a) and (b), respectively).

(e) EFFECTIVE DATE.—The amendments made by subsection (a) shall take effect on the first day of the first month that begins on or after the date that is 9 months after the date of the enactment of this Act.

SEC. 204. REQUIREMENTS RELATING TO OFFERS TO PROVIDE FOR A FEE A PRODUCT OR SERVICE AVAILABLE WITHOUT CHARGE FROM THE SOCIAL SECURITY ADMINISTRATION.

(a) IN GENERAL.—Section 1140 of the Social Security Act (42 U.S.C. 1320b–10) is amended—

(1) in subsection (a), by adding at the end the following:

''(4)(A) No person shall offer, for a fee, to assist an individual to obtain a product or service that the person knows or should know is provided free of charge by the Social Security Administration unless, at the time the offer is made, the person provides to the individual to whom the offer is tendered a notice that—

''(i) explains that the product or service is available free of charge from the Social Security Administration, and

''(ii) complies with standards prescribed by the Commissioner of Social Security respecting the content of such notice and its placement, visibility, and legibility.

''(B) Subparagraph (A) shall not apply to any offer—

''(i) to serve as a claimant representative in connection with a claim arising under title II, title VIII, or title XVI; or

''(ii) to prepare, or assist in the preparation of, an individual's plan for achieving self-support under title XVI.''; and

(2) in the heading, by striking ''PROHIBITION OF MISUSE OF SYMBOLS, EMBLEMS, OR NAMES IN REFERENCE'' and inserting ''PROHIBITIONS RELATING TO REFERENCES''.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to offers of assistance made after the sixth month ending after the Commissioner of Social Security promulgates final regulations prescribing the standards applicable to the notice required to be provided in connection with such offer. The Commissioner shall promulgate such final regulations within 1 year after the date of the enactment of this Act.

SEC. 205. REFUSAL TO RECOGNIZE CERTAIN INDIVIDUALS AS CLAIMANT REPRESENTATIVES.

Section 206(a)(1) of the Social Security Act (42 U.S.C. 406(a)(1)) is amended by inserting after the second sentence the following: ''Notwithstanding the preceding sentences, the Commissioner, after due notice and opportunity for hearing, (A) may refuse to recognize as a representative, and may disqualify a representative already recognized, any attorney who has been disbarred or suspended from any court or bar to which he or she was previously admitted to practice or who has been disqualified from participating in or appearing before any Federal program or agency, and (B) may refuse to recognize, and may disqualify, as a non-attorney representative any attorney who has been disbarred or suspended from any court or bar to which he or she was previously admitted to practice. A representative who has been disqualified or suspended pursuant to this section from appearing before the Social Security Administration as a result of collecting or receiving a fee in excess of the amount authorized shall be barred from appearing before the Social Security Administration as a representative until full restitution is made to the claimant and, thereafter, may be considered for reinstatement only under such rules as the Commissioner may prescribe.''.

SEC. 206. CRIMINAL PENALTY FOR CORRUPT OR FORCIBLE INTERFERENCE WITH ADMINISTRATION OF SOCIAL SECURITY ACT.

Part A of title XI of the Social Security Act (42 U.S.C. 1301 et seq.) is amended by inserting after section 1129A the following:

''ATTEMPTS TO INTERFERE WITH ADMINISTRATION OF SOCIAL SECURITY ACT

''SEC. 1129B. Whoever corruptly or by force or threats of force (including any threatening letter or communication) attempts to intimidate or impede any officer, employee, or contractor of the Social Security Administration (including any State employee of a disability determination service or any other individual designated by the Commissioner of Social Security) acting in an official capacity to carry out a duty under this Act, or in any other way corruptly or by force or threats of force (including any threatening letter or communication) obstructs or impedes, or attempts to obstruct or impede, the due administration of this Act, shall be guilty of a felony and upon conviction thereof shall be fined not more than $5,000, imprisoned not more than 3 years, or both, except that if the offense is committed only by threats of force, the person shall be guilty of a felony and upon conviction thereof shall be fined not more than $3,000, imprisoned not more than 1 year, or both. In this subsection, the term 'threats of force' means threats of harm to the officer or employee of the United States or to a contractor of the Social Security Administration, or to a member of the family of such an officer or employee or contractor.''.

SEC. 207. USE OF SYMBOLS, EMBLEMS, OR NAMES IN REFERENCE TO SOCIAL SECURITY OR MEDICARE.

(a) IN GENERAL.—Section 1140(a)(1) of the Social Security Act (42 U.S.C. 1320b–10(a)(1)) is amended—

(1) in subparagraph (A), by inserting ''Centers for Medicare & Medicaid Services','' after ''Health Care Financing Administration','', by striking ''or 'Medicaid','' and inserting ''Medicaid', 'Death Benefits Update', 'Federal Benefit Information', 'Funeral Expenses', or 'Final Supplemental Plan','' and by inserting ''CMS','' after ''HCFA','';

(2) in subparagraph (B), by inserting ''Centers for Medicare & Medicaid Services,'' after ''Health Care Financing Administration,'' each place it appears; and

(3) in the matter following subparagraph (B), by striking ''the Health Care Financing Administration,'' each place it appears and inserting ''the Centers for Medicare & Medicaid Services,''.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to items sent after 180 days after the date of the enactment of this Act.

SEC. 208. DISQUALIFICATION FROM PAYMENT DURING TRIAL WORK PERIOD UPON CONVICTION OF FRAUDULENT CONCEALMENT OF WORK ACTIVITY.

(a) IN GENERAL.—Section 222(c) of the Social Security Act (42 U.S.C. 422(c)) is amended by adding at the end the following:

''(5) Upon conviction by a Federal court that an individual has fraudulently concealed work activity during a period of trial work from the Commissioner of Social Security by—

''(A) providing false information to the Commissioner of Social Security as to whether the individual had earnings in or for a particular period, or as to the amount thereof;

''(B) receiving disability insurance benefits under this title while engaging in work activity under another identity, including under another social security account number or a number purporting to be a social security account number; or

''(C) taking other actions to conceal work activity with an intent fraudulently to secure payment in a greater amount than is due or when no payment is authorized,

no benefit shall be payable to such individual under this title with respect to a period of disability for any month before such conviction during which the individual rendered services during the period of trial work with respect to which the fraudulently concealed work activity occurred, and amounts otherwise due under this title as restitution, penalties, assessments, fines, or other repayments shall in all cases be in addition to any amounts for which such individual is liable as overpayments by reason of such concealment.''.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply with respect to work activity performed after the date of the enactment of this Act.

SEC. 209. AUTHORITY FOR JUDICIAL ORDERS OF RESTITUTION.

(a) AMENDMENTS TO TITLE II.—Section 208 of the Social Security Act (42 U.S.C. 408) is amended—

(1) by redesignating subsections (b), (c), and (d) as subsections (c), (d), and (e), respectively; and

(2) by inserting after subsection (a) the following:

''(b) Any Federal court, when sentencing a defendant convicted of an offense under subsection (a) that results in the Commissioner of Social Security making a benefit payment (or an increase in such a payment) that should not have been made, shall consider the Commissioner of Social Security a victim of the crime.''.

(b) AMENDMENTS TO TITLE VIII.—Section 807(i) of such Act (42 U.S.C. 1007(i)) is amended—

(1) by striking ''(i) RESTITUTION.—In any case where'' and inserting the following:

''(i) RESTITUTION.—

''(1) IN GENERAL.—In any case where''; and

(2) by adding at the end the following:

''(2) SSA TREATED AS A VICTIM.—Any Federal court, when sentencing a defendant convicted of an offense that results in the Commissioner of Social Security making a benefit payment (or an increase in such a payment) that should not have been made, shall consider the Commissioner of Social Security a victim of the crime.''.

(c) AMENDMENTS TO TITLE XVI.—Section 1632 of such Act (42 U.S.C. 1383a) is amended—

(1) by redesignating subsection (b) as subsection (c); and

(2) by inserting after subsection (a) the following:

''(b) Any Federal court, when sentencing a defendant convicted of an offense under subsection (a) that results in the Commissioner of Social Security making a benefit payment (or an increase in such a payment) that should not have been made, shall consider the Commissioner of Social Security a victim of the crime.''.

(d) SPECIAL ACCOUNT FOR RECEIPT OF RESTITUTION PAYMENTS.—Section 704(b) of such Act (42 U.S.C. 904(b)) is amended by adding at the end the following:

''(3)(A) Except as provided in subparagraph (B), amounts received by the Social Security Administration pursuant to an order of restitution under section 208(b), 807(i), or 1632(b) shall be credited to a special fund established in the Treasury of the United States for amounts so received or recovered. The amounts so credited, to the extent and in the amounts provided in advance in appropriations Acts, shall be available to defray expenses incurred in carrying out titles II, VIII, and XVI.

''(B) Subparagraph (A) shall not apply with respect to amounts received in connection with misuse by a representative payee (within the meaning of sections 205(j), 807, and 1631(a)(2)) of funds paid as benefits under title II, VIII, or XVI. Such amounts received in connection with misuse of funds paid as benefits under title II shall be transferred to the Managing Trustee of the Federal Old-Age and Survivors Insurance Trust Fund or the Federal Disability Insurance Trust Fund, as determined appropriate by the Commissioner of Social Security, and such amounts shall be deposited by the Managing Trustee into such Trust Fund. All other such amounts shall be deposited by the Commissioner into the general fund of the Treasury as miscellaneous receipts.''.

(e) EFFECTIVE DATE.—The amendments made by subsections (a), (b), and (c) shall apply with respect to violations occurring on or after the date of the enactment of this Act.

SEC. 210. INFORMATION FOR ADMINISTRATION OF PROVISIONS RELATED TO NONCOVERED EMPLOYMENT.

(a) COLLECTION.—Paragraph (2) of section 6047(d) of the Internal Revenue Code of 1986 (relating to reports by employers, plan administrators, etc.) is amended by adding at the end the following new sentence: ''In the case of any employer deferred compensation plan (as defined in section 3405(e)(5)) of a State, a political subdivision thereof, or any agency or instrumentality of either, the Secretary shall in such forms or regulations require the identification of any designated distribution (as so defined) if paid to any participant or beneficiary of such plan based in whole or in part upon an individual's earnings for service in the employ of any such governmental entity which did not constitute employment (as defined in section 3121(b)).''.

(b) DISCLOSURE.—Section 6103(l)(1) of the Internal Revenue Code of 1986 (relating to disclosure of certain returns and return information to Social Security Administration and Railroad Retirement Board) is amended—

(1) in subparagraph (B), by striking ''and''; and

(2) in subparagraph (C), by striking the period and inserting ''; and''; and

(3) by adding at the end the following:

''(D) any designated distribution described in the second sentence of section 6047(d)(2) to the Social Security Administration for purposes of its administration of the Social Security Act.''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to distributions made after December 31, 2003.

SEC. 211. AUTHORITY FOR CROSS-PROGRAM RECOVERY OF BENEFIT OVERPAYMENTS.

(a) IN GENERAL.—Section 1147 of the Social Security Act (42 U.S.C. 1320b–17) is amended to read as follows:

''CROSS-PROGRAM RECOVERY OF OVERPAYMENTS FROM BENEFITS

''(a) IN GENERAL.—Subject to subsection (b), whenever the Commissioner of Social Security determines that more than the correct amount of any payment has been made to a person under a program described in subsection (e), the Commissioner of Social Security may recover the amount incorrectly paid by decreasing any amount which is payable to such person under any other program specified in that subsection.

''(b) LIMITATION APPLICABLE TO CURRENT BENEFITS.—

''(1) IN GENERAL.—In carrying out subsection (a), the Commissioner of Social Security may not decrease the monthly amount payable to an individual under a program described in subsection (e) that is paid when regularly due—

''(A) in the case of benefits under title II or VIII, by more than 10 percent of the amount of the benefit payable to the person for that month under such title; and

''(B) in the case of benefits under title XVI, by an amount greater than the lesser of—

''(i) the amount of the benefit payable to the person for that month; or

''(ii) an amount equal to 10 percent of the person's income for that month (including such monthly benefit but excluding payments under title II when recovery is also made from title II payments and excluding income excluded pursuant to section 1612(b)).

''(2) EXCEPTION.—Paragraph (1) shall not apply if—

''(A) the person or the spouse of the person was involved in willful misrepresentation or concealment of material information in connection with the amount incorrectly paid; or

''(B) the person so requests.

''(c) NO EFFECT ON ELIGIBILITY OR BENEFIT AMOUNT UNDER TITLE VIII OR XVI.—In any case in which the Commissioner of Social Security takes action in accordance with subsection (a) to recover an amount incorrectly paid to any person, neither that person, nor (with respect to the program described in subsection (e)(3)) any individual whose eligibility for benefits under such program or whose amount of such benefits, is determined by considering any part of that person's income, shall, as a result of such action—

''(1) become eligible for benefits under the program described in paragraph (2) or (3) of subsection (e); or

''(2) if such person or individual is otherwise so eligible, become eligible for increased benefits under such program.

''(d) INAPPLICABILITY OF PROHIBITION AGAINST ASSESSMENT AND LEGAL PROCESS.—Section 207 shall not apply to actions taken under the provisions of this section to decrease amounts payable under titles II and XVI.

''(e) PROGRAMS DESCRIBED.—The programs described in this subsection are the following:

''(1) The old-age, survivors, and disability insurance benefits program under title II.

''(2) The special benefits for certain World War II veterans program under title VIII.

''(3) The supplemental security income benefits program under title XVI (including, for purposes of this section, State supplementary payments paid by the Commissioner pursuant to an agreement under section 1616(a) of this Act or section 212(b) of Public Law 93–66).''.

(b) CONFORMING AMENDMENTS.—

(1) Section 204(g) of the Social Security Act (42 U.S.C. 404(g)) is amended to read as follows:

''(g) For provisions relating to the cross-program recovery of overpayments made under programs administered by the Commissioner of Social Security, see section 1147.''.

(2) Section 808 of the Social Security Act (42 U.S.C. 1008) is amended—

(A) in subsection (a)(1)—

(i) by striking subparagraph (B);

(ii) in the matter preceding subparagraph (A), by striking ''any payment'' and all that follows through ''under this title'' and inserting ''any payment under this title''; and

(iii) by striking ''; or'' and inserting a period;

(B) by striking subsection (b) and redesignating subsections (c), (d), and (e) as subsections (b), (c), and (d), respectively; and

(C) by adding at the end the following:

''(e) CROSS-PROGRAM RECOVERY OF OVERPAYMENTS.—For provisions relating to the cross-program recovery of overpayments made under programs administered by the Commissioner of Social Security, see section 1147.''.

(3) Section 1147A of the Social Security Act (42 U.S.C. 1320b–18) is repealed.

(4) Section 1631(b) of the Social Security Act (42 U.S.C. 1383(b)) is amended—

(A) in paragraph (1)(B)—

(i) by striking ''excluding any other'' and inserting ''excluding payments under title II when recovery is made from title II payments pursuant to section 1147 and excluding''; and

(ii) by striking ''50 percent of''; and

(B) by striking paragraph (6) and inserting the following:

''(6) For provisions relating to the cross-program recovery of overpayments made under programs administered by the Commissioner of Social Security, see section 1147.''.

(c) EFFECTIVE DATE.—The amendments and repeal made by this section shall take effect on the date of enactment of this Act, and shall be effective with respect to overpayments under titles II, VIII, and XVI of the Social Security Act that are outstanding on or after such date.

SEC. 212. PROHIBITION ON PAYMENT OF TITLE II BENEFITS TO PERSONS NOT AUTHORIZED TO WORK IN THE UNITED STATES.

(a) FULLY INSURED AND CURRENTLY INSURED INDIVIDUALS.—Section 214 (42 U.S.C. 414) is amended—

(1) in subsection (a), by inserting before the period at the end the following: '', and who satisfies the criterion specified in subsection (c)'';

(2) in subsection (b), by inserting before the period at the end the following: '', and who satisfies the criterion specified in subsection (c)''; and

(3) by adding at the end the following:

''(c) For purposes of subsections (a) and (b), the criterion specified in this subsection is that the individual, if not a United States citizen or national, has been assigned a social security account number that was, at the time of assignment, or at any later time, consistent with the requirements of subclause (I) or (III) of section 205(c)(2)(B)(i).''.

(b) DISABILITY BENEFITS.—Section 223(a)(1) of the Social Security Act (42 U.S.C. 423(a)(1)) is amended—

(1) by redesignating subparagraphs (C) and (D) as subparagraphs (D) and (E), respectively; and

(2) by inserting after subparagraph (B), the following:

''(C) if not a United States citizen or national, has been assigned a social security account number that was, at the time of assignment, or at any later time, consistent with the requirements of subclause (I) or (III) of section 205(c)(2)(B)(i),''.

(c) EFFECTIVE DATE.—The amendments made by this section apply to benefit applications filed on or after January 1, 2004.

TITLE III—ATTORNEY REPRESENTATIVE FEE PAYMENT SYSTEM IMPROVEMENTS

SEC. 301. CAP ON ATTORNEY ASSESSMENTS.

(a) IN GENERAL.—Section 206(d)(2)(A) of the Social Security Act (42 U.S.C. 406(d)(2)(A)) is amended—

(1) by inserting '', except that the maximum amount of the assessment may not exceed the greater of $75 or the adjusted amount as provided pursuant to the following two sentences'' after ''subparagraph (B)''; and

(2) by adding at the end the following: ''In the case of any calendar year beginning after the amendments made by section 301 of the Social Security Protection Act of 2003 take effect, the dollar amount specified in the preceding sentence (including a previously adjusted amount) shall be adjusted annually under the procedures used to adjust benefit amounts under section 215(i)(2)(A)(ii), except such adjustment shall be based on the higher of $75 or the previously adjusted amount that would have been in effect for December of the preceding year, but for the rounding of such amount pursuant to the following sentence. Any amount so adjusted that is not a multiple of $1 shall be rounded to the next lowest multiple of $1, but in no case less than $75.''.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to fees for representation of claimants which are first required to be certified or paid under section 206 of the Social Security Act on or after the first day of the first month that begins after 180 days after the date of the enactment of this Act.

SEC. 302. GAO STUDY REGARDING FEE PAYMENT PROCESS FOR CLAIMANT REPRESENTATIVES.

(a) STUDY.—

(1) IN GENERAL.—The Comptroller General of the United States shall study and evaluate the appointment and payment of claimant representatives under titles II and XVI of the Social Security Act (42 U.S.C. 401 et seq., 1381 et seq.).

(2) CONSULTATION REQUIRED.—The Comptroller General shall consult with beneficiaries under title II of such Act, beneficiaries under title XVI of such Act, claimant representatives of beneficiaries under such titles, and other interested parties, in conducting the study and evaluation required under paragraph (1).

(b) REPORT.—Not later than 2 years after the date of enactment of this Act, the Comptroller General shall submit to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate a report that includes the following:

(1) A survey of the relevant characteristics of claimant representatives that provides statistically significant results for characteristics which include (but are not limited to)—

(A) qualifications and experience;

(B) the type of employment of such representatives, such as with an advocacy group, State or local government, or insurance or other company;

(C) geographical distribution between urban and rural areas;

(D) the nature of claimants' cases, such as whether the cases are for disability insurance benefits only, supplemental security income benefits only, or concurrent benefits;

(E) the relationship of such representatives to claimants, such as whether the representative is a friend, family member, or client of the claimant; and

(F) the amount of compensation (if any) paid to the representatives and the method of payment of such compensation.

(2) An assessment of the quality and effectiveness of the services provided by claimant representatives, including a comparison of claimant satisfaction or complaints and benefit outcomes, adjusted for differences in representatives' caseload, claimants' diagnostic group, level of decision, and other relevant factors.

(3) An assessment of the costs and benefits of the appointment and payment of representatives with respect to claimant satisfaction or complaints, benefit outcomes, and program administration.

(4) An assessment of the potential results, including the effect on claimants and program administration, of extending to title XVI of the Social Security Act the fee withholding procedures which apply under title II of that Act and of allowing non-attorney representatives to be subject to any fee withholding procedures applicable under title II and XVI of such Act, and whether the rules and procedures employed by the Commissioner of Social Security to evaluate the qualifications and performance of claimant representatives should be revised prior to any extensions of fee withholding.

TITLE IV—MISCELLANEOUS AND TECHNICAL AMENDMENTS

Subtitle A—Amendments Relating to the Ticket to Work and Work Incentives Improvement Act of 1999

SEC. 401. ELIMINATION OF DEMONSTRATION AUTHORITY SUNSET DATE.

Section 234(d)(2) of the Social Security Act (42 U.S.C. 434(d)(2)) is amended—

(1) in the paragraph heading, by striking ''TERMINATION AND FINAL'' and inserting ''FINAL''; and

(2) by striking the first sentence.

SEC. 402. EXPANSION OF WAIVER AUTHORITY AVAILABLE IN CONNECTION WITH DEMONSTRATION PROJECTS PROVIDING FOR REDUCTIONS IN DISABILITY INSURANCE BENEFITS BASED ON EARNINGS.

Section 302(c) of the Ticket to Work and Work Incentives Improvement Act of 1999 (42 U.S.C. 434 note) is amended by striking ''(42 U.S.C. 401 et seq.),'' and inserting ''(42 U.S.C. 401 et seq.) and the requirements of section 1148 of such Act (42 U.S.C. 1320b–19) as they relate to the program established under title II of such Act,''.

SEC. 403. FUNDING OF DEMONSTRATION PROJECTS PROVIDING FOR REDUCTIONS IN DISABILITY INSURANCE BENEFITS BASED ON EARNINGS.

Section 302(f) of the Ticket to Work and Work Incentives Improvement Act of 1999 (42 U.S.C. 434 note) is amended to read as follows:

''(f) EXPENDITURES.—Administrative expenses for demonstration projects under this section shall be paid from funds available for the administration of title II or XVIII of the Social Security Act, as appropriate. Benefits payable to or on behalf of individuals by reason of participation in projects under this section shall be made from the Federal Disability Insurance Trust Fund and the Federal Old-Age and Survivors Insurance Trust Fund, as determined appropriate by the Commissioner of Social Security, and from the Federal Hospital Insurance Trust Fund and the Federal Supplementary Medical Insurance Trust Fund, as determined appropriate by the Secretary of Health and Human Services, from funds available for benefits under such title II or XVIII.''.

SEC. 404. AVAILABILITY OF FEDERAL AND STATE WORK INCENTIVE SERVICES TO ADDITIONAL INDIVIDUALS.

(a) FEDERAL WORK INCENTIVES OUTREACH PROGRAM.—

(1) IN GENERAL.—Section 1149(c)(2) of the Social Security Act (42 U.S.C. 1320b–20(c)(2)) is amended to read as follows:

''(2) DISABLED BENEFICIARY.—The term 'disabled beneficiary' means an individual—

''(A) who is a disabled beneficiary as defined in section 1148(k)(2) of this Act;

''(B) who is receiving a cash payment described in section 1616(a) of this Act or a supplementary payment described in section 212(a)(3) of Public Law 93–66 (without regard to whether such payment is paid by the Commissioner pursuant to an agreement under section 1616(a) of

this Act or under section 212(b) of Public Law 93–66);

''(C) who, pursuant to section 1619(b) of this Act, is considered to be receiving benefits under title XVI of this Act; or

''(D) who is entitled to benefits under part A of title XVIII of this Act by reason of the penultimate sentence of section 226(b) of this Act.''.

(2) EFFECTIVE DATE.—The amendment made by this subsection shall apply with respect to grants, cooperative agreements, or contracts entered into on or after the date of the enactment of this Act.

(b) STATE GRANTS FOR WORK INCENTIVES ASSISTANCE.—

(1) DEFINITION OF DISABLED BENEFICIARY.—Section 1150(g)(2) of such Act (42 U.S.C. 1320b–21(g)(2)) is amended to read as follows:

''(2) DISABLED BENEFICIARY.—The term 'disabled beneficiary' means an individual—

''(A) who is a disabled beneficiary as defined in section 1148(k)(2) of this Act;

''(B) who is receiving a cash payment described in section 1616(a) of this Act or a supplementary payment described in section 212(a)(3) of Public Law 93–66 (without regard to whether such payment is paid by the Commissioner pursuant to an agreement under section 1616(a) of this Act or under section 212(b) of Public Law 93–66);

''(C) who, pursuant to section 1619(b) of this Act, is considered to be receiving benefits under title XVI of this Act; or

''(D) who is entitled to benefits under part A of title XVIII of this Act by reason of the penultimate sentence of section 226(b) of this Act.''.

(2) ADVOCACY OR OTHER SERVICES NEEDED TO MAINTAIN GAINFUL EMPLOYMENT.—Section 1150(b)(2) of such Act (42 U.S.C. 1320b–21(b)(2)) is amended by striking ''secure or regain'' and inserting ''secure, maintain, or regain''.

(3) EFFECTIVE DATE.—The amendments made by this subsection shall apply with respect to payments provided after the date of the enactment of this Act.

SEC. 405. TECHNICAL AMENDMENT CLARIFYING TREATMENT FOR CERTAIN PURPOSES OF INDIVIDUAL WORK PLANS UNDER THE TICKET TO WORK AND SELF-SUFFICIENCY PROGRAM.

(a) IN GENERAL.—Section 1148(g)(1) of the Social Security Act (42 U.S.C. 1320b–19(g)(1)) is amended by adding at the end, after and below subparagraph (E), the following:

''An individual work plan established pursuant to this subsection shall be treated, for purposes of section 51(d)(6)(B)(i) of the Internal Revenue Code of 1986, as an individualized written plan for employment under a State plan for vocational rehabilitation services approved under the Rehabilitation Act of 1973.''.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect as if included in section 505 of the Ticket to Work and Work Incentives Improvement Act of 1999 (Public Law 106–170; 113 Stat. 1921).

SEC. 406. GAO STUDY REGARDING THE TICKET TO WORK AND SELF-SUFFICIENCY PROGRAM.

(a) GAO REPORT.—Not later than 12 months after the date of enactment of this Act, the Comptroller General of the United States shall submit a report to Congress regarding the Ticket to Work and Self-Sufficiency Program established under section 1148 of the Social Security Act (42 U.S.C. 1320b–19) that—

(1) examines the annual and interim reports issued by States, the Ticket to Work and Work Incentives Advisory Panel established under section 101(f) of the Ticket to Work and Work Incentives Improvement Act of 1999 (42 U.S.C. 1320b–19 note), and the Commissioner of Social Security regarding such program;

(2) assesses the effectiveness of the activities carried out under such program; and

(3) recommends such legislative or administrative changes as the Comptroller General determines are appropriate to improve the effectiveness of such program.

Subtitle B—Miscellaneous Amendments

SEC. 411. ELIMINATION OF TRANSCRIPT REQUIREMENT IN REMAND CASES FULLY FAVORABLE TO THE CLAIMANT.

(a) IN GENERAL.—Section 205(g) of the Social Security Act (42 U.S.C. 405(g)) is amended in the sixth sentence by striking ''and a transcript'' and inserting ''and, in any case in which the Commissioner has not made a decision fully favorable to the individual, a transcript''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply with respect to final determinations issued (upon remand) on or after the date of the enactment of this Act.

SEC. 412. NONPAYMENT OF BENEFITS UPON REMOVAL FROM THE UNITED STATES.

(a) IN GENERAL.—Section 202(n) of the Social Security Act (42 U.S.C. 402(n)) is amended—

(1) in paragraph (1), by striking ''section 241(a) (other than under paragraph (1)(C) or (1)(E) thereof) of the Immigration and Nationality Act'' and inserting ''section 237(a) of the Immigration and Nationality Act (other than under paragraph (1)(C) of such section) or under section 212(a)(6)(A) of such Act'';

(2) in paragraph (2), by striking ''section 241(a) of the Immigration and Nationality Act (other than under paragraph (1)(C) or (1)(E) thereof)'' and inserting ''section 237(a) of the Immigration and Nationality Act (other than under paragraph (1)(C) of such section) or under section 212(a)(6)(A) of such Act'';

(3) in paragraph (3), by striking ''paragraph (19) of section 241(a) of the Immigration and Nationality Act (relating to persecution of others on account of race, religion, national origin, or political opinion, under the direction of or in association with the Nazi government of Germany or its allies) shall be considered to have been deported under such paragraph (19)'' and inserting ''paragraph (4)(D) of section 241(a) of the Immigration and Nationality Act (relating to participating in Nazi persecutions or genocide) shall be considered to have been deported under such paragraph (4)(D)''; and

(4) in paragraph (3) (as amended by paragraph (3) of this subsection), by striking ''241(a)'' and inserting ''237(a)''.

(b) TECHNICAL CORRECTIONS.—

(1) TERMINOLOGY REGARDING REMOVAL FROM THE UNITED STATES.—Section 202(n) of the Social Security Act (42 U.S.C. 402(n)) (as amended by subsection (a)) is amended further—

(A) by striking ''deportation'' each place it appears and inserting ''removal'';

(B) by striking ''deported'' each place it appears and inserting ''removed''; and

(C) in the heading, by striking ''Deportation'' and inserting ''Removal''.

(2) REFERENCES TO THE SECRETARY OF HOMELAND SECURITY.—Section 202(n) of the Social Security Act (42 U.S.C. 402(n)) (as amended by subsection (a) and paragraph (1)) is amended further by inserting ''or the Secretary of Homeland Security'' after ''the Attorney General'' each place it appears.

(c) EFFECTIVE DATES.—

(1) IN GENERAL.—The amendment made by—

(A) subsection (a)(1) shall apply to individuals with respect to whom the Commissioner of Social Security receives a removal notice after the date of the enactment of this Act;

(B) subsection (a)(2) shall apply with respect to notifications of removals received by the Commissioner of Social Security after the date of enactment of this Act; and

(C) subsection (a)(3) shall be effective as if enacted on March 1, 1991.

(2) SUBSEQUENT CORRECTION OF CROSS-REFERENCE AND TERMINOLOGY.—The amendments made by subsections (a)(4) and (b)(1) shall be effective as if enacted on April 1, 1997.

(3) REFERENCES TO THE SECRETARY OF HOMELAND SECURITY.—The amendment made by subsection (b)(2) shall be effective as if enacted on March 1, 2003.

SEC. 413. REINSTATEMENT OF CERTAIN REPORTING REQUIREMENTS.

Section 3003(a)(1) of the Federal Reports Elimination and Sunset Act of 1995 (31 U.S.C. 1113 note) shall not apply to any report required to be submitted under any of the following provisions of law:

(1)(A) Section 201(c)(2) of the Social Security Act (42 U.S.C. 401(c)(2)).

(B) Section 1817(b)(2) of the Social Security Act (42 U.S.C. 1395i(b)(2)).

(C) Section 1841(b)(2) of the Social Security Act (42 U.S.C. 1395t(b)(2)).

(2)(A) Section 221(c)(3)(C) of the Social Security Act (42 U.S.C. 421(c)(3)(C)).

(B) Section 221(i)(3) of the Social Security Act (42 U.S.C. 421(i)(3)).

SEC. 414. CLARIFICATION OF DEFINITIONS REGARDING CERTAIN SURVIVOR BENEFITS.

(a) WIDOWS.—Section 216(c) of the Social Security Act (42 U.S.C. 416(c)) is amended—

(1) by redesignating subclauses (A) through (C) of clause (6) as subclauses (i) through (iii), respectively;

(2) by redesignating clauses (1) through (6) as clauses (A) through (F), respectively;

(3) in clause (E) (as redesignated), by inserting ''except as provided in paragraph (2),'' before ''she was married'';

(4) by inserting ''(1)'' after ''(c)''; and

(5) by adding at the end the following:

''(2) The requirements of paragraph (1)(E) in connection with the surviving wife of an individual shall be treated as satisfied if—

''(A) the individual had been married prior to the individual's marriage to the surviving wife,

''(B) the prior wife was institutionalized during the individual's marriage to the prior wife due to mental incompetence or similar incapacity,

''(C) during the period of the prior wife's institutionalization, the individual would have divorced the prior wife and married the surviving wife, but the individual did not do so because such divorce would have been unlawful, by reason of the prior wife's institutionalization, under the laws of the State in which the individual was domiciled at the time (as determined based on evidence satisfactory to the Commissioner of Social Security),

''(D) the prior wife continued to remain institutionalized up to the time of her death, and

''(E) the individual married the surviving wife within 60 days after the prior wife's death.''.

(b) WIDOWERS.—Section 216(g) of such Act (42 U.S.C. 416(g)) is amended—

(1) by redesignating subclauses (A) through (C) of clause (6) as subclauses (i) through (iii), respectively;

(2) by redesignating clauses (1) through (6) as clauses (A) through (F), respectively;

(3) in clause (E) (as redesignated), by inserting ''except as provided in paragraph (2),'' before ''he was married'';

(4) by inserting ''(1)'' after ''(g)''; and

(5) by adding at the end the following:

''(2) The requirements of paragraph (1)(E) in connection with the surviving husband of an individual shall be treated as satisfied if—

''(A) the individual had been married prior to the individual's marriage to the surviving husband,

''(B) the prior husband was institutionalized during the individual's marriage to the prior husband due to mental incompetence or similar incapacity,

''(C) during the period of the prior husband's institutionalization, the individual would have divorced the prior husband and married the surviving husband, but the individual did not do so because such divorce would have been unlawful, by reason of the prior husband's institutionalization, under the laws of the State in which the individual was domiciled at the time (as determined based on evidence satisfactory to the Commissioner of Social Security),

''(D) the prior husband continued to remain institutionalized up to the time of his death, and

''(E) the individual married the surviving husband within 60 days after the prior husband's death.''.

(c) CONFORMING AMENDMENT.—Section 216(k) of such Act (42 U.S.C. 416(k)) is amended by striking ''clause (5) of subsection (c) or clause (5) of subsection (g)'' and inserting ''clause (E) of subsection (c)(1) or clause (E) of subsection (g)(1)''.

(d) EFFECTIVE DATE.—The amendments made by this section shall be effective with respect to applications for benefits under title II of the Social Security Act filed during months ending after the date of the enactment of this Act.

SEC. 415. CLARIFICATION RESPECTING THE FICA AND SECA TAX EXEMPTIONS FOR AN INDIVIDUAL WHOSE EARNINGS ARE SUBJECT TO THE LAWS OF A TOTALIZATION AGREEMENT PARTNER.

Sections 1401(c), 3101(c), and 3111(c) of the Internal Revenue Code of 1986 are each amended by striking ''to taxes or contributions for similar purposes under'' and inserting ''exclusively to the laws applicable to''.

SEC. 416. COVERAGE UNDER DIVIDED RETIREMENT SYSTEM FOR PUBLIC EMPLOYEES.

(a) IN GENERAL.—Section 218(d)(6)(C) of the Social Security Act (42 U.S.C. 418(d)(6)(C)) is amended by striking ''the State of Alaska, California, Connecticut, Florida, Georgia, Illinois, Massachusetts, Minnesota, Nevada, New Jersey, New Mexico, New York, North Dakota, Pennsylvania, Rhode Island, Tennessee, Texas, Vermont, Washington, Wisconsin, or Hawaii'' and inserting ''a State''.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) takes effect on January 1, 2003.

SEC. 417. COMPENSATION FOR THE SOCIAL SECURITY ADVISORY BOARD.

(a) IN GENERAL.—Subsection (f) of section 703 of the Social Security Act (42 U.S.C. 903(f)) is amended to read as follows:

''Compensation, Expenses, and Per Diem

''(f) A member of the Board shall, for each day (including traveltime) during which the member is attending meetings or conferences of the Board or otherwise engaged in the business of the Board, be compensated at the daily rate of basic pay for level IV of the Executive Schedule. While serving on business of the Board away from their homes or regular places of business, members may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5, United States Code, for persons in the Government employed intermittently.''.

(b) EFFECTIVE DATE.—The amendment made by this section shall be effective as of January 1, 2003.

SEC. 418. 60-MONTH PERIOD OF EMPLOYMENT REQUIREMENT FOR GOVERNMENT PENSION OFFSET EXEMPTION.

(a) WIFE'S INSURANCE BENEFITS.—Section 202(b)(4) of the Social Security Act (42 U.S.C. 402(b)(4)) is amended—

(1) in subparagraph (A), by striking ''if, on the last day she was employed by such entity'' and inserting ''if, during any portion of such service''; and

(2) in subparagraph (B)—

(A) in clause (ii), by striking ''Subparagraph (A)(ii)'' and inserting ''Clauses (i) and (ii) of subparagraph (A)''; and

(B) by adding at the end the following:

''(iii) Subparagraph (A)(i) shall not apply with respect to monthly periodic benefits based in whole or in part on service which constituted 'employment' as defined in section 210 pursuant to an agreement executed with the Commissioner of Social Security under section 218, provided that the wife (or divorced wife) was employed in such service—

''(I) on the date of enactment of this clause and such service was continuous throughout the 60-month period ending on the last day the wife (or divorced wife) was employed in the service of the State (or political subdivision thereof, as defined in section 218(b)(2)), or

''(II) in the case of such an agreement that was executed by the Commissioner of Social Security after the date of enactment of this clause, on the date such an agreement was executed by the Commissioner of Social Security and such service was continuous throughout the 60-month period ending on the last day the wife (or divorced wife) was employed in the service of the State (or political subdivision thereof, as so defined).''.

(b) HUSBAND'S INSURANCE BENEFITS.—Section 202(c)(2) of such Act (42 U.S.C. 402(c)(2)) is amended—

(1) in subparagraph (A), by striking ''if, on the last day he was employed by such entity'' and inserting ''if, during any portion of such service''; and

(2) in subparagraph (B)—

(A) in clause (ii), by striking ''Subparagraph (A)(ii)'' and inserting ''Clauses (i) and (ii) of subparagraph (A)''; and

(B) by adding at the end the following:

''(iii) Subparagraph (A)(i) shall not apply with respect to monthly periodic benefits based in whole or in part on service which constituted 'employment' as defined in section 210 pursuant to an agreement executed with the Commissioner of Social Security under section 218, provided that the husband (or divorced husband) was employed in such service—

''(I) on the date of enactment of this clause and such service was continuous throughout the 60-month period ending on the last day the husband (or divorced husband) was employed in the service of the State (or political subdivision thereof, as defined in section 218(b)(2)), or

''(II) in the case of such an agreement that was executed by the Commissioner of Social Security after the date of enactment of this clause, on the date such an agreement was executed by the Commissioner of Social Security and such service was continuous throughout the 60-month period ending on the last day the husband (or divorced husband) was employed in the service of the State (or political subdivision thereof, as so defined).''.

(c) WIDOW'S INSURANCE BENEFITS.—Section 202(e)(7) of such Act (42 U.S.C. 402(e)(7)) is amended—

(1) in subparagraph (A), by striking ''if, on the last day she was employed by such entity'' and inserting ''if, during any portion of such service''; and

(2) in subparagraph (B)—

(A) in clause (ii), by striking ''Subparagraph (A)(ii)'' and inserting ''Clauses (i) and (ii) of subparagraph (A)''; and

(B) by adding at the end the following:

''(iii) Subparagraph (A)(i) shall not apply with respect to monthly periodic benefits based in whole or in part on service which constituted 'employment' as defined in section 210 pursuant to an agreement executed with the Commissioner of Social Security under section 218, provided that the widow (or surviving divorced wife) was employed in such service—

''(I) on the date of enactment of this clause and such service was continuous throughout the 60-month period ending on the last day the widow (or surviving divorced wife) was employed in the service of the State (or political subdivision thereof, as defined in section 218(b)(2)), or

''(II) in the case of such an agreement that was executed by the Commissioner of Social Security after the date of enactment of this clause, on the date such an agreement was executed by the Commissioner of Social Security and such service was continuous throughout the 60-month period ending on the last day the widow (or surviving divorced wife) was employed in the service of the State (or political subdivision thereof, as so defined).''.

(d) WIDOWER'S INSURANCE BENEFITS.—Section 202(f)(2) of such Act (42 U.S.C. 402(f)(2)) is amended—

(1) in subparagraph (A), by striking ''if, on the last day he was employed by such entity'' and inserting ''if, during any portion of such service''; and

(2) in subparagraph (B)—

(A) in clause (ii), by striking ''Subparagraph (A)(ii)'' and inserting ''Clauses (i) and (ii) of subparagraph (A)''; and

(B) by adding at the end the following:

''(iii) Subparagraph (A)(i) shall not apply with respect to monthly periodic benefits based in whole or in part on service which constituted 'employment' as defined in section 210 pursuant to an agreement executed with the Commissioner of Social Security under section 218, provided that the widower (or surviving divorced husband) was employed in such service—

''(I) on the date of enactment of this clause and such service was continuous throughout the 60-month period ending on the last day the widower (or surviving divorced husband) was employed in the service of the State (or political subdivision thereof, as defined in section 218(b)(2)), or

''(II) in the case of such an agreement that was executed by the Commissioner of Social Security after the date of enactment of this clause, on the date such an agreement was executed by the Commissioner of Social Security and such service was continuous throughout the 60-month period ending on the last day the widower (or surviving divorced husband) was employed in the service of the State (or political subdivision thereof, as so defined).''.

(e) MOTHER'S AND FATHER'S INSURANCE BENEFITS.—Section 202(g)(4) of the such Act (42 U.S.C. 402(g)(4)) is amended—

(1) in subparagraph (A), by striking ''if, on the last day the individual was employed by such entity'' and inserting ''if, during any portion of such service''; and

(2) in subparagraph (B)—

(A) in clause (ii), by striking ''Subparagraph (A)(ii)'' and inserting ''Clauses (i) and (ii) of subparagraph (A)''; and

(B) by adding at the end the following:

''(iii) Subparagraph (A)(i) shall not apply with respect to monthly periodic benefits based in whole or in part on service which constituted 'employment' as defined in section 210 pursuant to an agreement executed with the Commissioner of Social Security under section 218, provided that the individual was employed in such service—

''(I) on the date of enactment of this clause and such service was continuous throughout the 60-month period ending on the last day the individual was employed in the service of the State (or political subdivision thereof, as defined in section 218(b)(2)), or

''(II) in the case of such an agreement that was executed by the Commissioner of Social Security after the date of enactment of this clause, on the date such an agreement was executed by the Commissioner of Social Security and such service was continuous throughout the 60-month period ending on the last day the individual was employed in the service of the State (or political subdivision thereof, as so defined).''.

(f) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to applications for benefits under title II of the Social Security Act filed on or after the first day of the first month that begins after the date of the enactment of this Act, except that such amendments shall not apply with respect to applications for benefits under title II of the Social Security Act based on earnings while in the service of any State (or political subdivision thereof, as defined in section 218(b)(2) of the Social Security Act)—

(1) if the last day of such service occurs before December 31, 2003, or

(2) in any case in which the last day of such service occurs before June 30, 2004, subject to a contract for such service entered into prior to September 30, 2003.

SEC. 419. POST-1956 MILITARY WAGE CREDITS.

(a) PAYMENT TO THE SOCIAL SECURITY TRUST FUNDS IN SATISFACTION OF OUTSTANDING OBLIGATIONS.—Section 201 of the Social Security Act (42 U.S.C. 401) is amended by adding at the end the following:

''(n) Not later than July 1, 2004, the Secretary of the Treasury shall transfer, from amounts in the general fund of the Treasury that are not otherwise appropriated—

''(1) $624,971,854 to the Federal Old-Age and Survivors Insurance Trust Fund;

''(2) $105,379,671 to the Federal Disability Insurance Trust Fund; and

''(3) $173,306,134 to the Federal Hospital Insurance Trust Fund.

Amounts transferred in accordance with this subsection shall be in satisfaction of certain outstanding obligations for deemed wage credits for 2000 and 2001.''.

(b) CONFORMING AMENDMENTS.—

(1) REPEAL OF AUTHORITY FOR ANNUAL APPROPRIATIONS AND RELATED ADJUSTMENTS TO COMPENSATE THE SOCIAL SECURITY TRUST FUND FOR MILITARY WAGE CREDITS.—Section 229 of the Social Security Act (42 U.S.C. 429) is amended—

(A) by striking ''(a)''; and

(B) by striking subsection (b).

(2) AMENDMENT TO REFLECT THE TERMINATION OF WAGE CREDITS EFFECTIVE AFTER CALENDAR YEAR 2001 BY SECTION 8134 OF PUBLIC LAW 107–117.—Section 229(a)(2) of the Social Security Act (42 U.S.C. 429(a)(2)), as amended by paragraph (1), is amended by inserting ''and before 2002'' after ''1977''.

Subtitle C—Technical Amendments

SEC. 421. TECHNICAL CORRECTION RELATING TO RESPONSIBLE AGENCY HEAD.

Section 1143 of the Social Security Act (42 U.S.C. 1320b–13) is amended—

(1) by striking ''Secretary'' the first place it appears and inserting ''Commissioner of Social Security''; and

(2) by striking ''Secretary'' each subsequent place it appears and inserting ''Commissioner''.

SEC. 422. TECHNICAL CORRECTION RELATING TO RETIREMENT BENEFITS OF MINISTERS.

(a) IN GENERAL.—Section 211(a)(7) of the Social Security Act (42 U.S.C. 411(a)(7)) is amended by inserting '', but shall not include in any such net earnings from self-employment the rental value of any parsonage or any parsonage allowance (whether or not excluded under section 107 of the Internal Revenue Code of 1986) provided after the individual retires, or any other retirement benefit received by such individual from a church plan (as defined in section 414(e) of such Code) after the individual retires'' before the semicolon.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to years beginning before, on, or after December 31, 1994.

SEC. 423. TECHNICAL CORRECTIONS RELATING TO DOMESTIC EMPLOYMENT.

(a) AMENDMENT TO INTERNAL REVENUE CODE.—Section 3121(a)(7)(B) of the Internal Revenue Code of 1986 is amended by striking ''described in subsection (g)(5)'' and inserting ''on a farm operated for profit''.

(b) AMENDMENT TO SOCIAL SECURITY ACT.—Section 209(a)(6)(B) of the Social Security Act (42 U.S.C. 409(a)(6)(B)) is amended by striking ''described in section 210(f)(5)'' and inserting ''on a farm operated for profit''.

(c) CONFORMING AMENDMENT.—Section 3121(g)(5) of such Code and section 210(f)(5) of such Act (42 U.S.C. 410(f)(5)) are amended by striking ''or is domestic service in a private home of the employer''.

SEC. 424. TECHNICAL CORRECTIONS OF OUTDATED REFERENCES.

(a) CORRECTION OF CITATION RESPECTING THE TAX DEDUCTION RELATING TO HEALTH INSURANCE COSTS OF SELF-EMPLOYED INDIVIDUALS.—Section 211(a)(15) of the Social Security Act (42 U.S.C. 411(a)(15)) is amended by striking ''section 162(m)'' and inserting ''section 162(l)''.

(b) ELIMINATION OF REFERENCE TO OBSOLETE 20-DAY AGRICULTURAL WORK TEST.—Section 3102(a) of the Internal Revenue Code of 1986 is amended by striking ''and the employee has not performed agricultural labor for the employer on 20 days or more in the calendar year for cash remuneration computed on a time basis''.

SEC. 425. TECHNICAL CORRECTION RESPECTING SELF-EMPLOYMENT INCOME IN COMMUNITY PROPERTY STATES.

(a) SOCIAL SECURITY ACT AMENDMENT.—Section 211(a)(5)(A) of the Social Security Act (42 U.S.C. 411(a)(5)(A)) is amended by striking ''all of the gross income'' and all that follows and inserting ''the gross income and deductions attributable to such trade or business shall be treated as the gross income and deductions of the spouse carrying on such trade or business or, if such trade or business is jointly operated, treated as the gross income and deductions of each spouse on the basis of their respective distributive share of the gross income and deductions;''.

(b) INTERNAL REVENUE CODE OF 1986 AMENDMENT.—Section 1402(a)(5)(A) of the Internal Revenue Code of 1986 is amended by striking ''all of the gross income'' and all that follows and inserting ''the gross income and deductions attributable to such trade or business shall be treated as the gross income and deductions of the spouse carrying on such trade or business or, if such trade or business is jointly operated, treated as the gross income and deductions of each spouse on the basis of their respective distributive share of the gross income and deductions; and''.

SEC. 426. TECHNICAL AMENDMENTS TO THE RAILROAD RETIREMENT AND SURVIVORS' IMPROVEMENT ACT OF 2001.

(a) QUORUM RULES.—Section 15(j)(7) of the Railroad Retirement Act of 1974 (45 U.S.C. 231n(j)(7)) is amended by striking ''entire Board of Trustees'' and inserting ''Trustees then holding office''.

(b) POWERS OF THE BOARD OF TRUSTEES.—Section 15(j)(4) of the Railroad Retirement Act of 1974 (45 U.S.C. 231n(j)(4)) is amended to read as follows:

''(4) POWERS OF THE BOARD OF TRUSTEES.—The Board of Trustees shall—

''(A) retain independent advisers to assist it in the formulation and adoption of its investment guidelines;

''(B) invest assets of the Trust in a manner consistent with such investment guidelines, either directly or through the retention of independent investment managers;

''(C) adopt bylaws and other rules to govern its operations;

''(D) employ professional staff, and contract with outside advisers, including the Railroad Retirement Board, to provide legal, accounting, investment advisory or management services (compensation for which may be on a fixed contract fee basis or on such other terms as are customary for such services), or other services necessary for the proper administration of the Trust;

''(E) sue and be sued and participate in legal proceedings, have and use a seal, conduct business, carry on operations, and exercise its powers within or without the District of Columbia, form, own, or participate in entities of any kind, enter into contracts and agreements necessary to carry out its business purposes, lend money for such purposes, and deal with property as security for the payment of funds so loaned, and possess and exercise any other powers appropriate to carry out the purposes of the Trust;

''(F) pay administrative expenses of the Trust from the assets of the Trust; and

''(G) transfer money to the disbursing agent or as otherwise provided in section 7(b)(4), to pay benefits payable under this Act from the assets of the Trust.''.

(c) STATE AND LOCAL TAXES.—Section 15(j)(6) of the Railroad Retirement Act of 1974 (45 U.S.C. 231n(j)(6)) is amended to read as follows:

''(6) STATE AND LOCAL TAXES.—The Trust shall be exempt from any income, sales, use, property, or other similar tax or fee imposed or levied by a State, political subdivision, or local taxing authority. The district courts of the United States shall have original jurisdiction over a civil action brought by the Trust to enforce this subsection and may grant equitable or declaratory relief requested by the Trust.''.

(d) FUNDING.—Section 15(j)(8) of the Railroad Retirement Act of 1974 (45 U.S.C. 231n(j)(8)) is repealed.

(e) TRANSFERS.—

(1) Section 15(k) of the Railroad Retirement Act of 1974 (45 U.S.C. 231n(k)) is amended by adding at the end the following: ''At the direction of the Railroad Retirement Board, the National Railroad Retirement Investment Trust shall transfer funds to the Railroad Retirement Account.''.

(2) Section 15A(d)(2) of the Railroad Retirement Act of 1974 (45 U.S.C. 231n–1(d)(2)) is amended—

(A) by inserting ''or the Railroad Retirement Account'' after ''National Railroad Retirement Investment Trust'' the second place it appears;

(B) by inserting ''or the Railroad Retirement Board'' after ''National Railroad Retirement Investment Trust'' the third place it appears;

(C) by inserting ''(either directly or through a commingled account consisting only of such obligations)'' after ''United States'' the first place it appears; and

(D) in the third sentence, by inserting before the period at the end the following: ''or to purchase such additional obligations''.

(3) Paragraph (4)(B)(ii) of section 7(b) of the Railroad Retirement Act of 1974 (45 U.S.C. 231f(b)(4)(B)(ii)) is amended by inserting ''quarterly or at such other times as the Railroad Retirement Board and the Board of Trustees of the National Railroad Retirement Investment Trust may mutually agree'' after ''amounts'' the second place it appears.

(f) CLERICAL AMENDMENTS.—Section 15(j)(5) of the Railroad Retirement Act of 1974 (45 U.S.C. 231n(j)(5)) is amended—

(1) in subparagraph (B), by striking ''trustee's'' each place it appears and inserting ''Trustee's'';

(2) in subparagraph (C), by striking ''trustee'' and ''trustees'' each place it appears and inserting ''Trustee'' and ''Trustees'', respectively; and

(3) in the matter preceding clause (i) of subparagraph (D), by striking ''trustee'' and inserting ''Trustee''.

Subtitle D—Amendments Related to Title XVI

SEC. 430. EXCLUSION FROM INCOME FOR CERTAIN INFREQUENT OR IRREGULAR INCOME AND CERTAIN INTEREST OR DIVIDEND INCOME.

(a) INFREQUENT OR IRREGULAR INCOME.—Section 1612(b)(3) of the Social Security Act (42 U.S.C. 1382a(b)(3)) is amended to read as follows—

''(3) in any calendar quarter, the first—

''(A) $60 of unearned income, and

''(B) $30 of earned income,

of such individual (and such spouse, if any) which, as determined in accordance with criteria prescribed by the Commissioner of Social Security, is received too infrequently or irregularly to be included;''.

(b) INTEREST OR DIVIDEND INCOME.—Section 1612(b) of the Social Security Act (42 U.S.C. 1382a(b)) is amended—

(1) in paragraph (21), by striking ''and'' at the end;

(2) in paragraph (22), by striking the period and inserting ''; and''; and

(3) by adding at the end the following:

''(23) interest or dividend income from resources—

''(A) not excluded under section 1613(a), or

''(B) excluded pursuant to Federal law other than section 1613(a).''.

(c) EFFECTIVE DATE.—The amendments made by this section shall be effective with respect to

benefits payable for months in calendar quarters that begin more than 90 days after the date of the enactment of this Act.

SEC. 431. UNIFORM 9-MONTH RESOURCE EXCLUSION PERIODS.

(a) UNDERPAYMENTS OF BENEFITS.—Section 1613(a)(7) of the Social Security Act (42 U.S.C. 1382b(a)(7)) is amended—

(1) by striking ''6'' and inserting ''9''; and

(2) by striking ''(or to the first 9 months following such month with respect to any amount so received during the period beginning October 1, 1987, and ending September 30, 1989)''.

(b) ADVANCEABLE TAX CREDITS.—Section 1613(a)(11) of the Social Security Act (42 U.S.C. 1382b(a)(11)) is amended to read as follows:

''(11) for the 9-month period beginning after the month in which received—

''(A) notwithstanding section 203 of the Economic Growth and Tax Relief Reconciliation Act of 2001, any refund of Federal income taxes made to such individual (or such spouse) under section 24 of the Internal Revenue Code of 1986 (relating to child tax credit) by reason of subsection (d) thereof; and

''(B) any refund of Federal income taxes made to such individual (or such spouse) by reason of section 32 of the Internal Revenue Code of 1986 (relating to earned income tax credit), and any payment made to such individual (or such spouse) by an employer under section 3507 of such Code (relating to advance payment of earned income credit);''.

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of enactment of this Act, and shall apply to amounts described in paragraph (7) of section 1613(a) of the Social Security Act and refunds of Federal income taxes described in paragraph (11) of such section, that are received by an eligible individual or eligible spouse on or after such date.

SEC. 432. MODIFICATION OF DEDICATED ACCOUNT REQUIREMENTS.

(a) IN GENERAL.—Section 1631(a)(2)(F) of the Social Security Act (42 U.S.C. 1383(a)(2)(F)) is amended—

(1) in clause (ii)(II)—

(A) in item (ff), by striking ''or'' at the end;

(B) by redesignating item (gg) as item (hh);

(C) by inserting after item (ff) the following:

''(gg) reimbursement of expenditures incurred by the representative payee that are for the good of such individual; or''; and

(D) in the matter following item (hh) (as redesignated by subparagraph (B)), by striking ''(gg), is related to the impairment (or combination of impairments)'' and inserting ''(hh), is expended for the good''; and

(2) in clause (iv), by inserting '', including with respect to allowable expenses paid from the account in accordance with clause (ii)(II)'' before the period.

(b) EFFECTIVE DATE.—The amendments made by this section take effect on January 1, 2004, and apply with respect to allowable expenses incurred or accounts established on or after that date.

SEC. 433. ELIMINATION OF CERTAIN RESTRICTIONS ON THE APPLICATION OF THE STUDENT EARNED INCOME EXCLUSION.

(a) IN GENERAL.—Section 1612(b)(1) of the Social Security Act (42 U.S.C. 1382a(b)(1)) is amended by striking ''a child who'' and inserting ''under the age of 22 and''.

(b) EFFECTIVE DATE.—The amendment made by this section shall be effective with respect to benefits payable for months that begin on or after 1 year after the date of enactment of this Act.

SEC. 434. EXCLUSION OF AMERICORPS AND OTHER VOLUNTEER BENEFITS FOR PURPOSES OF DETERMINING SUPPLEMENTAL SECURITY INCOME ELIGIBILITY AND BENEFIT AMOUNTS AND SOCIAL SECURITY DISABILITY INSURANCE ENTITLEMENT.

(a) IN GENERAL.—

(1) SSI.—

(A) INCOME.—Section 1612(b) of the Social Security Act (42 U.S.C. 1382a(b)) (as amended by section 430(a)(2)) is amended—

(i) in paragraph (22), by striking ''and'' at the end;

(ii) in paragraph (23), by striking the period and inserting ''; and''; and

(iii) by adding at the end the following:

''(24) any cash or in-kind benefit conferred upon (or paid on behalf of) an individual serving as a volunteer or participant in a program administered by the Corporation for National and Community Service for service in such program.''.

(B) SUBSTANTIAL GAINFUL ACTIVITY.—Section 1614(a)(3) of the Social Security Act (42 U.S.C. 1382c(a)(3)) is amended by adding at the end the following:

''(K) In determining under subparagraph (A) when services performed or earnings derived from services demonstrate an individual's ability to engage in substantial gainful activity, the Commissioner of Social Security shall disregard services performed as a volunteer or participant in any program administered by the Corporation for National and Community Service, and any earnings derived from such service.''.

(2) SSDI.—Section 223(d)(4) of such Act (42 U.S.C. 423(d)(4)) is amended by adding at the end the following:

''(C) In determining under subparagraph (A) when services performed or earnings derived from services demonstrate an individual's ability to engage in substantial gainful activity, the Commissioner of Social Security shall disregard services performed as a volunteer or participant in any program administered by the Corporation for National and Community Service, and any earnings derived from such service.''.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to benefits payable for months beginning on or after 60 days after the date of enactment of this Act.

SEC. 435. EXCEPTION TO RETROSPECTIVE MONTHLY ACCOUNTING FOR NONRECURRING INCOME.

(a) IN GENERAL.—Section 1611(c) of the Social Security Act (42 U.S.C. 1382(c)) is amended by adding at the end the following:

''(9)(A) Notwithstanding paragraphs (1) and (2), any nonrecurring income which is paid to an individual in the first month of any period of eligibility shall be taken into account in determining the amount of the benefit under this title of such individual (and his eligible spouse, if any) only for that month, and shall not be taken into account in determining the amount of the benefit for any other month.

''(B) For purposes of subparagraph (A), payments to an individual in varying amounts from the same or similar source for the same or similar purpose shall not be considered to be nonrecurring income.''.

(b) DELETION OF OBSOLETE MATERIAL.—Section 1611(c)(2)(B) of the Social Security Act (42 U.S.C. 1382(c)(2)(B)) is amended to read as follows:

''(B) in the case of the first month following a period of ineligibility in which eligibility is restored after the first day of such month, bear the same ratio to the amount of the benefit which would have been payable to such individual if eligibility had been restored on the first day of such month as the number of days in such month including and following the date of restoration of eligibility bears to the total number of days in such month.''.

(c) EFFECTIVE DATE.—The amendments made by this section shall be effective with respect to benefits payable for months that begin on or after 1 year after the date of enactment of this Act.

SEC. 436. REMOVAL OF RESTRICTION ON PAYMENT OF BENEFITS TO CHILDREN WHO ARE BORN OR WHO BECOME BLIND OR DISABLED AFTER THEIR MILITARY PARENTS ARE STATIONED OVERSEAS.

(a) IN GENERAL.—Section 1614(a)(1)(B)(ii) of the Social Security Act (42 U.S.C. 1382c(a)(1)(B)(ii)) is amended—

(1) by inserting ''and'' after ''citizen of the United States,''; and

(2) by striking '', and who,'' and all that follows and inserting a period.

(b) EFFECTIVE DATE.—The amendments made by this section shall be effective with respect to benefits payable for months beginning after the date of enactment of this Act, but only on the basis of an application filed after such date.

SEC. 437. TREATMENT OF EDUCATION-RELATED INCOME AND RESOURCES.

(a) EXCLUSION FROM INCOME OF GIFTS PROVIDED FOR TUITION AND OTHER EDUCATION-RELATED FEES.—Section 1612(b)(7) of the Social Security Act (42 U.S.C. 1382a(b)(7)) is amended by striking ''or fellowship received for use in paying'' and inserting ''fellowship, or gift (or portion of a gift) used to pay''.

(b) EXCLUSION FROM RESOURCES FOR 9 MONTHS OF GRANTS, SCHOLARSHIPS, FELLOWSHIPS, OR GIFTS PROVIDED FOR TUITION AND OTHER EDUCATION-RELATED FEES.—Section 1613(a) of the Social Security Act (42 U.S.C. 1382b(a)) (as amended by section 101(c)(2)) is amended—

(1) in paragraph (13), by striking ''and'' at the end;

(2) in paragraph (14), by striking the period and inserting ''; and''; and

(3) by inserting after paragraph (14) the following:

''(15) for the 9-month period beginning after the month in which received, any grant, scholarship, fellowship, or gift (or portion of a gift) used to pay the cost of tuition and fees at any educational (including technical or vocational education) institution.''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to benefits payable for months that begin more than 90 days after the date of enactment of this Act.

SEC. 438. MONTHLY TREATMENT OF UNIFORMED SERVICE COMPENSATION.

(a) TREATMENT OF PAY AS RECEIVED WHEN EARNED.—Section 1611(c) of the Social Security Act (42 U.S.C. 1382(c)), as amended by section 435(a), is amended by adding at the end the following:

''(10) For purposes of this subsection, remuneration for service performed as a member of a uniformed service may be treated as received in the month in which it was earned, if the Commissioner of Social Security determines that such treatment would promote the economical and efficient administration of the program authorized by this title.''.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to benefits payable for months that begin more than 90 days after the date of enactment of this Act.

SEC. 439. UPDATE OF RESOURCE LIMITS.

(a) INCREASE.—Section 1611(a)(3) of the Social Security Act (42 U.S.C. 1382(a)(3)) is amended—

(1) in subparagraph (A), by adding at the end the following: ''On January 1, 2004, such dollar amount shall be increased to an amount equal to 150 percent of the dollar amount applicable to an individual described in paragraph (1)(B)(ii).''; and

(2) in subparagraph (B)—

(A) by striking ''and'' the last place it appears; and

(B) by inserting '', and to $3,000 on January 1, 2004'' before the period.

(b) COST-OF-LIVING ADJUSTMENT.—Section 1617(a)(1) of the Social Security Act (42 U.S.C. 1382f(a)(1)) is amended by inserting ''(a)(3)(B),'' before ''(b)(1)''.

(c) EFFECTIVE DATES.—

(1) INCREASE.—The amendments made by subsection (a) shall take effect on January 1, 2004.

(2) COST-OF-LIVING ADJUSTMENT.—The amendment made by subsection (b) shall take effect on January 1, 2005.

SEC. 440. REVIEW OF STATE AGENCY BLINDNESS AND DISABILITY DETERMINATIONS.

Section 1633 of the Social Security Act (42 U.S.C. 1383b) is amended by adding at the end the following:

''(e)(1) The Commissioner of Social Security shall review determinations, made by State agencies pursuant to subsection (a) in connection with applications for benefits under this title on the basis of blindness or disability, that individuals who have attained 18 years of age are blind or disabled. Any review by the Commissioner of Social Security of a State agency determination under this paragraph shall be made before any action is taken to implement the determination.

''(2)(A) In carrying out paragraph (1), the Commissioner of Social Security shall review—

''(i) with respect to fiscal year 2004, at least 25 percent of all determinations referred to in paragraph (1) that are made in such year after the later of—

''(I) March 31; and

''(II) the date of enactment of this subsection; and

''(ii) with respect to fiscal years after fiscal year 2004, at least 50 percent of all such determinations that are made in each such fiscal year.

''(B) In conducting reviews pursuant to subparagraph (A), the Commissioner of Social Security shall, to the extent feasible, select for review those determinations which the Commissioner of Social Security identifies as being the most likely to be incorrect.''.

Mr. GRASSLEY. Mr. President, I urge my colleagues to support H.R. 743, the Social Security Protection Act of 2003.

The Social Security Protection Act of 2003 provides the Social Security Administration with important new tools to fight waste, fraud, and abuse. This bill would eliminate benefits to fugitive felons. It would prohibit benefits to illegal workers. It would eliminate the ''last day'' loophole in the Government Pension Offset. It would provide additional oversight of representative payees. Finally, the bill would improve benefits for person with disabilities.

This bill passed the House of Representatives in April. The Senate Committee on Finance approved the bill in September with a number of important changes.

In order to expedite passage of this legislation, Senator BAUCUS and I have worked closely with the chairman and the ranking member of the Social Security Subcommittee of the House Ways and Means Committee over the past several weeks. The result of this work is reflected in the managers' amendment that has now been incorporated into this bill.

I have drafted an explanation of the amendment that has been agreed to by the chairman and the ranking member of the House Social Security Subcommittee, as well as by the chairman and ranking member of the Senate Finance Committee. I ask unanimous consent that the explanation be printed in the RECORD.

I strongly urge my colleagues to support this commonsense, bipartisan legislation.

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

EXPLANATION OF THE MANAGER'S AMENDMENT TO H.R. 743, THE ''SOCIAL SECURITY PROTECTION ACT OF 2003'' AS REPORTED BY THE SENATE COMMITTEE ON FINANCE, REPORT 108–176

Section 107. Survey of use of payments by representative payees

The Manager's amendment would limit the scope and cost of the survey and change the organization designated to have the responsibility for conducting the survey.

As a result of the Manager's amendment, the Commissioner of Social Security, in consultation with the Inspector General of the Social Security Administration (SSA), the General Accounting Office, the Committee on Ways and Means of the House of Representatives, and the Committee on Finance of the Senate, shall conduct a one-time audit of a representative sample of representative payees who are not subject to triennial onsite review or other random review under SSA policy or law, as amended by this bill. That is, the sample shall include individual representative payees serving one or several beneficiaries; individual ''high-volume'' payees serving more than several but fewer than 15 beneficiaries; individual ''high-volume'' payees serving more than several but fewer than 15 beneficiaries; and non-fee-for-service organizational payees who are serving fewer than 50 beneficiaries. The cost of this audit will not be greater than $8.5 million. The results of the audit should be presented in a report to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate.

The audit shall assess the extent to which representative payees are not performing their duties as payees in accordance with SSA standards for payee conduct. Such SSA standards include, but are not limited to, whether the funds are being used for the benefit of the beneficiary. To the extent possible, the report shall identify which types of payees have the highest risk of misuse of benefits, and suggest ways to reduce those risks and better protect beneficiaries.

In conducting the audit, the Commissioner shall take special care to avoid excessive intrusiveness into family affairs, including making appropriate adjustments to its audit methodology. if some or all of the audit is contracted out, such contractor shall be chosen with due regard for its experience in conducting reviews of individuals and families, as well as businesses and other organizations.

In the course of conducting the audit and preparing the report, the Commissioner, or a designated contractor, may make observations about the adequacy of payees' actions and recommendations for change or further review. However, determinations as to whether funds have been misused and/or whether a payee should be changed must be made only by the Commissioner. Further, those conducting the survey should not provide advice, guidance or other feedback to payees that are reviewed under this audit regarding their performance as payees.

This provision authorizes and appropriates up to $8.5 million under subsection 1110(a) of the Social Security Act to carry out this audit. However, these funds are appropriated in addition to any funds appropriated for this subsection under any other law. There is no intention of reducing the funds that would otherwise be available under this subsection to carry out any other projects.

It is expected that the Commissioner will carry out a survey that is statistically valid at reasonable levels of confidence and precision. However, if the Commissioner determines that such a survey can be prepared for less than the amount appropriated, then the full $8.5 million should not be used. The Commissioner has the authority to limit the amount expended under this provision to that lesser amount. The Committees expect the Commissioner to carefully assess the design of the audit to ensure that it is being performed as economically as possible, while still meeting the objective of obtaining information that is of sufficient statistical validity to assist in increasing the knowledge and understanding of the representative payee program and facilitating its possible improvement.

Effective Date

The report will be due to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate 18 months after the date of enactment of this Act.

Section 203. Denial of Title II benefits to persons fleeing prosecution, custody, or confinement, and to persons violating probation or parole

The Manager's amendment would substitute the following ''good cause'' exception for the original provision included in the Committee-reported bill.

Press accounts, hearing testimony and other information provided to the Committees have identified cases in which benefit continuation may be justified due to extenuating circumstances. In light of this, the provision gives the Commissioner authority to pay Title II or Title XVI benefits that were withheld, or would otherwise be withheld, if there is good cause in the following circumstances:

First, the Commissioner shall apply the good cause exception if a court of competent jurisdiction finds the person is not guilty, charges are dismissed, a warrant for arrest is vacated, or there are similar exonerating circumstances found by the court.

Second, the Commissioner shall apply the good cause exception if the individual establishes to the satisfaction of the Commissioner that he or she was the victim of identity fraud and the warrant was erroneously issued on such basis.

Third, the Commissioner may apply the good cause exception if the criminal offense was non-violent and not drug-related, and in the case of probation or parole violators, both the violation and the underlying offense were non-violent and not drug-related. However, in such cases, the Commissioner may only establish good cause based on mitigating factors such as the nature and severity of the crime, the length of time that has passed since the warrant was issued, whether other crimes have been committed in the interim, and the beneficiary's mental capacity to resolve the issue.

This document (which is to accompany the Manager's amendment) also seeks to clarify two issues with respect to current law. First, section 1611(e)(5)(A)(ii) of the Social Security Act (42 USC 1382(e)(5)(A)(ii)) requires a law enforcement officer to notify the Commissioner that an SSI recipient has information necessary for the officer to conduct his official duties.

The Manager's amendment deletes this information requirement in (A)(ii) to clarify that a law enforcement officer only needs to notify the Commissioner of the recipient's fugitive status (or parole / probation status), and the officer's duty to locate or apprehend the recipient. This change is not intended to have any effect on the existing interpretation or application of section 1611 and is consistent with current practices and procedures.

Second, several recent decisions by Administrative Law Judges have noted that neither

the current statute nor the current regulations define the phrase ''fleeing to avoid prosecution.'' This report provides the following clarification. If it is reasonable to conclude that the individual knew or should have known that criminal charges were pending, or has been made aware of such charges by the SSA, then the individual should be considered ''fleeing,'' whether or not law enforcement seeks arrest or extradition.

Section 206. Penalty for corrupt or forcible interference with administration of the Social Security Act

The Manager's amendment makes a technical correction to address a drafting error.

Section 209. Authority for judicial orders of restitution

The Manager's amendment makes technical corrections and eliminates the special restitution account created within the Treasury Department. Funds collected through restitution would instead be credited to the Social Security trust funds or the general fund of the U.S. Treasury, as appropriate.

Section 210. Information for administration of provisions related to non-covered employment

The Manager's amendment would strike this section.

Section 212. Prohibition of payment of Title II benefits to persons not authorized to work in the United States

The Manager's amendment would make a technical correction related to certain noncitizens and change the effective date.

B–1 visa holders are generally aliens visiting the United States temporarily for business on behalf of a foreign employer. According to State Department regulations, the B–1 visa holder conducts business as a continuation of his foreign employment. D visa holders are generally alien flight attendants who enter into an employment contract in the United States with a U.S. airline and who only fly into and out of the United States.

Although these categories of visa holders are not technically authorized to work in the United States, such persons are legally present in the United States while they are working. Thus, they should not be subject to the benefit prohibition.

The Manager's amendment would also change the effective date to limit the application of this provision to persons with Social Security numbers issued after January 1, 2004. This change would provide the Social Security Administration the opportunity to develop the recordkeeping system necessary to enforce the provision.

Section 302. Temporary extension of attorney fee payment system to Title XVI claims

The Manager's amendment re-designates Section 302 as Section 304 and adopts the House-passed provision to extend the current Title II attorney fee withholding process to Title XVI for a period of five years.

The amendment would also cap the 6.3 percent assessment on approved attorney representation fees at $75 (indexed for inflation), as provided for Title II claims under Section 301 of the bill.

With respect to the cap of $75 for Title II and Title XVI claims, it should be noted that the cap applies on a per case basis. (Concurrent cases shall be treated as a single case for this purpose.) In a case multiple representatives, the SAA should apply the assessment proportionately to each representative issued a check and in no case should the cumulative assessment exceed $75.

Finally, the amendment would amend the existing dedicated account and installment payment provisions in Title XVI. Under current law, dedicated accounts are required when an individual receives past-due benefits equal to 6 times the Federal Benefit Rate (FBR); installment payments are required when past due benefits are to be 12 times the FBR. The amendment clarifies that these triggering amounts would be based on the amount of past-due benefits that remain after attorney fees that the Social Security Administration paid directly to the attorney out of past-due benefits are deducted.

Effective Date

Applies with respect to fees for representation that are first required to be certified or paid on or after the date the Commissioner submits to Congress a notice that she has completed the actions necessary to fully implement the demonstration project under Section 303.

Section 303. Nationwide demonstration project providing for extension of fee withholding procedures to non-attorney representatives

The Manager's amendments adds the following new section.

Present Law

An individual applying for Title II or Title XVI benefits may seek the assistance of another person. The person assisting the applicant may not charge or receive a fee unless the Social Security Administration (SSA) approves it. If the person assisting the individual is an attorney and the individual is awarded past-due benefits under Title II, the SSA may deduct the attorney's fee from the individual's benefits and pay the attorney directly—minus a fee to cover the SSA's administrative costs.

Explanation of Provision

This provision would authorize a nationwide demonstration project to allow non-attorneys the option of fee withholding under both Title II and Title XVI for a period of five years. The SSA would charge a 6.3 percent assessment on approved fees, subject to a $75 cap (indexed for inflation), as applies to attorneys under section 206 and section 1631(d)(2) of the Act.

Non-attorney representatives seeking direct payment of fees under the demonstration project would need to meet at least the following prerequisites: hold a bachelor's degree or equivalent experience, pass an examination written and administered by the Commissioner, secure professional liability insurance or the equivalent, undergo a criminal background check, and complete continuing education courses. The provision would require the Commissioner to implement and carry out the demonstration project no later than one year after the date of enactment. The demonstration project would terminate 5 years after being fully implemented.

The Commissioner may charge a reasonable fee to individuals seeking approval for direct payments. Such fees should be comparable to the fees charged to other professionals subject to similar regulation.

The Commissioner should consult with relevant experts in the area of disability policy and professional ethics (including, but not limited to, experienced non-attorney and attorney disability claimant representatives, disability advocates, and organizations that develop and administer examinations for the regulation of professionals) in developing the exam and in determining whether other prerequisites should be required.

The Commissioner would be required to submit interim reports on the progress of the demonstration and a final report after the conclusion of the demonstration.

Reason for Change

The demonstration project authorized by this section would allow the SSA to pay all qualified representatives directly out of past-due benefits for Title II and Title XVI claims and would enable Congress (in conjunction with the GAO study required under Section 304) to assess whether such an extension of fee withholding would increase access to qualified professional representation.

Effective Date

Applies with respect to fees for representation that are first required to be certified or paid after the date the Commissioner submits to Congress a notice that she has completed the actions necessary to fully implement this demonstration project. The interim reports would be due annually, and the final report would be due 90 days after the termination of the demonstration.

Section 304. GAO study of fee payment process for claimant representatives

The Manager's amendment re-designates Section 302 as Section 304 and modifies the GAO study.

The Committee-reported bill called for a study based upon the potential results of extending fee withholding to Title XVI and to non-attorneys. As modified by the Manager's amendment, the study will now be based on the actual results of such an extension as provided in Section 302 and Section 303 of the bill.

The GAO report would provide a comprehensive overview of the appointment and payment of claimant representatives. It would include a survey of all categories of representatives—both attorneys and non-attorneys, as well as those who do and do not elect fee withholding. It would compare claimant outcomes by type of representatives. It would also compare the costs and benefits of fee withholding from the perspective of the Social Security Administration, claimants, and representatives.

GAO would evaluate the interactions between fee withholding, the windfall offset, and interim assistance reimbursement. This evaluation would consider the effects of such interactions on claimant outcomes, access to representatives, and reimbursements to the Federal and State governments.

Finally, GAO would make recommendations for any legislative or administrative changes deemed appropriate. The report would be due no later than 3 years after the implementation date of Section 303.

Section 401. Application of demonstration authority sunset date to new projects

The Manager's amendment would extend the demonstration authority through December 18, 2005, rather than making it permanent, and allow projects initiated by December 17, 2005 to be completed thereafter.

Section 407. Reauthorization of appropriations for certain work incentives programs

The Manager's amendment adds the following new section.

Present Law

The Ticket to Work Act directs SSA to establish a community-based program to provide benefit planning and assistance to disabled beneficiaries. To establish this program, SSA is required to award cooperative agreements (or grants or contracts) to State or private entities. Services include disseminating accurate information on work incentive programs (the Ticket to Work, section 1619 programs, etc.) and related issues to all disabled beneficiaries. In fulfillment of this requirement, SSA has established the Benefits Planning, Assistance, and Outreach (BPAO) program. The Act also authorizes SSA to award grants to State protection and advocacy (P&A) systems so that they can provide protection and advocacy services to disabled beneficiaries. Services include information and advice about obtaining vocational rehabilitation and employment services and advocacy or other services that a

disabled beneficiary may need to secure, maintain, or regain employment. SSA has established the Protection and Advocacy to Beneficiaries of Social Security (PABSS) Program pursuant to this authorization.

The Ticket to Work Act authorizes certain funding amounts to be appropriated for these BPAO and PABSS programs for the fiscal years 2000 through 2004.

Explanation of Provision

This provision extends the authorization to appropriate funding for these programs for another five fiscal years.

Reason for Change

SSA cannot continue to fund the BPAO and PABSS programs beyond fiscal year 2004 without an extension of authorization. These programs provide essential vocational rehabilitation and employment services for disabled beneficiaries to secure, maintain, and regain employment and reduce their dependency on cash benefit programs.

Effective Date

Upon enactment.

Section 416. Coverage under divided retirement system for public employees in Kentucky and Louisiana

The Manager's amendment would incorporate the House-passed provision in place of the Committee's provision, and add the State of Louisiana, as requested by its State Treasurer.

Section 418. 60-month period of employment requirement for application of government pension offset exemption

The Manager's amendment would adopt the House-passed provision with a revised effective date and transition rule. This provision is effective with respect to individuals whose last day of State or local government service occurs on or after July 1, 2004. The Manager's amendment would adopt the House-passed provision with a revised effective date and transition rule. This provision is effective with respect to individuals whose last day of State or local government service occurs on or after July 1, 2004. The transition rule allows State or local employees, who retire from government employment within five years of enactment, to count previous work within the same retirement system towards the 60-month requirement. Such previous work must meet both of the following criteria: (a) the work was covered under both Social Security and the government pension system, and (b) the work was performed prior to the date of enactment.

The Manager's amendment also consolidated existing provisions of the Social Security Act in order to co-locate the government pension offset provision with the provision on which it is modeled, the dual entitlement rule for covered workers.

Section 419. Disclosure to workers of effect of windfall elimination provision and government pension offset provision

The Manager's amendment re-designates Section 419 as Section 420 and adds the following new section.

Present Law

There are approximately 7.5 million workers who do not pay taxes into the Social Security system. The majority of these workers are State and local government employees. Many of these government workers may eventually qualify for Social Security as the result of other employment, or as the spouse or survivor of a worker covered by Social Security. The Government Pension Offset (GPO) and the Windfall Elimination Provision (WEP) were enacted—in 1977 and 1983, respectively—to provide more equitable treatment of covered and non-covered workers.

Explanation of Provision

This provision requires the Social Security Administration to send a modified Social Security Statement to non-covered employees that describes the potential maximum benefit reductions that may result from the receipt of a Federal, State, or local government pension based on employment that is not subject to Social Security payroll taxes.

It also requires government employers to notify newly hired non-covered employees of the potential maximum effect of non-covered work on their Social Security benefits. The employer shall obtain signed documentation of such notification from the employee and transmit a copy to the pension paying entity.

Reason for Change

Organizations representing State and local employees report their members are often unaware of the GPO and WEP provisions until they apply for retirement benefits. The Committee believes the Social Security Administration should utilize the annual earnings statement mailed to every employee age 25 and over to more explicitly inform State and local employees about the GPO and WEP. It is important that these employees also be informed about their options to become exempt from these provisions by electing coverage under the Social Security program.

Efective Date

Government employers must provide notification of the potential effect of non-covered work beginning with employees hired on or after January 1, 2005. The Social Security Administration must provide the modified Social Security Statements beginning January 1, 2007.

Section 420A. Elimination of disincentives to return to work for childhood disability beneficiaries

The Manager's amendment adds the following new section.

Current Law

A Childhood Disability Beneficiary (CDB)—sometimes also referred to as a Disabled Adult Child (DAC)—whose benefits terminate because disability ceased can become re-entitled on the parent's record only if he or she is disabled within the 7-year period following the month benefits terminate and is not entitled to higher benefits on his or her own record.

Explanation of Provision

The provisions would allow re-entitlement to childhood disability benefits after the 7-year period if the beneficiary's previous entitlement had terminated because disability ceased due to the performance of Substantial Gainful Activity (SGA) and the beneficiary is not entitled to higher benefits on his or her own record. This provision would not apply to beneficiaries whose previous entitlement terminated based on medical improvement.

Reason for Change

Prohibiting re-entitlement to childhood disability benefits after the expiration of the 7-year period is a significant disincentive to return-to-work for a CDB. Many CDBs find that the benefits for which they qualify on their own work record are less—often significantly less—than the benefits they received as a CDB based on a parent's work history. The permanent loss of benefits on the parent's record remains a major disincentive for a CDB to attempt to return to work, one not addressed by the Ticket to Work and Work Incentives Improvement Act of 1999. Although this provision is expected to affect very few individuals, the change will make a significant difference for those individuals in their efforts to work to the fullest extent possible.

Effective Date

The provision is effective on the first day of the seventh month that begins after the date of enactment of this Act.

Section 426. Technical amendments to the Railroad Retirement and Survivors' Improvement Act of 2001

The Manager's amendment strikes subsections (e)(1) and (e)(3).

Section 432. Modification of the dedicated account requirements

The Manager's amendment strikes this section.

Section 434. Exclusion of Americorps and other volunteer benefits for purposes of determining supplemental security income eligibility and benefit amounts and social Security disability insurance entitlement

The Manager's amendment strikes this section.

Section 439. Update of resource limit

The Manager's amendment strikes this section.

Section 440. Review of state agency blindness and disability determinations

The Manager's amendment strikes this section.

Mr. BAUCUS. Mr. President, I rise today to urge my colleagues to support H.R. 743, the Social Security Protection Act of 2003 as modified. H.R. 743 is bipartisan legislation developed by Ways and Means Social Security Subcommittee Chairman SHAW and Ranking Member MATSUI. H.R. 743 passed the House by a vote of 396 to 28, and was reported by the Committee on Finance with unanimous support. In keeping with the bipartisan tradition of the Senate Finance Committee and with the bipartisan origins of this legislation, Senator GRASSLEY and I have worked together to further refine this legislation for Senate consideration.

H.R. 743 makes a number of important changes to the Social Security and Supplemental Security Income, SSI, programs. These changes will accomplish a number of important goals: they will enhance the financial security of some of the most vulnerable beneficiaries of these programs, increase protections to seniors from deceptive practices by individuals in the private sector, reduce disincentives to employment for disabled individuals, improve program integrity and thereby save money for the Social Security and Medicare trust funds and for taxpayers, and make the Social Security program more equitable.

One of the most important results of this legislation will be to enhance the financial security of the almost 7 million Social Security and SSI beneficiaries who are not capable of managing their own financial affairs due to advanced age or disability. The Social Security Administration, SSA, currently appoints individuals or organizations to act as ''representative payees'' for such beneficiaries. Most of these representative payees perform their roles conscientiously. However, some do not—indeed there have even been instances of terrible abuse in this program.

It is imperative that Congress take action to guard vulnerable seniors and disabled individuals from such abuse. This legislation increases requirements for SSA to provide restitution to beneficiaries when representative payees defraud the beneficiaries of their benefits. The legislation also tightens the qualifications for representative payees, increases oversight of the program, and imposes stricter penalties on those who violate their responsibilities. Finally, the legislation provides—for the first time ever—that there will be a one-time audit of a representative sample of representative payees to assess the extent to which representative payees are not using the beneficiary's funds for the benefit of the beneficiary.

The legislation expands the protection to seniors and disabled individuals by increasing the list of references to Social Security, Medicare and Medicaid which cannot be used by private-sector individuals, companies and organizations to give a false impression of Federal endorsement. The legislation also protects seniors from those who deceptively attempt to charge them for services that the seniors could receive for free from SSA.

The legislation eliminates a disincentive to return to work for childhood disability beneficiaries. The provision would make it easier to regain childhood disability benefits for disabled adult children who had returned to work at one time. Additionally, H.R. 743 also includes technical amendments to improve the effectiveness of the Ticket to Work and Work Incentives Improvement Act, legislation passed in 1999 to help beneficiaries with disabilities become employed and move toward self-sufficiency.

H.R. 743 improves program integrity by expanding the current prohibition against paying benefits to fugitive felons. As part of the 1996 welfare reform law, Congress banned the payment of SSI benefits to these individuals. However, under current law, fugitive felons can still receive Social Security benefits under title II. This legislation prohibits the payment of title II Social Security benefits to fugitive felons.

The bill also makes the Social Security program more equitable by including a provision to make an exemption to the Government Pension Offset more uniform. The Government Pension Offset, GPO, was enacted in order to equalize the treatment of workers in jobs not covered by Social Security and workers in jobs covered by Social Security, with respect to spousal and survivors benefits. The GPO reduces the Social Security spousal or survivors benefit by an amount equal to two-thirds of the Government pension. However, as a GAO report highlighted, State and local government workers are exempt from the GPO if their job on their last day of employment was covered by Social Security. In contrast, Federal workers who switched from the Civil Service Retirement System, CSRS, a system that is not covered by Social Security, to the Federal Employee Retirement System, FERS, a system that is covered by Social Security, must work for 5 years under FERS in order to be exempt from the GPO. H.R. 743 makes the exemption to the Government Pension Offset similar for State and local government workers as for Federal Government workers.

I believe that each of the provisions of H.R. 743 deserve the support of the Senate. Moreover, in an attempt to expedite Congressional passage of this legislation, the changes that Senator GRASSLEY and I want to make to the bill as reported by the Finance Committee have already been worked out with both the chairman and the ranking member of the Social Security Subcommittee of the House Ways and Means Committee. Moreover, we have ''report language'' that has been agreed to by the chairman and the ranking member of the Social Security Subcommittee—as well as by the chairman and ranking member of the Senate Finance Committee which will be included in the CONGRESSIONAL RECORD directly following the legislative language. This statement provides details about each of the provisions of the legislation, as well as the rationale behind each provision.

This legislation contains the types of improvements we can all agree on, as demonstrated by the overwhelming bipartisan vote in the House, and the bipartisan, bicameral agreement of the chairmen and ranking members of the committees of jurisdiction. I wholeheartedly urge my colleagues in the Senate to approve these sensible and important changes.

Mr. FRIST. Mr. President, I ask unanimous consent that the Grassley amendment at the desk be agreed to, the committee substitute, as amended, be agreed to; the bill, as amended, be read a third time and passed, the motion to reconsider be laid upon the table, and any statements relating to the bill be printed in the RECORD.

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

The amendment (No. 2227) was agreed to.

(The amendment is printed in today's RECORD under ''Text of Amendments.'')

The committee amendment in the nature of a substitute, as amended, was agreed to.

The bill (H.R. 743), as amended, was read the third time and passed, as follows:

H.R. 743

Resolved, That the bill from the House of Representatives (H.R. 743) entitled ''An Act to amend the Social Security Act and the Internal Revenue Code of 1986 to provide additional safeguards for Social Security and Supplemental Security Income beneficiaries with representative payees, to enhance program protections, and for other purposes.'', do pass with the following amendment:

Strike out all after the enacting clause and insert:

SECTION 1. SHORT TITLE AND TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the ''Social Security Protection Act of 2003''.

(b) TABLE OF CONTENTS.—The table of contents is as follows:

(a) TITLE II AMENDMENTS.—

(1) REISSUANCE OF BENEFITS.—Section 205(j)(5) of the Social Security Act (42 U.S.C. 405(j)(5)) is amended by inserting after the first sentence the following: ''In any case in which a representative payee that—

''(A) is not an individual (regardless of whether it is a 'qualified organization' within the meaning of paragraph (4)(B)); or

''(B) is an individual who, for any month during a period when misuse occurs, serves 15 or more individuals who are beneficiaries under this title, title VIII, title XVI, or any combination of such titles;

misuses all or part of an individual's benefit paid to such representative payee, the Commissioner of Social Security shall certify for payment to the beneficiary or the beneficiary's alternative representative payee an amount equal to the amount of such benefit so misused. The provisions of this paragraph are subject to the limitations of paragraph (7)(B).''.

(2) MISUSE OF BENEFITS DEFINED.—Section 205(j) of such Act (42 U.S.C. 405(j)) is amended by adding at the end the following:

''(8) For purposes of this subsection, misuse of benefits by a representative payee occurs in any case in which the representative payee receives payment under this title for the use and benefit of another person and converts such payment, or any part thereof, to a use other than for the use and benefit of such other person. The Commissioner of Social Security may prescribe by regulation the meaning of the term 'use and benefit' for purposes of this paragraph.''.

(b) TITLE VIII AMENDMENTS.—

(1) REISSUANCE OF BENEFITS.—Section 807(i) of the Social Security Act (42 U.S.C. 1007(i)) is amended further by inserting after the first sentence the following: ''In any case in which a representative payee that—

''(A) is not an individual; or

''(B) is an individual who, for any month during a period when misuse occurs, serves 15 or more individuals who are beneficiaries under this title, title II, title XVI, or any combination of such titles;

misuses all or part of an individual's benefit paid to such representative payee, the Commissioner of Social Security shall pay to the beneficiary or the beneficiary's alternative representative payee an amount equal to the amount of such benefit so misused. The provisions of this paragraph are subject to the limitations of subsection (l)(2).''.

(2) MISUSE OF BENEFITS DEFINED.—Section 807 of such Act (42 U.S.C. 1007) is amended by adding at the end the following:

''(j) MISUSE OF BENEFITS.—For purposes of this title, misuse of benefits by a representative payee occurs in any case in which the representative payee receives payment under this title for the use and benefit of another person under this title and converts such payment, or any part thereof, to a use other than for the use and benefit of such person. The Commissioner of Social Security may prescribe by regulation the meaning of the term 'use and benefit' for purposes of this subsection.''.

(3) TECHNICAL AMENDMENT.—Section 807(a) of such Act (42 U.S.C. 1007(a)) is amended, in the first sentence, by striking ''for his or her benefit'' and inserting ''for his or her use and benefit''.

(c) TITLE XVI AMENDMENTS.—

(1) REISSUANCE OF BENEFITS.—Section 1631(a)(2)(E) of such Act (42 U.S.C. 1383(a)(2)(E)) is amended by inserting after the first sentence the following: ''In any case in which a representative payee that—

''(i) is not an individual (regardless of whether it is a 'qualified organization' within the meaning of subparagraph (D)(ii)); or

''(ii) is an individual who, for any month during a period when misuse occurs, serves 15 or more individuals who are beneficiaries under this title, title II, title VIII, or any combination of such titles;

misuses all or part of an individual's benefit paid to such representative payee, the Commissioner of Social Security shall pay to the beneficiary or the beneficiary's alternative representative payee an amount equal to the amount of such benefit so misused. The provisions of this subparagraph are subject to the limitations of subparagraph (H)(ii).''.

(2) EXCLUSION OF REISSUED BENEFITS FROM RESOURCES.—Section 1613(a) of such Act (42 U.S.C. 1382b(a)) is amended—

(A) in paragraph (12), by striking ''and'' at the end;

(B) in paragraph (13), by striking the period and inserting ''; and''; and

(C) by inserting after paragraph (13) the following:

''(14) for the 9-month period beginning after the month in which received, any amount received by such individual (or spouse) or any other person whose income is deemed to be included in such individual's (or spouse's) income for purposes of this title as restitution for benefits under this title, title II, or title VIII that a representative payee of such individual (or spouse) or such other person under section 205(j), 807, or 1631(a)(2) has misused.''.

(3) MISUSE OF BENEFITS DEFINED.—Section 1631(a)(2)(A) of such Act (42 U.S.C. 1383(a)(2)(A)) is amended by adding at the end the following:

''(iv) For purposes of this paragraph, misuse of benefits by a representative payee occurs in any case in which the representative payee receives payment under this title for the use and benefit of another person and converts such payment, or any part thereof, to a use other than for the use and benefit of such other person. The Commissioner of Social Security may prescribe by regulation the meaning of the term 'use and benefit' for purposes of this clause.''.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to any case of benefit misuse by a representative payee with respect to which the Commissioner of Social Security makes the determination of misuse on or after January 1, 1995.

SEC. 102. OVERSIGHT OF REPRESENTATIVE PAYEES.

(a) CERTIFICATION OF BONDING AND LICENSING REQUIREMENTS FOR NONGOVERNMENTAL ORGANIZATIONAL REPRESENTATIVE PAYEES.—

(1) TITLE II AMENDMENTS.—Section 205(j) of the Social Security Act (42 U.S.C. 405(j)) is amended—

(A) in paragraph (2)(C)(v), by striking ''a community-based nonprofit social service agency licensed or bonded by the State'' in subclause (I) and inserting ''a certified community-based nonprofit social service agency (as defined in paragraph (9))'';

(B) in paragraph (3)(F), by striking ''community-based nonprofit social service agencies'' and inserting ''certified community-based nonprofit social service agencies (as defined in paragraph (9))'';

(C) in paragraph (4)(B), by striking ''any community-based nonprofit social service agency which is bonded or licensed in each State in which it serves as a representative payee'' and inserting ''any certified community-based nonprofit social service agency (as defined in paragraph (9))''; and

(D) by adding after paragraph (8) (as added by section 101(a)(2) of this Act) the following:

''(9) For purposes of this subsection, the term 'certified community-based nonprofit social service agency' means a community-based nonprofit social service agency which is in compliance with requirements, under regulations which

shall be prescribed by the Commissioner, for annual certification to the Commissioner that it is bonded in accordance with requirements specified by the Commissioner and that it is licensed in each State in which it serves as a representative payee (if licensing is available in the State) in accordance with requirements specified by the Commissioner. Any such annual certification shall include a copy of any independent audit on the agency which may have been performed since the previous certification.''.

(2) TITLE XVI AMENDMENTS.—Section 1631(a)(2) of such Act (42 U.S.C. 1383(a)(2)) is amended—

(A) in subparagraph (B)(vii), by striking ''a community-based nonprofit social service agency licensed or bonded by the State'' in subclause (I) and inserting ''a certified community-based nonprofit social service agency (as defined in subparagraph (I))'';

(B) in subparagraph (D)(ii)—

(i) by striking ''or any community-based'' and all that follows through ''in accordance'' in subclause (II) and inserting ''or any certified community-based nonprofit social service agency (as defined in subparagraph (I)), if the agency, in accordance'';

(ii) by redesignating items (aa) and (bb) as subclauses (I) and (II), respectively (and adjusting the margins accordingly); and

(iii) by striking ''subclause (II)(bb)'' and inserting ''subclause (II)''; and

(C) by adding at the end the following:

''(I) For purposes of this paragraph, the term 'certified community-based nonprofit social service agency' means a community-based nonprofit social service agency which is in compliance with requirements, under regulations which shall be prescribed by the Commissioner, for annual certification to the Commissioner that it is bonded in accordance with requirements specified by the Commissioner and that it is licensed in each State in which it serves as a representative payee (if licensing is available in the State) in accordance with requirements specified by the Commissioner. Any such annual certification shall include a copy of any independent audit on the agency which may have been performed since the previous certification.''.

(3) EFFECTIVE DATE.—The amendments made by this subsection shall take effect on the first day of the thirteenth month beginning after the date of the enactment of this Act.

(b) PERIODIC ONSITE REVIEW.—

(1) TITLE II AMENDMENT.—Section 205(j)(6) of such Act (42 U.S.C. 405(j)(6)) is amended to read as follows:

''(6)(A) In addition to such other reviews of representative payees as the Commissioner of Social Security may otherwise conduct, the Commissioner shall provide for the periodic onsite review of any person or agency located in the United States that receives the benefits payable under this title (alone or in combination with benefits payable under title VIII or title XVI) to another individual pursuant to the appointment of such person or agency as a representative payee under this subsection, section 807, or section 1631(a)(2) in any case in which—

''(i) the representative payee is a person who serves in that capacity with respect to 15 or more such individuals;

''(ii) the representative payee is a certified community-based nonprofit social service agency (as defined in paragraph (9) of this subsection or section 1631(a)(2)(I)); or

''(iii) the representative payee is an agency (other than an agency described in clause (ii)) that serves in that capacity with respect to 50 or more such individuals.

''(B) Within 120 days after the end of each fiscal year, the Commissioner shall submit to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate a report on the results of periodic onsite reviews conducted during the fiscal year pursuant to subparagraph (A) and of any other reviews of representative payees conducted during such fiscal year in connection with benefits under this title. Each such report shall describe in detail all problems identified in such reviews and any corrective action taken or planned to be taken to correct such problems, and shall include—

''(i) the number of such reviews;

''(ii) the results of such reviews;

''(iii) the number of cases in which the representative payee was changed and why;

''(iv) the number of cases involving the exercise of expedited, targeted oversight of the representative payee by the Commissioner conducted upon receipt of an allegation of misuse of funds, failure to pay a vendor, or a similar irregularity;

''(v) the number of cases discovered in which there was a misuse of funds;

''(vi) how any such cases of misuse of funds were dealt with by the Commissioner;

''(vii) the final disposition of such cases of misuse of funds, including any criminal penalties imposed; and

''(viii) such other information as the Commissioner deems appropriate.''.

(2) TITLE VIII AMENDMENT.—Section 807 of such Act (as amended by section 101(b)(2) of this Act) is amended further by adding at the end the following:

''(k) PERIODIC ONSITE REVIEW.—

''(1) IN GENERAL.—In addition to such other reviews of representative payees as the Commissioner of Social Security may otherwise conduct, the Commissioner may provide for the periodic onsite review of any person or agency that receives the benefits payable under this title (alone or in combination with benefits payable under title II or title XVI) to another individual pursuant to the appointment of such person or agency as a representative payee under this section, section 205(j), or section 1631(a)(2) in any case in which—

''(A) the representative payee is a person who serves in that capacity with respect to 15 or more such individuals; or

''(B) the representative payee is an agency that serves in that capacity with respect to 50 or more such individuals.

''(2) REPORT.—Within 120 days after the end of each fiscal year, the Commissioner shall submit to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate a report on the results of periodic onsite reviews conducted during the fiscal year pursuant to paragraph (1) and of any other reviews of representative payees conducted during such fiscal year in connection with benefits under this title. Each such report shall describe in detail all problems identified in such reviews and any corrective action taken or planned to be taken to correct such problems, and shall include—

''(A) the number of such reviews;

''(B) the results of such reviews;

''(C) the number of cases in which the representative payee was changed and why;

''(D) the number of cases involving the exercise of expedited, targeted oversight of the representative payee by the Commissioner conducted upon receipt of an allegation of misuse of funds, failure to pay a vendor, or a similar irregularity;

''(E) the number of cases discovered in which there was a misuse of funds;

''(F) how any such cases of misuse of funds were dealt with by the Commissioner;

''(G) the final disposition of such cases of misuse of funds, including any criminal penalties imposed; and

''(H) such other information as the Commissioner deems appropriate.''.

(3) TITLE XVI AMENDMENT.—Section 1631(a)(2)(G) of such Act (42 U.S.C. 1383(a)(2)(G)) is amended to read as follows:

''(G)(i) In addition to such other reviews of representative payees as the Commissioner of Social Security may otherwise conduct, the Commissioner shall provide for the periodic onsite review of any person or agency that receives the benefits payable under this title (alone or in combination with benefits payable under title II or title VIII) to another individual pursuant to the appointment of the person or agency as a representative payee under this paragraph, section 205(j), or section 807 in any case in which—

''(I) the representative payee is a person who serves in that capacity with respect to 15 or more such individuals;

''(II) the representative payee is a certified community-based nonprofit social service agency (as defined in subparagraph (I) of this paragraph or section 205(j)(9)); or

''(III) the representative payee is an agency (other than an agency described in subclause (II)) that serves in that capacity with respect to 50 or more such individuals.

''(ii) Within 120 days after the end of each fiscal year, the Commissioner shall submit to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate a report on the results of periodic onsite reviews conducted during the fiscal year pursuant to clause (i) and of any other reviews of representative payees conducted during such fiscal year in connection with benefits under this title. Each such report shall describe in detail all problems identified in the reviews and any corrective action taken or planned to be taken to correct the problems, and shall include—

''(I) the number of the reviews;

''(II) the results of such reviews;

''(III) the number of cases in which the representative payee was changed and why;

''(IV) the number of cases involving the exercise of expedited, targeted oversight of the representative payee by the Commissioner conducted upon receipt of an allegation of misuse of funds, failure to pay a vendor, or a similar irregularity;

''(V) the number of cases discovered in which there was a misuse of funds;

''(VI) how any such cases of misuse of funds were dealt with by the Commissioner;

''(VII) the final disposition of such cases of misuse of funds, including any criminal penalties imposed; and

''(VIII) such other information as the Commissioner deems appropriate.''.

SEC. 103. DISQUALIFICATION FROM SERVICE AS REPRESENTATIVE PAYEE OF PERSONS CONVICTED OF OFFENSES RESULTING IN IMPRISONMENT FOR MORE THAN 1 YEAR OR FLEEING PROSECUTION, CUSTODY, OR CONFINEMENT.

(a) TITLE II AMENDMENTS.—Section 205(j)(2) of the Social Security Act (42 U.S.C. 405(j)(2)) is amended—

(1) in subparagraph (B)(i)—

(A) by striking ''and'' at the end of subclause (III);

(B) by redesignating subclause (IV) as subclause (VI); and

(C) by inserting after subclause (III) the following:

''(IV) obtain information concerning whether such person has been convicted of any other offense under Federal or State law which resulted in imprisonment for more than 1 year,

''(V) obtain information concerning whether such person is a person described in section 202(x)(1)(A)(iv), and'';

(2) in subparagraph (B), by adding at the end the following:

''(iii) Notwithstanding the provisions of section 552a of title 5, United States Code, or any other provision of Federal or State law (other than section 6103 of the Internal Revenue Code of 1986 and section 1106(c) of this Act), the Commissioner shall furnish any Federal, State, or local law enforcement officer, upon the written request of the officer, with the current address, social security account number, and photograph (if applicable) of any person investigated under

this paragraph, if the officer furnishes the Commissioner with the name of such person and such other identifying information as may reasonably be required by the Commissioner to establish the unique identity of such person, and notifies the Commissioner that—

''(I) such person is described in section 202(x)(1)(A)(iv),

''(II) such person has information that is necessary for the officer to conduct the officer's official duties, and

''(III) the location or apprehension of such person is within the officer's official duties.'';

(3) in subparagraph (C)(i)(II)—

(A) by striking ''subparagraph (B)(i)(IV),,'' and inserting ''subparagraph (B)(i)(VI)''; and

(B) by striking ''section 1631(a)(2)(B)(ii)(IV)'' and inserting ''section 1631(a)(2)(B)(ii)(VI)''; and

(4) in subparagraph (C)(i)—

(A) by striking ''or'' at the end of subclause (II);

(B) by striking the period at the end of subclause (III) and inserting a comma; and

(C) by adding at the end the following:

''(IV) such person has previously been convicted as described in subparagraph (B)(i)(IV), unless the Commissioner determines that such certification would be appropriate notwithstanding such conviction, or

''(V) such person is person described in section 202(x)(1)(A)(iv).''.

(b) TITLE VIII AMENDMENTS.—Section 807 of such Act (42 U.S.C. 1007) is amended—

(1) in subsection (b)(2)—

(A) by striking ''and'' at the end of subparagraph (C);

(B) by redesignating subparagraph (D) as subparagraph (F); and

(C) by inserting after subparagraph (C) the following:

''(D) obtain information concerning whether such person has been convicted of any other offense under Federal or State law which resulted in imprisonment for more than 1 year;

''(E) obtain information concerning whether such person is a person described in section 804(a)(2); and'';

(2) in subsection (b), by adding at the end the following:

''(3) Notwithstanding the provisions of section 552a of title 5, United States Code, or any other provision of Federal or State law (other than section 6103 of the Internal Revenue Code of 1986 and section 1106(c) of this Act), the Commissioner shall furnish any Federal, State, or local law enforcement officer, upon the written request of the officer, with the current address, social security account number, and photograph (if applicable) of any person investigated under this subsection, if the officer furnishes the Commissioner with the name of such person and such other identifying information as may reasonably be required by the Commissioner to establish the unique identity of such person, and notifies the Commissioner that—

''(A) such person is described in section 804(a)(2),

''(B) such person has information that is necessary for the officer to conduct the officer's official duties, and

''(C) the location or apprehension of such person is within the officer's official duties.''; and

(3) in subsection (d)(1)—

(A) by striking ''or'' at the end of subparagraph (B);

(B) by striking the period at the end of subparagraph (C) and inserting a semicolon; and

(C) by adding at the end the following:

''(D) such person has previously been convicted as described in subsection (b)(2)(D), unless the Commissioner determines that such payment would be appropriate notwithstanding such conviction; or

''(E) such person is a person described in section 804(a)(2).''.

(c) TITLE XVI AMENDMENTS.—Section 1631(a)(2)(B) of such Act (42 U.S.C. 1383(a)(2)(B)) is amended—

(1) in clause (ii)—

(A) by striking ''and'' at the end of subclause (III);

(B) by redesignating subclause (IV) as subclause (VI); and

(C) by inserting after subclause (III) the following:

''(IV) obtain information concerning whether the person has been convicted of any other offense under Federal or State law which resulted in imprisonment for more than 1 year;

''(V) obtain information concerning whether such person is a person described in section 1611(e)(4)(A); and'';

(2) in clause (iii)(II)—

(A) by striking ''clause (ii)(IV)'' and inserting ''clause (ii)(VI)''; and

(B) by striking ''section 205(j)(2)(B)(i)(IV)'' and inserting ''section 205(j)(2)(B)(i)(VI)'';

(3) in clause (iii)—

(A) by striking ''or'' at the end of subclause (II);

(B) by striking the period at the end of subclause (III) and inserting a semicolon; and

(C) by adding at the end the following:

''(IV) the person has previously been convicted as described in clause (ii)(IV) of this subparagraph, unless the Commissioner determines that the payment would be appropriate notwithstanding the conviction; or

''(V) such person is a person described in section 1611(e)(4)(A).''; and

(4) by adding at the end the following:

''(xiv) Notwithstanding the provisions of section 552a of title 5, United States Code, or any other provision of Federal or State law (other than section 6103 of the Internal Revenue Code of 1986 and section 1106(c) of this Act), the Commissioner shall furnish any Federal, State, or local law enforcement officer, upon the written request of the officer, with the current address, social security account number, and photograph (if applicable) of any person investigated under this subparagraph, if the officer furnishes the Commissioner with the name of such person and such other identifying information as may reasonably be required by the Commissioner to establish the unique identity of such person, and notifies the Commissioner that—

''(I) such person is described in section 1611(e)(4)(A),

''(II) such person has information that is necessary for the officer to conduct the officer's official duties, and

''(III) the location or apprehension of such person is within the officer's official duties.''.

(d) EFFECTIVE DATE.—The amendments made by this section shall take effect on the first day of the thirteenth month beginning after the date of the enactment of this Act.

(e) REPORT TO CONGRESS.—The Commissioner of Social Security, in consultation with the Inspector General of the Social Security Administration, shall prepare a report evaluating whether the existing procedures and reviews for the qualification (including disqualification) of representative payees are sufficient to enable the Commissioner to protect benefits from being misused by representative payees. The Commissioner shall submit the report to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate no later than 270 days after the date of the enactment of this Act. The Commissioner shall include in such report any recommendations that the Commissioner considers appropriate.

SEC. 104. FEE FORFEITURE IN CASE OF BENEFIT MISUSE BY REPRESENTATIVE PAYEES.

(a) TITLE II AMENDMENTS.—Section 205(j)(4)(A)(i) of the Social Security Act (42 U.S.C. 405(j)(4)(A)(i)) is amended—

(1) in the first sentence, by striking ''A'' and inserting ''Except as provided in the next sentence, a''; and

(2) in the second sentence, by striking ''The Secretary'' and inserting the following: ''A qualified organization may not collect a fee from an individual for any month with respect to which the Commissioner of Social Security or a court of competent jurisdiction has determined that the organization misused all or part of the individual's benefit, and any amount so collected by the qualified organization for such month shall be treated as a misused part of the individual's benefit for purposes of paragraphs (5) and (6). The Commissioner''.

(b) TITLE XVI AMENDMENTS.—Section 1631(a)(2)(D)(i) of such Act (42 U.S.C. 1383(a)(2)(D)(i)) is amended—

(1) in the first sentence, by striking ''A'' and inserting ''Except as provided in the next sentence, a''; and

(2) in the second sentence, by striking ''The Commissioner'' and inserting the following: ''A qualified organization may not collect a fee from an individual for any month with respect to which the Commissioner of Social Security or a court of competent jurisdiction has determined that the organization misused all or part of the individual's benefit, and any amount so collected by the qualified organization for such month shall be treated as a misused part of the individual's benefit for purposes of subparagraphs (E) and (F). The Commissioner''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to any month involving benefit misuse by a representative payee in any case with respect to which the Commissioner of Social Security or a court of competent jurisdiction makes the determination of misuse after 180 days after the date of the enactment of this Act.

SEC. 105. LIABILITY OF REPRESENTATIVE PAYEES FOR MISUSED BENEFITS.

(a) TITLE II AMENDMENTS.—Section 205(j) of the Social Security Act (42 U.S.C. 405(j)) (as amended by sections 101 and 102) is amended further—

(1) by redesignating paragraphs (7), (8), and (9) as paragraphs (8), (9), and (10), respectively;

(2) in paragraphs (2)(C)(v), (3)(F), and (4)(B), by striking ''paragraph (9)'' and inserting ''paragraph (10)'';

(3) in paragraph (6)(A)(ii), by striking ''paragraph (9)'' and inserting ''paragraph (10)''; and

(4) by inserting after paragraph (6) the following:

''(7)(A) If the Commissioner of Social Security or a court of competent jurisdiction determines that a representative payee that is not a Federal, State, or local government agency has misused all or part of an individual's benefit that was paid to such representative payee under this subsection, the representative payee shall be liable for the amount misused, and such amount (to the extent not repaid by the representative payee) shall be treated as an overpayment of benefits under this title to the representative payee for all purposes of this Act and related laws pertaining to the recovery of such overpayments. Subject to subparagraph (B), upon recovering all or any part of such amount, the Commissioner shall certify an amount equal to the recovered amount for payment to such individual or such individual's alternative representative payee.

''(B) The total of the amount certified for payment to such individual or such individual's alternative representative payee under subparagraph (A) and the amount certified for payment under paragraph (5) may not exceed the total benefit amount misused by the representative payee with respect to such individual.''.

(b) TITLE VIII AMENDMENT.—Section 807 of such Act (as amended by section 102(b)(2)) is amended further by adding at the end the following:

''(l) LIABILITY FOR MISUSED AMOUNTS.—

''(1) IN GENERAL.—If the Commissioner of Social Security or a court of competent jurisdiction determines that a representative payee that is not a Federal, State, or local government agency has misused all or part of a qualified individual's benefit that was paid to such representative payee under this section, the representative

payee shall be liable for the amount misused, and such amount (to the extent not repaid by the representative payee) shall be treated as an overpayment of benefits under this title to the representative payee for all purposes of this Act and related laws pertaining to the recovery of such overpayments. Subject to paragraph (2), upon recovering all or any part of such amount, the Commissioner shall make payment of an amount equal to the recovered amount to such qualified individual or such qualified individual's alternative representative payee.

''(2) LIMITATION.—The total of the amount paid to such individual or such individual's alternative representative payee under paragraph (1) and the amount paid under subsection (i) may not exceed the total benefit amount misused by the representative payee with respect to such individual.''.

(c) TITLE XVI AMENDMENTS.—Section 1631(a)(2) of such Act (42 U.S.C. 1383(a)(2)) (as amended by section 102(b)(3)) is amended further—

(1) in subparagraph (G)(i)(II), by striking ''section 205(j)(9)'' and inserting ''section 205(j)(10)''; and

(2) by striking subparagraph (H) and inserting the following:

''(H)(i) If the Commissioner of Social Security or a court of competent jurisdiction determines that a representative payee that is not a Federal, State, or local government agency has misused all or part of an individual's benefit that was paid to the representative payee under this paragraph, the representative payee shall be liable for the amount misused, and the amount (to the extent not repaid by the representative payee) shall be treated as an overpayment of benefits under this title to the representative payee for all purposes of this Act and related laws pertaining to the recovery of the overpayments. Subject to clause (ii), upon recovering all or any part of the amount, the Commissioner shall make payment of an amount equal to the recovered amount to such individual or such individual's alternative representative payee.

''(ii) The total of the amount paid to such individual or such individual's alternative representative payee under clause (i) and the amount paid under subparagraph (E) may not exceed the total benefit amount misused by the representative payee with respect to such individual.''.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to benefit misuse by a representative payee in any case with respect to which the Commissioner of Social Security or a court of competent jurisdiction makes the determination of misuse after 180 days after the date of the enactment of this Act.

SEC. 106. AUTHORITY TO REDIRECT DELIVERY OF BENEFIT PAYMENTS WHEN A REPRESENTATIVE PAYEE FAILS TO PROVIDE REQUIRED ACCOUNTING.

(a) TITLE II AMENDMENTS.—Section 205(j)(3) of the Social Security Act (42 U.S.C. 405(j)(3)) (as amended by sections 102(a)(1)(B) and 105(a)(2)) is amended—

(1) by redesignating subparagraphs (E) and (F) as subparagraphs (F) and (G), respectively; and

(2) by inserting after subparagraph (D) the following:

''(E) In any case in which the person described in subparagraph (A) or (D) receiving payments on behalf of another fails to submit a report required by the Commissioner of Social Security under subparagraph (A) or (D), the Commissioner may, after furnishing notice to such person and the individual entitled to such payment, require that such person appear in person at a field office of the Social Security Administration serving the area in which the individual resides in order to receive such payments.''.

(b) TITLE VIII AMENDMENTS.—Section 807(h) of such Act (42 U.S.C. 1007(h)) is amended—

(1) by redesignating paragraphs (3) and (4) as paragraphs (4) and (5), respectively; and

(2) by inserting after paragraph (2) the following:

''(3) AUTHORITY TO REDIRECT DELIVERY OF BENEFIT PAYMENTS WHEN A REPRESENTATIVE PAYEE FAILS TO PROVIDE REQUIRED ACCOUNTING.—In any case in which the person described in paragraph (1) or (2) receiving benefit payments on behalf of a qualified individual fails to submit a report required by the Commissioner of Social Security under paragraph (1) or (2), the Commissioner may, after furnishing notice to such person and the qualified individual, require that such person appear in person at a United States Government facility designated by the Social Security Administration as serving the area in which the qualified individual resides in order to receive such benefit payments.''.

(c) TITLE XVI AMENDMENT.—Section 1631(a)(2)(C) of such Act (42 U.S.C. 1383(a)(2)(C)) is amended by adding at the end the following:

''(v) In any case in which the person described in clause (i) or (iv) receiving payments on behalf of another fails to submit a report required by the Commissioner of Social Security under clause (i) or (iv), the Commissioner may, after furnishing notice to the person and the individual entitled to the payment, require that such person appear in person at a field office of the Social Security Administration serving the area in which the individual resides in order to receive such payments.''.

(d) EFFECTIVE DATE.—The amendments made by this section shall take effect 180 days after the date of the enactment of this Act.

SEC. 107. SURVEY OF USE OF PAYMENTS BY REPRESENTATIVE PAYEES.

(a) IN GENERAL.—Section 1110 of the Social Security Act (42 U.S.C. 1310) is amended by adding at the end the following:

''(c)(1) In addition to the amount otherwise appropriated in any other law to carry out subsection (a) for fiscal year 2004, up to $8,500,000 is authorized and appropriated and shall be used by the Commissioner of Social Security under this subsection for purposes of conducting a statistically valid survey to determine how payments made to individuals, organizations, and State or local government agencies that are representative payees for benefits paid under title II or XVI are being managed and used on behalf of the beneficiaries for whom such benefits are paid.

''(2) Not later than 18 months after the date of enactment of this subsection, the Commissioner of Social Security shall submit a report on the survey conducted in accordance with paragraph (1) to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate.''.

Subtitle B—Enforcement

SEC. 111. CIVIL MONETARY PENALTY AUTHORITY WITH RESPECT TO WRONGFUL CONVERSIONS BY REPRESENTATIVE PAYEES.

(a) IN GENERAL.—Section 1129(a) of the Social Security Act (42 U.S.C. 1320a–8) is amended by adding at the end the following:

''(3) Any person (including an organization, agency, or other entity) who, having received, while acting in the capacity of a representative payee pursuant to section 205(j), 807, or 1631(a)(2), a payment under title II, VIII, or XVI for the use and benefit of another individual, converts such payment, or any part thereof, to a use that such person knows or should know is other than for the use and benefit of such other individual shall be subject to, in addition to any other penalties that may be prescribed by law, a civil money penalty of not more than $5,000 for each such conversion. Such person shall also be subject to an assessment, in lieu of damages sustained by the United States resulting from the conversion, of not more than twice the amount of any payments so converted.''.

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

TITLE II—PROGRAM PROTECTIONS

SEC. 201. CIVIL MONETARY PENALTY AUTHORITY WITH RESPECT TO WITHHOLDING OF MATERIAL FACTS.

(a) TREATMENT OF WITHHOLDING OF MATERIAL FACTS.—

(1) CIVIL PENALTIES.—Section 1129(a)(1) of the Social Security Act (42 U.S.C. 1320a–8(a)(1)) is amended—

(A) by striking ''who'' in the first sentence and inserting ''who—'';

(B) by striking ''makes'' in the first sentence and all that follows through ''shall be subject to,'' and inserting the following:

''(A) makes, or causes to be made, a statement or representation of a material fact, for use in determining any initial or continuing right to or the amount of monthly insurance benefits under title II or benefits or payments under title VIII or XVI, that the person knows or should know is false or misleading,

''(B) makes such a statement or representation for such use with knowing disregard for the truth, or

''(C) omits from a statement or representation for such use, or otherwise withholds disclosure of, a fact which the person knows or should know is material to the determination of any initial or continuing right to or the amount of monthly insurance benefits under title II or benefits or payments under title VIII or XVI, if the person knows, or should know, that the statement or representation with such omission is false or misleading or that the withholding of such disclosure is misleading,

shall be subject to,'';

(C) by inserting ''or each receipt of such benefits or payments while withholding disclosure of such fact'' after ''each such statement or representation'' in the first sentence;

(D) by inserting ''or because of such withholding of disclosure of a material fact'' after ''because of such statement or representation'' in the second sentence; and

(E) by inserting ''or such a withholding of disclosure'' after ''such a statement or representation'' in the second sentence.

(2) ADMINISTRATIVE PROCEDURE FOR IMPOSING PENALTIES.—Section 1129A(a) of such Act (42 U.S.C. 1320a–8a(a)) is amended—

(A) by striking ''who'' the first place it appears and inserting ''who—''; and

(B) by striking ''makes'' and all that follows through ''shall be subject to,'' and inserting the following:

''(1) makes, or causes to be made, a statement or representation of a material fact, for use in determining any initial or continuing right to or the amount of monthly insurance benefits under title II or benefits or payments under title XVI that the person knows or should know is false or misleading,

''(2) makes such a statement or representation for such use with knowing disregard for the truth, or

''(3) omits from a statement or representation for such use, or otherwise withholds disclosure of, a fact which the person knows or should know is material to the determination of any initial or continuing right to or the amount of monthly insurance benefits under title II or benefits or payments under title XVI, if the person knows, or should know, that the statement or representation with such omission is false or misleading or that the withholding of such disclosure is misleading,

shall be subject to,''.

(b) CLARIFICATION OF TREATMENT OF RECOVERED AMOUNTS.—Section 1129(e)(2)(B) of such Act (42 U.S.C. 1320a–8(e)(2)(B)) is amended by striking ''In the case of amounts recovered arising out of a determination relating to title VIII or XVI,'' and inserting ''In the case of any other amounts recovered under this section,''.

(c) CONFORMING AMENDMENTS.—

(1) Section 1129(b)(3)(A) of such Act (42 U.S.C. 1320a–8(b)(3)(A)) is amended by striking ''charging fraud or false statements''.

(2) Section 1129(c)(1) of such Act (42 U.S.C. 1320a–8(c)(1)) is amended by striking ''and representations'' and inserting '', representations, or actions''.

(3) Section 1129(e)(1)(A) of such Act (42 U.S.C. 1320a–8(e)(1)(A)) is amended by striking ''statement or representation referred to in subsection (a) was made'' and inserting ''violation occurred''.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to violations committed after the date on which the Commissioner of Social Security implements the centralized computer file described in section 202.

SEC. 202. ISSUANCE BY COMMISSIONER OF SOCIAL SECURITY OF RECEIPTS TO ACKNOWLEDGE SUBMISSION OF REPORTS OF CHANGES IN WORK OR EARNINGS STATUS OF DISABLED BENEFICIARIES.

Effective as soon as possible, but not later than 1 year after the date of the enactment of this Act, until such time as the Commissioner of Social Security implements a centralized computer file recording the date of the submission of information by a disabled beneficiary (or representative) regarding a change in the beneficiary's work or earnings status, the Commissioner shall issue a receipt to the disabled beneficiary (or representative) each time he or she submits documentation, or otherwise reports to the Commissioner, on a change in such status.

SEC. 203. DENIAL OF TITLE II BENEFITS TO PERSONS FLEEING PROSECUTION, CUSTODY, OR CONFINEMENT, AND TO PERSONS VIOLATING PROBATION OR PAROLE.

(a) IN GENERAL.—Section 202(x) of the Social Security Act (42 U.S.C. 402(x)) is amended—

(1) in the heading, by striking ''Prisoners'' and all that follows and inserting the following: ''Prisoners, Certain Other Inmates of Publicly Funded Institutions, Fugitives, Probationers, and Parolees'';

(2) in paragraph (1)(A)(ii)(IV), by striking ''or'' at the end;

(3) in paragraph (1)(A)(iii), by striking the period at the end and inserting a comma;

(4) by inserting after paragraph (1)(A)(iii) the following:

''(iv) is fleeing to avoid prosecution, or custody or confinement after conviction, under the laws of the place from which the person flees, for a crime, or an attempt to commit a crime, which is a felony under the laws of the place from which the person flees, or, in jurisdictions that do not define crimes as felonies, is punishable by death or imprisonment for a term exceeding 1 year regardless of the actual sentence imposed, or

''(v) is violating a condition of probation or parole imposed under Federal or State law.'';

(5) by adding at the end of paragraph (1)(B) the following:

''(iii) Notwithstanding subparagraph (A), the Commissioner shall, for good cause shown, pay the individual benefits that have been withheld or would otherwise be withheld pursuant to clause (iv) or (v) of subparagraph (A) if the Commissioner determines that—

''(I) a court of competent jurisdiction has found the individual not guilty of the criminal offense, dismissed the charges relating to the criminal offense, vacated the warrant for arrest of the individual for the criminal offense, or issued any similar exonerating order (or taken similar exonerating action), or

''(II) the individual was erroneously implicated in connection with the criminal offense by reason of identity fraud.

''(iv) Notwithstanding subparagraph (A), the Commissioner may, for good cause shown based on mitigating circumstances, pay the individual benefits that have been withheld or would otherwise be withheld pursuant to clause (iv) or (v) of subparagraph (A) if the Commissioner determines that—

''(I) the offense described in clause (iv) or underlying the imposition of the probation or parole described in clause (v) was nonviolent and not drug-related, and

''(II) in the case of an individual from whom benefits have been withheld or otherwise would be withheld pursuant to subparagraph (A)(v), the action that resulted in the violation of a condition of probation or parole was nonviolent and not drug-related.''; and

(6) in paragraph (3), by adding at the end the following:

''(C) Notwithstanding the provisions of section 552a of title 5, United States Code, or any other provision of Federal or State law (other than section 6103 of the Internal Revenue Code of 1986 and section 1106(c) of this Act), the Commissioner shall furnish any Federal, State, or local law enforcement officer, upon the written request of the officer, with the current address, Social Security number, and photograph (if applicable) of any beneficiary under this title, if the officer furnishes the Commissioner with the name of the beneficiary, and other identifying information as reasonably required by the Commissioner to establish the unique identity of the beneficiary, and notifies the Commissioner that—

''(i) the beneficiary is described in clause (iv) or (v) of paragraph (1)(A); and

''(ii) the location or apprehension of the beneficiary is within the officer's official duties.''.

(b) CONFORMING AMENDMENTS TO TITLE XVI.—Section 1611(e) of the Social Security Act (42 U.S.C. 1382(e)) is amended—

(1) in paragraph (4)—

(A) by redesignating subparagraphs (A) and (B) as clauses (i) and (ii), respectively;

(B) by inserting ''(A)'' after ''(4)'';

(C) in clause (i) of subparagraph (A) (as redesignated by subparagraph (A)), by striking ''or which, in the case of the State of New Jersey, is a high misdemeanor under the laws of such State'' and inserting ''or, in jurisdictions that do not define crimes as felonies, is punishable by death or imprisonment for a term exceeding 1 year regardless of the actual sentence imposed''; and

(D) by adding at the end the following:

''(B) Notwithstanding subparagraph (A), the Commissioner shall, for good cause shown, treat the person referred to in subparagraph (A) as an eligible individual or eligible spouse if the Commissioner determines that—

''(i) a court of competent jurisdiction has found the person not guilty of the criminal offense, dismissed the charges relating to the criminal offense, vacated the warrant for arrest of the person for the criminal offense, or issued any similar exonerating order (or taken similar exonerating action), or

''(ii) the person was erroneously implicated in connection with the criminal offense by reason of identity fraud.

''(C) Notwithstanding subparagraph (A), the Commissioner may, for good cause shown based on mitigating circumstances, treat the person referred to in subparagraph (A) as an eligible individual or eligible spouse if the Commissioner determines that—

''(i) the offense described in subparagraph (A)(i) or underlying the imposition of the probation or parole described in subparagraph (A)(ii) was nonviolent and not drug-related, and

''(ii) in the case of a person who is not considered an eligible individual or eligible spouse pursuant to subparagraph (A)(ii), the action that resulted in the violation of a condition of probation or parole was nonviolent and not drug-related.''; and

(2) in paragraph (5), by striking subparagraphs (A) and (B) and inserting the following:

''(A) the recipient is described in clause (i) or (ii) of paragraph (4)(A); and

''(B) the location or apprehension of the recipient is within the officer's official duties.''.

(c) CONFORMING AMENDMENT.—Section 804(a)(2) of the Social Security Act (42 U.S.C. 1004(a)(2)) is amended by striking ''or which, in the case of the State of New Jersey, is a high misdemeanor under the laws of such State'' and inserting ''or, in jurisdictions that do not define crimes as felonies, is punishable by death or imprisonment for a term exceeding 1 year regardless of the actual sentence imposed''.

(d) EFFECTIVE DATE.—The amendments made by this section shall take effect on the first day of the first month that begins on or after the date that is 9 months after the date of enactment of this Act.

SEC. 204. REQUIREMENTS RELATING TO OFFERS TO PROVIDE FOR A FEE, A PRODUCT OR SERVICE AVAILABLE WITHOUT CHARGE FROM THE SOCIAL SECURITY ADMINISTRATION.

(a) IN GENERAL.—Section 1140 of the Social Security Act (42 U.S.C. 1320b–10) is amended—

(1) in subsection (a), by adding at the end the following:

''(4)(A) No person shall offer, for a fee, to assist an individual to obtain a product or service that the person knows or should know is provided free of charge by the Social Security Administration unless, at the time the offer is made, the person provides to the individual to whom the offer is tendered a notice that—

''(i) explains that the product or service is available free of charge from the Social Security Administration, and

''(ii) complies with standards prescribed by the Commissioner of Social Security respecting the content of such notice and its placement, visibility, and legibility.

''(B) Subparagraph (A) shall not apply to any offer—

''(i) to serve as a claimant representative in connection with a claim arising under title II, title VIII, or title XVI; or

''(ii) to prepare, or assist in the preparation of, an individual's plan for achieving self-support under title XVI.''; and

(2) in the heading, by striking ''PROHIBITION OF MISUSE OF SYMBOLS, EMBLEMS, OR NAMES IN REFERENCE'' and inserting ''PROHIBITIONS RELATING TO REFERENCES''.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to offers of assistance made after the sixth month ending after the Commissioner of Social Security promulgates final regulations prescribing the standards applicable to the notice required to be provided in connection with such offer. The Commissioner shall promulgate such final regulations within 1 year after the date of the enactment of this Act.

SEC. 205. REFUSAL TO RECOGNIZE CERTAIN INDIVIDUALS AS CLAIMANT REPRESENTATIVES.

Section 206(a)(1) of the Social Security Act (42 U.S.C. 406(a)(1)) is amended by inserting after the second sentence the following: ''Notwithstanding the preceding sentences, the Commissioner, after due notice and opportunity for hearing, (A) may refuse to recognize as a representative, and may disqualify a representative already recognized, any attorney who has been disbarred or suspended from any court or bar to which he or she was previously admitted to practice or who has been disqualified from participating in or appearing before any Federal program or agency, and (B) may refuse to recognize, and may disqualify, as a non-attorney representative any attorney who has been disbarred or suspended from any court or bar to which he or she was previously admitted to practice. A representative who has been disqualified or suspended pursuant to this section from appearing before the Social Security Administration as a result of collecting or receiving a fee in excess of the amount authorized shall be barred from appearing before the Social Security Administration as a representative until full restitution is made to the claimant and, thereafter,

may be considered for reinstatement only under such rules as the Commissioner may prescribe.''.

SEC. 206. CRIMINAL PENALTY FOR CORRUPT OR FORCIBLE INTERFERENCE WITH ADMINISTRATION OF SOCIAL SECURITY ACT.

Part A of title XI of the Social Security Act (42 U.S.C. 1301 et seq.) is amended by inserting after section 1129A the following:

''ATTEMPTS TO INTERFERE WITH ADMINISTRATION OF SOCIAL SECURITY ACT

''SEC. 1129B. Whoever corruptly or by force or threats of force (including any threatening letter or communication) attempts to intimidate or impede any officer, employee, or contractor of the Social Security Administration (including any State employee of a disability determination service or any other individual designated by the Commissioner of Social Security) acting in an official capacity to carry out a duty under this Act, or in any other way corruptly or by force or threats of force (including any threatening letter or communication) obstructs or impedes, or attempts to obstruct or impede, the due administration of this Act, shall be fined not more than $5,000, imprisoned not more than 3 years, or both, except that if the offense is committed only by threats of force, the person shall be fined not more than $3,000, imprisoned not more than 1 year, or both. In this subsection, the term 'threats of force' means threats of harm to the officer or employee of the United States or to a contractor of the Social Security Administration, or to a member of the family of such an officer or employee or contractor.''.

SEC. 207. USE OF SYMBOLS, EMBLEMS, OR NAMES IN REFERENCE TO SOCIAL SECURITY OR MEDICARE.

(a) IN GENERAL.—Section 1140(a)(1) of the Social Security Act (42 U.S.C. 1320b–10(a)(1)) is amended—

(1) in subparagraph (A), by inserting '' 'Centers for Medicare & Medicaid Services','' after '' 'Health Care Financing Administration','', by striking ''or 'Medicaid','' and inserting '' 'Medicaid', 'Death Benefits Update', 'Federal Benefit Information', 'Funeral Expenses', or 'Final Supplemental Plan','' and by inserting '' 'CMS','' after '' 'HCFA','';

(2) in subparagraph (B), by inserting ''Centers for Medicare & Medicaid Services,'' after ''Health Care Financing Administration,'' each place it appears; and

(3) in the matter following subparagraph (B), by striking ''the Health Care Financing Administration,'' each place it appears and inserting ''the Centers for Medicare & Medicaid Services,''.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to items sent after 180 days after the date of the enactment of this Act.

SEC. 208. DISQUALIFICATION FROM PAYMENT DURING TRIAL WORK PERIOD UPON CONVICTION OF FRAUDULENT CONCEALMENT OF WORK ACTIVITY.

(a) IN GENERAL.—Section 222(c) of the Social Security Act (42 U.S.C. 422(c)) is amended by adding at the end the following:

''(5) Upon conviction by a Federal court that an individual has fraudulently concealed work activity during a period of trial work from the Commissioner of Social Security by—

''(A) providing false information to the Commissioner of Social Security as to whether the individual had earnings in or for a particular period, or as to the amount thereof;

''(B) receiving disability insurance benefits under this title while engaging in work activity under another identity, including under another social security account number or a number purporting to be a social security account number; or

''(C) taking other actions to conceal work activity with an intent fraudulently to secure payment in a greater amount than is due or when no payment is authorized,

no benefit shall be payable to such individual under this title with respect to a period of disability for any month before such conviction during which the individual rendered services during the period of trial work with respect to which the fraudulently concealed work activity occurred, and amounts otherwise due under this title as restitution, penalties, assessments, fines, or other repayments shall in all cases be in addition to any amounts for which such individual is liable as overpayments by reason of such concealment.''.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply with respect to work activity performed after the date of the enactment of this Act.

SEC. 209. AUTHORITY FOR JUDICIAL ORDERS OF RESTITUTION.

(a) AMENDMENTS TO TITLE II.—Section 208 of the Social Security Act (42 U.S.C. 408) is amended—

(1) by redesignating subsections (b), (c), and (d) as subsections (c), (d), and (e), respectively;

(2) by inserting after subsection (a) the following:

''(b)(1) Any Federal court, when sentencing a defendant convicted of an offense under subsection (a), may order, in addition to or in lieu of any other penalty authorized by law, that the defendant make restitution to the victims of such offense specified in paragraph (4).

''(2) Sections 3612, 3663, and 3664 of title 18, United States Code, shall apply with respect to the issuance and enforcement of orders of restitution to victims of such offense under this subsection.

''(3) If the court does not order restitution, or orders only partial restitution, under this subsection, the court shall state on the record the reasons therefor.

''(4) For purposes of paragraphs (1) and (2), the victims of an offense under subsection (a) are the following:

''(A) Any individual who suffers a financial loss as a result of the defendant's violation of subsection (a).

''(B) The Commissioner of Social Security, to the extent that the defendant's violation of subsection (a) results in—

''(i) the Commissioner of Social Security making a benefit payment that should not have been made; or

''(ii) an individual suffering a financial loss due to the defendant's violation of subsection (a) in his or her capacity as the individual's representative payee appointed pursuant to section 205(j).

''(5)(A) Except as provided in subparagraph (B), funds paid to the Commissioner of Social Security as restitution pursuant to a court order shall be deposited in the Federal Old-Age and Survivors Insurance Trust Fund, or the Federal Disability Insurance Trust Fund, as appropriate.

''(B) In the case of funds paid to the Commissioner of Social Security pursuant to paragraph (4)(B)(ii), the Commissioner of Social Security shall certify for payment to the individual described in such paragraph an amount equal to the lesser of the amount of the funds so paid or the individual's outstanding financial loss, except that such amount may be reduced by the amount of any overpayments of benefits owed under this title, title VIII, or title XVI by the individual.''; and

(3) by amending subsection (c) (as redesignated by paragraph (1)), by striking the second sentence.

(b) AMENDMENTS TO TITLE VIII.—Section 811 of the Social Security Act (42 U.S.C. 1011) is amended—

(1) by striking subsection (b) and inserting the following:

''(b) COURT ORDER FOR RESTITUTION.—

''(1) IN GENERAL.—Any Federal court, when sentencing a defendant convicted of an offense under subsection (a), may order, in addition to or in lieu of any other penalty authorized by law, that the defendant make restitution to the Commissioner of Social Security, in any case in which such offense results in—

''(A) the Commissioner of Social Security making a benefit payment that should not have been made, or

''(B) an individual suffering a financial loss due to the defendant's violation of subsection (a) in his or her capacity as the individual's representative payee appointed pursuant to section 807(i).

''(2) RELATED PROVISIONS.—Sections 3612, 3663, and 3664 of title 18, United States Code, shall apply with respect to the issuance and enforcement of orders of restitution under this subsection. In so applying such sections, the Commissioner of Social Security shall be considered the victim.

''(3) STATED REASONS FOR NOT ORDERING RESTITUTION.—If the court does not order restitution, or orders only partial restitution, under this subsection, the court shall state on the record the reasons therefor.

''(4) RECEIPT OF RESTITUTION PAYMENTS.—

''(A) IN GENERAL.—Except as provided in subparagraph (B), funds paid to the Commissioner of Social Security as restitution pursuant to a court order shall be deposited as miscellaneous receipts in the general fund of the Treasury.

''(B) PAYMENT TO THE INDIVIDUAL.—In the case of funds paid to the Commissioner of Social Security pursuant to paragraph (1)(B), the Commissioner of Social Security shall certify for payment to the individual described in such paragraph an amount equal to the lesser of the amount of the funds so paid or the individual's outstanding financial loss as described in such paragraph, except that such amount may be reduced by any overpayment of benefits owed under this title, title II, or title XVI by the individual.''.

(c) AMENDMENTS TO TITLE XVI.—Section 1632 of the Social Security Act (42 U.S.C. 1383a) is amended—

(1) by redesignating subsection (b) as subsection (c); and

(2) by inserting after subsection (a) the following:

''(b)(1) Any Federal court, when sentencing a defendant convicted of an offense under subsection (a), may order, in addition to or in lieu of any other penalty authorized by law, that the defendant make restitution to the Commissioner of Social Security, in any case in which such offense results in—

''(A) the Commissioner of Social Security making a benefit payment that should not have been made, or

''(B) an individual suffering a financial loss due to the defendant's violation of subsection (a) in his or her capacity as the individual's representative payee appointed pursuant to section 1631(a)(2).

''(2) Sections 3612, 3663, and 3664 of title 18, United States Code, shall apply with respect to the issuance and enforcement of orders of restitution under this subsection. In so applying such sections, the Commissioner of Social Security shall be considered the victim.

''(3) If the court does not order restitution, or orders only partial restitution, under this subsection, the court shall state on the record the reasons therefor.

''(4)(A) Except as provided in subparagraph (B), funds paid to the Commissioner of Social Security as restitution pursuant to a court order shall be deposited as miscellaneous receipts in the general fund of the Treasury.

''(B) In the case of funds paid to the Commissioner of Social Security pursuant to

paragraph (1)(B), the Commissioner of Social Security shall certify for payment to the individual described in such paragraph an amount equal to the lesser of the amount of the funds so paid or the individual's outstanding financial loss as described in such paragraph, except that such amount may be reduced by any overpayment of benefits owed under this title, title II, or title VIII by the individual.''; and

(3) by amending subsection (c) (as redesignated by paragraph (1)) by striking ''(1) If a person'' and all that follows through ''(2)''.

(d) EFFECTIVE DATE.—The amendments made by subsections (a), (b), and (c) shall apply with respect to violations occurring on or after the date of enactment of this Act.

SEC. 210. AUTHORITY FOR CROSS-PROGRAM RECOVERY OF BENEFIT OVERPAYMENTS.

(a) IN GENERAL.—Section 1147 of the Social Security Act (42 U.S.C. 1320b–17) is amended to read as follows:

''CROSS-PROGRAM RECOVERY OF OVERPAYMENTS FROM BENEFITS

''(a) IN GENERAL.—Subject to subsection (b), whenever the Commissioner of Social Security determines that more than the correct amount of any payment has been made to a person under a program described in subsection (e), the Commissioner of Social Security may recover the amount incorrectly paid by decreasing any amount which is payable to such person under any other program specified in that subsection.

''(b) LIMITATION APPLICABLE TO CURRENT BENEFITS.—

''(1) IN GENERAL.—In carrying out subsection (a), the Commissioner of Social Security may not decrease the monthly amount payable to an individual under a program described in subsection (e) that is paid when regularly due—

''(A) in the case of benefits under title II or VIII, by more than 10 percent of the amount of the benefit payable to the person for that month under such title; and

''(B) in the case of benefits under title XVI, by an amount greater than the lesser of—

''(i) the amount of the benefit payable to the person for that month; or

''(ii) an amount equal to 10 percent of the person's income for that month (including such monthly benefit but excluding payments under title II when recovery is also made from title II payments and excluding income excluded pursuant to section 1612(b)).

''(2) EXCEPTION.—Paragraph (1) shall not apply if—

''(A) the person or the spouse of the person was involved in willful misrepresentation or concealment of material information in connection with the amount incorrectly paid; or

''(B) the person so requests.

''(c) NO EFFECT ON ELIGIBILITY OR BENEFIT AMOUNT UNDER TITLE VIII OR XVI.—In any case in which the Commissioner of Social Security takes action in accordance with subsection (a) to recover an amount incorrectly paid to any person, neither that person, nor (with respect to the program described in subsection (e)(3)) any individual whose eligibility for benefits under such program or whose amount of such benefits, is determined by considering any part of that person's income, shall, as a result of such action—

''(1) become eligible for benefits under the program described in paragraph (2) or (3) of subsection (e); or

''(2) if such person or individual is otherwise so eligible, become eligible for increased benefits under such program.

''(d) INAPPLICABILITY OF PROHIBITION AGAINST ASSESSMENT AND LEGAL PROCESS.—Section 207 shall not apply to actions taken under the provisions of this section to decrease amounts payable under titles II and XVI.

''(e) PROGRAMS DESCRIBED.—The programs described in this subsection are the following:

''(1) The old-age, survivors, and disability insurance benefits program under title II.

''(2) The special benefits for certain World War II veterans program under title VIII.

''(3) The supplemental security income benefits program under title XVI (including, for purposes of this section, State supplementary payments paid by the Commissioner pursuant to an agreement under section 1616(a) of this Act or section 212(b) of Public Law 93–66).''.

(b) CONFORMING AMENDMENTS.—

(1) Section 204(g) of the Social Security Act (42 U.S.C. 404(g)) is amended to read as follows:

''(g) For provisions relating to the cross-program recovery of overpayments made under programs administered by the Commissioner of Social Security, see section 1147.''.

(2) Section 808 of the Social Security Act (42 U.S.C. 1008) is amended—

(A) in subsection (a)(1)—

(i) by striking subparagraph (B);

(ii) in the matter preceding subparagraph (A), by striking ''any payment'' and all that follows through ''under this title'' and inserting ''any payment under this title''; and

(iii) by striking ''; or'' and inserting a period;

(B) by striking subsection (b) and redesignating subsections (c), (d), and (e) as subsections (b), (c), and (d), respectively; and

(C) by adding at the end the following:

''(e) CROSS-PROGRAM RECOVERY OF OVERPAYMENTS.—For provisions relating to the cross-program recovery of overpayments made under programs administered by the Commissioner of Social Security, see section 1147.''.

(3) Section 1147A of the Social Security Act (42 U.S.C. 1320b–18) is repealed.

(4) Section 1631(b) of the Social Security Act (42 U.S.C. 1383(b)) is amended—

(A) in paragraph (1)(B)—

(i) by striking ''excluding any other'' and inserting ''excluding payments under title II when recovery is made from title II payments pursuant to section 1147 and excluding''; and

(ii) by striking ''50 percent of''; and

(B) by striking paragraph (6) and inserting the following:

''(6) For provisions relating to the cross-program recovery of overpayments made under programs administered by the Commissioner of Social Security, see section 1147.''.

(c) EFFECTIVE DATE.—The amendments and repeal made by this section shall take effect on the date of enactment of this Act, and shall be effective with respect to overpayments under titles II, VIII, and XVI of the Social Security Act that are outstanding on or after such date.

SEC. 211. PROHIBITION ON PAYMENT OF TITLE II BENEFITS TO PERSONS NOT AUTHORIZED TO WORK IN THE UNITED STATES.

(a) FULLY INSURED AND CURRENTLY INSURED INDIVIDUALS.—Section 214 (42 U.S.C. 414) is amended—

(1) in subsection (a), by inserting before the period at the end the following: '', and who satisfies the criterion specified in subsection (c)'';

(2) in subsection (b), by inserting before the period at the end the following: '', and who satisfies the criterion specified in subsection (c)''; and

(3) by adding at the end the following:

''(c) For purposes of subsections (a) and (b), the criterion specified in this subsection is that the individual, if not a United States citizen or national—

''(1) has been assigned a social security account number that was, at the time of assignment, or at any later time, consistent with the requirements of subclause (I) or (III) of section 205(c)(2)(B)(i); or

''(2) at the time any such quarters of coverage are earned—

''(A) is described in subparagraph (B) or (D) of section 101(a)(15) of the Immigration and Nationality Act,

''(B) is lawfully admitted temporarily to the United States for business (in the case of an individual described in such subparagraph (B)) or the performance as a crewman (in the case of an individual described in such subparagraph (D)), and

''(C) the business engaged in or service as a crewman performed is within the scope of the terms of such individual's admission to the United States.''.

(b) DISABILITY BENEFITS.—Section 223(a)(1) of the Social Security Act (42 U.S.C. 423(a)(1)) is amended—

(1) by redesignating subparagraphs (C) and (D) as subparagraphs (D) and (E), respectively; and

(2) by inserting after subparagraph (B), the following:

''(C) if not a United States citizen or national—

''(i) has been assigned a social security account number that was, at the time of assignment, or at any later time, consistent with the requirements of subclause (I) or (III) of section 205(c)(2)(B)(i); or

''(ii) at the time any quarters of coverage are earned—

''(I) is described in subparagraph (B) or (D) of section 101(a)(15) of the Immigration and Nationality Act,

''(II) is lawfully admitted temporarily to the United States for business (in the case of an individual described in such subparagraph (B)) or the performance as a crewman (in the case of an individual described in such subparagraph (D)), and

''(III) the business engaged in or service as a crewman performed is within the scope of the terms of such individual's admission to the United States.''.

(c) EFFECTIVE DATE.—The amendments made by this section apply to benefit applications based on social security account numbers issued on or after January 1, 2004.

TITLE III—ATTORNEY REPRESENTATIVE FEE PAYMENT SYSTEM IMPROVEMENTS

SEC. 301. CAP ON ATTORNEY ASSESSMENTS.

(a) IN GENERAL.—Section 206(d)(2)(A) of the Social Security Act (42 U.S.C. 406(d)(2)(A)) is amended—

(1) by inserting '', except that the maximum amount of the assessment may not exceed the greater of $75 or the adjusted amount as provided pursuant to the following two sentences'' after ''subparagraph (B)''; and

(2) by adding at the end the following: ''In the case of any calendar year beginning after the amendments made by section 301 of the Social Security Protection Act of 2003 take effect, the dollar amount specified in the preceding sentence (including a previously adjusted amount) shall be adjusted annually under the procedures used to adjust benefit amounts under section 215(i)(2)(A)(ii), except such adjustment shall be based on the higher of $75 or the previously adjusted amount that would have been in effect for December of the preceding year, but for the rounding of such amount pursuant to the following sentence. Any amount so adjusted that is not a multiple of $1 shall be rounded to the next lowest multiple of $1, but in no case less than $75.''.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply with respect

to fees for representation of claimants which are first required to be certified or paid under section 206 of the Social Security Act on or after the first day of the first month that begins after 180 days after the date of the enactment of this Act.

SEC. 302. TEMPORARY EXTENSION OF ATTORNEY FEE PAYMENT SYSTEM TO TITLE XVI CLAIMS.

(a) IN GENERAL.—Section 1631(d)(2) of the Social Security Act (42 U.S.C. 1383(d)(2)) is amended—

(1) in subparagraph (A), in the matter preceding clause (i)—

(A) by striking ''section 206(a)'' and inserting ''section 206'';

(B) by striking ''(other than paragraph (4) thereof)'' and inserting ''(other than subsections (a)(4) and (d) thereof)''; and

(C) by striking ''paragraph (2) thereof'' and inserting ''such section'';

(2) in subparagraph (A)(i)—

(A) by striking ''in subparagraphs (A)(ii)(I) and (C)(i),'' and inserting ''in subparagraphs (A)(ii)(I) and (D)(i) of subsection (a)(2)''; and

(B) by striking ''and'' at the end;

(3) by striking subparagraph (A)(ii) and inserting the following:

''(ii) by substituting, in subsections (a)(2)(B) and (b)(1)(B)(i), the phrase 'paragraph (7)(A) or (8)(A) of section 1631(a) or the requirements of due process of law' for the phrase 'subsection (g) or (h) of section 223';

''(iii) by substituting, in subsection (a)(2)(C)(i), the phrase 'under title II' for the phrase 'under title XVI';

''(iv) by substituting, in subsection (b)(1)(A), the phrase 'pay the amount of such fee' for the phrase 'certify the amount of such fee for payment' and by striking, in subsection (b)(1)(A), the phrase 'or certified for payment'; and

''(v) by substituting, in subsection (b)(1)(B)(ii), the phrase 'deemed to be such amounts as determined before any applicable reduction under section 1631(g), and reduced by the amount of any reduction in benefits under this title or title II made pursuant to section 1127(a)' for the phrase 'determined before any applicable reduction under section 1127(a))'.''; and

(4) by redesignating subparagraph (B) as subparagraph (D) and inserting after subparagraph (A) the following:

''(B) Subject to subparagraph (C), if the claimant is determined to be entitled to past-due benefits under this title and the person representing the claimant is an attorney, the Commissioner of Social Security shall pay out of such past-due benefits to such attorney an amount equal to the lesser of—

''(i) so much of the maximum fee as does not exceed 25 percent of such past-due benefits (as determined before any applicable reduction under section 1631(g) and reduced by the amount of any reduction in benefits under this title or title II pursuant to section 1127(a)), or

''(ii) the amount of past-due benefits available after any applicable reductions under sections 1631(g) and 1127(a).

''(C)(i) Whenever a fee for services is required to be paid to an attorney from a claimant's past-due benefits pursuant to subparagraph (B), the Commissioner shall impose on the attorney an assessment calculated in accordance with clause (ii).

''(ii)(I) The amount of an assessment under clause (i) shall be equal to the product obtained by multiplying the amount of the representative's fee that would be required to be paid by subparagraph (B) before the application of this subparagraph, by the percentage specified in subclause (II), except that the maximum amount of the assessment may not exceed $75. In the case of any calendar year beginning after the amendments made by section 302 of the Social Security Protection Act of 2003 take effect, the dollar amount specified in the preceding sentence (including a previously adjusted amount) shall be adjusted annually under the procedures used to adjust benefit amounts under section 215(i)(2)(A)(ii), except such adjustment shall be based on the higher of $75 or the previously adjusted amount that would have been in effect for December of the preceding year, but for the rounding of such amount pursuant to the following sentence. Any amount so adjusted that is not a multiple of $1 shall be rounded to the next lowest multiple of $1, but in no case less than $75.

''(II) The percentage specified in this subclause is such percentage rate as the Commissioner determines is necessary in order to achieve full recovery of the costs of determining and approving fees to attorneys from the past-due benefits of claimants, but not in excess of 6.3 percent.

''(iii) The Commissioner may collect the assessment imposed on an attorney under clause (i) by offset from the amount of the fee otherwise required by subparagraph (B) to be paid to the attorney from a claimant's past-due benefits.

''(iv) An attorney subject to an assessment under clause (i) may not, directly or indirectly, request or otherwise obtain reimbursement for such assessment from the claimant whose claim gave rise to the assessment.

''(v) Assessments on attorneys collected under this subparagraph shall be deposited as miscellaneous receipts in the general fund of the Treasury.

''(vi) The assessments authorized under this subparagraph shall be collected and available for obligation only to the extent and in the amount provided in advance in appropriations Acts. Amounts so appropriated are authorized to remain available until expended, for administrative expenses in carrying out this title and related laws.''.

(b) CONFORMING AMENDMENTS.—Section 1631(a) of the Social Security Act (42 U.S.C. 1383(a)) is amended—

(1) in paragraph (2)(F)(i)(II), by inserting ''and payment of attorney fees under subsection (d)(2)(B)'' after ''subsection (g)''; and

(2) in paragraph (10)(A)—

(A) in the matter preceding clause (i), by inserting ''and payment of attorney fees under subsection (d)(2)(B)'' after ''subsection (g)''; and

(B) in the matter following clause (ii), by inserting ''and payment of attorney fees under subsection (d)(2)(B)'' after ''State''.

(c) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by this section shall apply with respect to fees for representation of claimants which are first required to be paid under section 1631(d)(2) of the Social Security Act on or after the date of the submission by the Commissioner of Social Security to each House of Congress pursuant to section 303(d) of this Act of written notice of completion of full implementation of the requirements for operation of the demonstration project under section 303 of this Act.

(2) SUNSET.—Such amendments shall not apply with respect to fees for representation of claimants in the case of any claim for benefits with respect to which the agreement for representation is entered into after 5 years after the date described in paragraph (1).

SEC. 303. NATIONWIDE DEMONSTRATION PROJECT PROVIDING FOR EXTENSION OF FEE WITHHOLDING PROCEDURES TO NON-ATTORNEY REPRESENTATIVES.

(a) IN GENERAL.—The Commissioner of Social Security (hereafter in this section referred to as the ''Commissioner'') shall develop and carry out a nationwide demonstration project under this section with respect to agents and other persons, other than attorneys, who represent claimants under titles II and XVI of the Social Security Act before the Commissioner. The demonstration project shall be designed to determine the potential results of extending to such representatives the fee withholding procedures and assessment procedures that apply under sections 206 and section 1631(d)(2) of such Act to attorneys seeking direct payment out of past due benefits under such titles and shall include an analysis of the effect of such extension on claimants and program administration.

(b) STANDARDS FOR INCLUSION IN DEMONSTRATION PROJECT.—Fee-withholding procedures may be extended under the demonstration project carried out pursuant to subsection (a) to any non-attorney representative only if such representative meets at least the following prerequisites:

(1) The representative has been awarded a bachelor's degree from an accredited institution of higher education, or has been determined by the Commissioner to have equivalent qualifications derived from training and work experience.

(2) The representative has passed an examination, written and administered by the Commissioner, which tests knowledge of the relevant provisions of the Social Security Act and the most recent developments in agency and court decisions affecting titles II and XVI of such Act.

(3) The representative has secured professional liability insurance, or equivalent insurance, which the Commissioner has determined to be adequate to protect claimants in the event of malpractice by the representative.

(4) The representative has undergone a criminal background check to ensure the representative's fitness to practice before the Commissioner.

(5) The representative demonstrates ongoing completion of qualified courses of continuing education, including education regarding ethics and professional conduct, which are designed to enhance professional knowledge in matters related to entitlement to, or eligibility for, benefits based on disability under titles II and XVI of such Act. Such continuing education, and the instructors providing such education, shall meet such standards as the Commissioner may prescribe.

(c) ASSESSMENT OF FEES.—

(1) IN GENERAL.—The Commissioner may assess representatives reasonable fees to cover the cost to the Social Security Administration of administering the prerequisites described in subsection (b).

(2) DISPOSITION OF FEES.—Fees collected under paragraph (1) shall be credited to the Federal Old-Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust Fund, or deposited as miscellaneous receipts in the general fund of the Treasury, based on such allocations as the Commissioner of Social Security determines appropriate.

(3) AUTHORIZATION OF APPROPRIATIONS.—The fees authorized under this subparagraph shall be collected and available for obligation only to the extent and in the amount provided in advance in appropriations Acts. Amounts so appropriated are authorized to remain available until expended for administering the prerequisites described in subsection (b).

(d) NOTICE TO CONGRESS AND APPLICABILITY OF FEE WITHHOLDING PROCEDURES.—Not later than 1 year after the date of enactment of this Act, the Commissioner shall complete such actions as are necessary to fully implement the requirements for full operation of

the demonstration project and shall submit to each House of Congress a written notice of the completion of such actions. The applicability under this section to non-attorney representatives of the fee withholding procedures and assessment procedures under sections 206 and 1631(d)(2) of the Social Security Act shall be effective with respect to fees for representation of claimants in the case of claims for benefits with respect to which the agreement for representation is entered into by such non-attorney representatives during the period beginning with the date of the submission of such notice by the Commissioner to Congress and ending with the termination date of the demonstration project.

(e) REPORTS BY THE COMMISSIONER; TERMINATION.—

(1) INTERIM REPORTS.—On or before the date which is 1 year after the date of enactment of this Act, and annually thereafter, the Commissioner shall transmit to the Committee on Ways and Means of the House of Representatives and to the Committee on Finance of the Senate an annual interim report on the progress of the demonstration project carried out under this section, together with any related data and materials that the Commissioner may consider appropriate.

(2) TERMINATION DATE AND FINAL REPORT.—The termination date of the demonstration project under this section is the date which is 5 years after the date of the submission of the notice by the Commissioner to each House of Congress pursuant to subsection (d). The authority under the preceding provisions of this section shall not apply in the case of claims for benefits with respect to which the agreement for representation is entered into after the termination date. Not later than 90 days after the termination date, the Commissioner shall submit to the Committee on Ways and Means of the House of Representatives and to the Committee on Finance of the Senate a final report with respect to the demonstration project.

SEC. 304. GAO STUDY REGARDING THE FEE PAYMENT PROCESS FOR CLAIMANT REPRESENTATIVES.

(a) STUDY.—

(1) IN GENERAL.—The Comptroller General of the United States shall study and evaluate the appointment and payment of claimant representatives appearing before the Commissioner of Social Security in connection with benefit claims under titles II and XVI of the Social Security Act (42 U.S.C. 401 et seq., 1381 et seq.) in each of the following groups:

(A) Attorney claimant representatives who elect fee withholding under section 206 or 1631(d)(2) of such Act.

(B) Attorney claimant representatives who do not elect such fee withholding.

(C) Non-attorney claimant representatives who are eligible for, and elect, such fee withholding.

(D) Non-attorney claimant representatives who are eligible for, but do not elect, such fee withholding.

(E) Non-attorney claimant representatives who are not eligible for such fee withholding.

(2) MATTERS TO BE STUDIED.—In conducting the study under this subsection, the Comptroller General shall, for each of group of claimant representatives described in paragraph (1)—

(A) conduct a survey of the relevant characteristics of such claimant representatives including—

(i) qualifications and experience;

(ii) the type of employment of such claimant representatives, such as with an advocacy group, State or local government, or insurance or other company;

(iii) geographical distribution between urban and rural areas;

(iv) the nature of claimants' cases, such as whether the cases are for disability insurance benefits only, supplemental security income benefits only, or concurrent benefits;

(v) the relationship of such claimant representatives to claimants, such as whether the claimant is a friend, family member, or client of the claimant representative; and

(vi) the amount of compensation (if any) paid to the claimant representatives and the method of payment of such compensation;

(B) assess the quality and effectiveness of the services provided by such claimant representatives, including a comparison of claimant satisfaction or complaints and benefit outcomes, adjusted for differences in claimant representatives' caseload, claimants' diagnostic group, level of decision, and other relevant factors;

(C) assess the interactions between fee withholding under sections 206 and 1631(d)(2) of such Act (including under the amendments made by section 302 of this Act and under the demonstration project conducted under section 303 of this Act), the windfall offset under section 1127 of such Act, and interim assistance reimbursements under section 1631(g) of such Act;

(D) assess the potential results of making permanent the fee withholding procedures under sections 206 and 1631(d)(2) of such Act under the amendments made by section 302 of this Act and under the demonstration project conducted under section 303 of this Act with respect to program administration and claimant outcomes, and assess whether the rules and procedures employed by the Commissioner of Social Security to evaluate the qualifications and performance of claimant representatives should be revised prior to making such procedures permanent; and

(E) make such recommendations for administrative and legislative changes as the Comptroller General of the United States considers necessary or appropriate.

(3) CONSULTATION REQUIRED.—The Comptroller General of the United States shall consult with beneficiaries under title II of such Act, beneficiaries under title XVI of such Act, claimant representatives of beneficiaries under such titles, and other interested parties, in conducting the study and evaluation required under paragraph (1).

(b) REPORT.—Not later than 3 years after the date of the submission by the Commissioner of Social Security to each House of Congress pursuant to section 303(d) of this Act of written notice of completion of full implementation of the requirements for operation of the demonstration project under section 303 of this Act, the Comptroller General of the United States shall submit to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate a report on the results of the study and evaluation conducted pursuant to subsection (a).

TITLE IV—MISCELLANEOUS AND TECHNICAL AMENDMENTS

Subtitle A—Amendments Relating to the Ticket to Work and Work Incentives Improvement Act of 1999

SEC. 401. APPLICATION OF DEMONSTRATION AUTHORITY SUNSET DATE TO NEW PROJECTS.

Section 234 of the Social Security Act (42 U.S.C. 434) is amended—

(1) in the first sentence of subsection (c), by striking ''conducted under subsection (a)'' and inserting ''initiated under subsection (a) on or before December 17, 2005''; and

(2) in subsection (d)(2), by striking the first sentence and inserting the following: ''The authority to initiate projects under the preceding provisions of this section shall terminate on December 18, 2005.''.

SEC. 402. EXPANSION OF WAIVER AUTHORITY AVAILABLE IN CONNECTION WITH DEMONSTRATION PROJECTS PROVIDING FOR REDUCTIONS IN DISABILITY INSURANCE BENEFITS BASED ON EARNINGS.

Section 302(c) of the Ticket to Work and Work Incentives Improvement Act of 1999 (42 U.S.C. 434 note) is amended by striking ''(42 U.S.C. 401 et seq.),'' and inserting ''(42 U.S.C. 401 et seq.) and the requirements of section 1148 of such Act (42 U.S.C. 1320b–19) as they relate to the program established under title II of such Act,''.

SEC. 403. FUNDING OF DEMONSTRATION PROJECTS PROVIDING FOR REDUCTIONS IN DISABILITY INSURANCE BENEFITS BASED ON EARNINGS.

Section 302(f) of the Ticket to Work and Work Incentives Improvement Act of 1999 (42 U.S.C. 434 note) is amended to read as follows:

''(f) EXPENDITURES.—Administrative expenses for demonstration projects under this section shall be paid from funds available for the administration of title II or XVIII of the Social Security Act, as appropriate. Benefits payable to or on behalf of individuals by reason of participation in projects under this section shall be made from the Federal Disability Insurance Trust Fund and the Federal Old-Age and Survivors Insurance Trust Fund, as determined appropriate by the Commissioner of Social Security, and from the Federal Hospital Insurance Trust Fund and the Federal Supplementary Medical Insurance Trust Fund, as determined appropriate by the Secretary of Health and Human Services, from funds available for benefits under such title II or XVIII.''.

SEC. 404. AVAILABILITY OF FEDERAL AND STATE WORK INCENTIVE SERVICES TO ADDITIONAL INDIVIDUALS.

(a) FEDERAL WORK INCENTIVES OUTREACH PROGRAM.—

(1) IN GENERAL.—Section 1149(c)(2) of the Social Security Act (42 U.S.C. 1320b–20(c)(2)) is amended to read as follows:

''(2) DISABLED BENEFICIARY.—The term 'disabled beneficiary' means an individual—

''(A) who is a disabled beneficiary as defined in section 1148(k)(2) of this Act;

''(B) who is receiving a cash payment described in section 1616(a) of this Act or a supplementary payment described in section 212(a)(3) of Public Law 93–66 (without regard to whether such payment is paid by the Commissioner pursuant to an agreement under section 1616(a) of this Act or under section 212(b) of Public Law 93–66);

''(C) who, pursuant to section 1619(b) of this Act, is considered to be receiving benefits under title XVI of this Act; or

''(D) who is entitled to benefits under part A of title XVIII of this Act by reason of the penultimate sentence of section 226(b) of this Act.''.

(2) EFFECTIVE DATE.—The amendment made by this subsection shall apply with respect to grants, cooperative agreements, or contracts entered into on or after the date of the enactment of this Act.

(b) STATE GRANTS FOR WORK INCENTIVES ASSISTANCE.—

(1) DEFINITION OF DISABLED BENEFICIARY.—Section 1150(g)(2) of such Act (42 U.S.C. 1320b–21(g)(2)) is amended to read as follows:

''(2) DISABLED BENEFICIARY.—The term 'disabled beneficiary' means an individual—

''(A) who is a disabled beneficiary as defined in section 1148(k)(2) of this Act;

''(B) who is receiving a cash payment described in section 1616(a) of this Act or a supplementary payment described in section 212(a)(3) of Public Law 93–66 (without regard to whether such payment is paid by the Commissioner pursuant to an agreement under

section 1616(a) of this Act or under section 212(b) of Public Law 93–66);

''(C) who, pursuant to section 1619(b) of this Act, is considered to be receiving benefits under title XVI of this Act; or

''(D) who is entitled to benefits under part A of title XVIII of this Act by reason of the penultimate sentence of section 226(b) of this Act.''.

(2) ADVOCACY OR OTHER SERVICES NEEDED TO MAINTAIN GAINFUL EMPLOYMENT.—Section 1150(b)(2) of such Act (42 U.S.C. 1320b–21(b)(2)) is amended by striking ''secure or regain'' and inserting ''secure, maintain, or regain''.

(3) EFFECTIVE DATE.—The amendments made by this subsection shall apply with respect to payments provided after the date of the enactment of this Act.

SEC. 405. TECHNICAL AMENDMENT CLARIFYING TREATMENT FOR CERTAIN PURPOSES OF INDIVIDUAL WORK PLANS UNDER THE TICKET TO WORK AND SELF-SUFFICIENCY PROGRAM.

(a) IN GENERAL.—Section 1148(g)(1) of the Social Security Act (42 U.S.C. 1320b–19(g)(1)) is amended by adding at the end, after and below subparagraph (E), the following:

''An individual work plan established pursuant to this subsection shall be treated, for purposes of section 51(d)(6)(B)(i) of the Internal Revenue Code of 1986, as an individualized written plan for employment under a State plan for vocational rehabilitation services approved under the Rehabilitation Act of 1973.''.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect as if included in section 505 of the Ticket to Work and Work Incentives Improvement Act of 1999 (Public Law 106–170; 113 Stat. 1921).

SEC. 406. GAO STUDY REGARDING THE TICKET TO WORK AND SELF-SUFFICIENCY PROGRAM.

(a) GAO REPORT.—Not later than 12 months after the date of enactment of this Act, the Comptroller General of the United States shall submit a report to Congress regarding the Ticket to Work and Self-Sufficiency Program established under section 1148 of the Social Security Act (42 U.S.C. 1320b–19) that—

(1) examines the annual and interim reports issued by States, the Ticket to Work and Work Incentives Advisory Panel established under section 101(f) of the Ticket to Work and Work Incentives Improvement Act of 1999 (42 U.S.C. 1320b–19 note), and the Commissioner of Social Security regarding such program;

(2) assesses the effectiveness of the activities carried out under such program; and

(3) recommends such legislative or administrative changes as the Comptroller General determines are appropriate to improve the effectiveness of such program.

SEC. 407. REAUTHORIZATION OF APPROPRIATIONS FOR CERTAIN WORK INCENTIVES PROGRAMS.

(a) BENEFITS PLANNING, ASSISTANCE, AND OUTREACH.—Section 1149(d) of the Social Security Act (42 U.S.C. 1320b–20(d)) is amended by striking ''2004'' and inserting ''2009''.

(b) PROTECTION AND ADVOCACY.—Section 1150(h) of the Social Security Act (42 U.S.C. 1320b–21(h)) is amended by striking ''2004'' and inserting ''2009''.

Subtitle B—Miscellaneous Amendments

SEC. 411. ELIMINATION OF TRANSCRIPT REQUIREMENT IN REMAND CASES FULLY FAVORABLE TO THE CLAIMANT.

(a) IN GENERAL.—Section 205(g) of the Social Security Act (42 U.S.C. 405(g)) is amended in the sixth sentence by striking ''and a transcript'' and inserting ''and, in any case in which the Commissioner has not made a decision fully favorable to the individual, a transcript''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply with respect to final determinations issued (upon remand) on or after the date of the enactment of this Act.

SEC. 412. NONPAYMENT OF BENEFITS UPON REMOVAL FROM THE UNITED STATES.

(a) IN GENERAL.—Section 202(n) of the Social Security Act (42 U.S.C. 402(n)) is amended—

(1) in paragraph (1), by striking ''section 241(a) (other than under paragraph (1)(C) or (1)(E) thereof) of the Immigration and Nationality Act'' and inserting ''section 237(a) of the Immigration and Nationality Act (other than under paragraph (1)(C) of such section) or under section 212(a)(6)(A) of such Act'';

(2) in paragraph (2), by striking ''section 241(a) of the Immigration and Nationality Act (other than under paragraph (1)(C) or (1)(E) thereof)'' and inserting ''section 237(a) of the Immigration and Nationality Act (other than under paragraph (1)(C) of such section) or under section 212(a)(6)(A) of such Act'';

(3) in paragraph (3), by striking ''paragraph (19) of section 241(a) of the Immigration and Nationality Act (relating to persecution of others on account of race, religion, national origin, or political opinion, under the direction of or in association with the Nazi government of Germany or its allies) shall be considered to have been deported under such paragraph (19)'' and inserting ''paragraph (4)(D) of section 241(a) of the Immigration and Nationality Act (relating to participating in Nazi persecutions or genocide) shall be considered to have been deported under such paragraph (4)(D)''; and

(4) in paragraph (3) (as amended by paragraph (3) of this subsection), by striking ''241(a)'' and inserting ''237(a)''.

(b) TECHNICAL CORRECTIONS.—

(1) TERMINOLOGY REGARDING REMOVAL FROM THE UNITED STATES.—Section 202(n) of the Social Security Act (42 U.S.C. 402(n)) (as amended by subsection (a)) is amended further—

(A) by striking ''deportation'' each place it appears and inserting ''removal'';

(B) by striking ''deported'' each place it appears and inserting ''removed''; and

(C) in the heading, by striking ''Deportation'' and inserting ''Removal''.

(2) REFERENCES TO THE SECRETARY OF HOMELAND SECURITY.—Section 202(n) of the Social Security Act (42 U.S.C. 402(n)) (as amended by subsection (a) and paragraph (1)) is amended further by inserting ''or the Secretary of Homeland Security'' after ''the Attorney General'' each place it appears.

(c) EFFECTIVE DATES.—

(1) IN GENERAL.—The amendment made by—

(A) subsection (a)(1) shall apply to individuals with respect to whom the Commissioner of Social Security receives a removal notice after the date of the enactment of this Act;

(B) subsection (a)(2) shall apply with respect to notifications of removals received by the Commissioner of Social Security after the date of enactment of this Act; and

(C) subsection (a)(3) shall be effective as if enacted on March 1, 1991.

(2) SUBSEQUENT CORRECTION OF CROSS-REFERENCE AND TERMINOLOGY.—The amendments made by subsections (a)(4) and (b)(1) shall be effective as if enacted on April 1, 1997.

(3) REFERENCES TO THE SECRETARY OF HOMELAND SECURITY.—The amendment made by subsection (b)(2) shall be effective as if enacted on March 1, 2003.

SEC. 413. REINSTATEMENT OF CERTAIN REPORTING REQUIREMENTS.

Section 3003(a)(1) of the Federal Reports Elimination and Sunset Act of 1995 (31 U.S.C. 1113 note) shall not apply to any report required to be submitted under any of the following provisions of law:

(1)(A) Section 201(c)(2) of the Social Security Act (42 U.S.C. 401(c)(2)).

(B) Section 1817(b)(2) of the Social Security Act (42 U.S.C. 1395i(b)(2)).

(C) Section 1841(b)(2) of the Social Security Act (42 U.S.C. 1395t(b)(2)).

(2)(A) Section 221(c)(3)(C) of the Social Security Act (42 U.S.C. 421(c)(3)(C)).

(B) Section 221(i)(3) of the Social Security Act (42 U.S.C. 421(i)(3)).

SEC. 414. CLARIFICATION OF DEFINITIONS REGARDING CERTAIN SURVIVOR BENEFITS.

(a) WIDOWS.—Section 216(c) of the Social Security Act (42 U.S.C. 416(c)) is amended—

(1) by redesignating subclauses (A) through (C) of clause (6) as subclauses (i) through (iii), respectively;

(2) by redesignating clauses (1) through (6) as clauses (A) through (F), respectively;

(3) in clause (E) (as redesignated), by inserting ''except as provided in paragraph (2),'' before ''she was married'';

(4) by inserting ''(1)'' after ''(c)''; and

(5) by adding at the end the following:

''(2) The requirements of paragraph (1)(E) in connection with the surviving wife of an individual shall be treated as satisfied if—

''(A) the individual had been married prior to the individual's marriage to the surviving wife,

''(B) the prior wife was institutionalized during the individual's marriage to the prior wife due to mental incompetence or similar incapacity,

''(C) during the period of the prior wife's institutionalization, the individual would have divorced the prior wife and married the surviving wife, but the individual did not do so because such divorce would have been unlawful, by reason of the prior wife's institutionalization, under the laws of the State in which the individual was domiciled at the time (as determined based on evidence satisfactory to the Commissioner of Social Security),

''(D) the prior wife continued to remain institutionalized up to the time of her death, and

''(E) the individual married the surviving wife within 60 days after the prior wife's death.''.

(b) WIDOWERS.—Section 216(g) of such Act (42 U.S.C. 416(g)) is amended—

(1) by redesignating subclauses (A) through (C) of clause (6) as subclauses (i) through (iii), respectively;

(2) by redesignating clauses (1) through (6) as clauses (A) through (F), respectively;

(3) in clause (E) (as redesignated), by inserting ''except as provided in paragraph (2),'' before ''he was married'';

(4) by inserting ''(1)'' after ''(g)''; and

(5) by adding at the end the following:

''(2) The requirements of paragraph (1)(E) in connection with the surviving husband of an individual shall be treated as satisfied if—

''(A) the individual had been married prior to the individual's marriage to the surviving husband,

''(B) the prior husband was institutionalized during the individual's marriage to the prior husband due to mental incompetence or similar incapacity,

''(C) during the period of the prior husband's institutionalization, the individual would have divorced the prior husband and married the surviving husband, but the individual did not do so because such divorce would have been unlawful, by reason of the prior husband's institutionalization, under the laws of the State in which the individual was domiciled at the time (as determined based on evidence satisfactory to the Commissioner of Social Security),

''(D) the prior husband continued to remain institutionalized up to the time of his death, and

''(E) the individual married the surviving husband within 60 days after the prior husband's death.''.

(c) CONFORMING AMENDMENT.—Section 216(k) of such Act (42 U.S.C. 416(k)) is amended by striking ''clause (5) of subsection (c) or clause (5) of subsection (g)'' and inserting ''clause (E) of subsection (c)(1) or clause (E) of subsection (g)(1)''.

(d) EFFECTIVE DATE.—The amendments made by this section shall be effective with respect to applications for benefits under title II of the Social Security Act filed during months ending after the date of the enactment of this Act.

SEC. 415. CLARIFICATION RESPECTING THE FICA AND SECA TAX EXEMPTIONS FOR AN INDIVIDUAL WHOSE EARNINGS ARE SUBJECT TO THE LAWS OF A TOTALIZATION AGREEMENT PARTNER.

Sections 1401(c), 3101(c), and 3111(c) of the Internal Revenue Code of 1986 are each amended by striking ''to taxes or contributions for similar purposes under'' and inserting ''exclusively to the laws applicable to''.

SEC. 416. COVERAGE UNDER DIVIDED RETIREMENT SYSTEM FOR PUBLIC EMPLOYEES IN KENTUCKY AND LOUISIANA.

(a) IN GENERAL.—Section 218(d)(6)(C) of the Social Security Act (42 U.S.C. 418(d)(6)(C)) is amended by inserting ''Kentucky, Louisiana,'' after ''Illinois,''.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) takes effect on January 1, 2003.

SEC. 417. COMPENSATION FOR THE SOCIAL SECURITY ADVISORY BOARD.

(a) IN GENERAL.—Subsection (f) of section 703 of the Social Security Act (42 U.S.C. 903(f)) is amended to read as follows:

''Compensation, Expenses, and Per Diem

''(f) A member of the Board shall, for each day (including traveltime) during which the member is attending meetings or conferences of the Board or otherwise engaged in the business of the Board, be compensated at the daily rate of basic pay for level IV of the Executive Schedule. While serving on business of the Board away from their homes or regular places of business, members may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5, United States Code, for persons in the Government employed intermittently.''.

(b) EFFECTIVE DATE.—The amendment made by this section shall be effective as of January 1, 2003.

SEC. 418. 60-MONTH PERIOD OF EMPLOYMENT REQUIREMENT FOR APPLICATION OF GOVERNMENT PENSION OFFSET EXEMPTION.

(a) IN GENERAL.—Section 202(k) of the Social Security Act (42 U.S.C. 402(k)) is amended by adding at the end the following:

''(5)(A) The amount of a monthly insurance benefit of any individual for each month under subsection (b), (c), (e), (f), or (g) (as determined after application of the provisions of subsection (q) and the preceding provisions of this subsection) shall be reduced (but not below zero) by an amount equal to two-thirds of the amount of any monthly periodic benefit payable to such individual for such month which is based upon such individual's earnings while in the service of the Federal Government or any State (or political subdivision thereof, as defined in section 218(b)(2)) if, during any portion of the last 60 months of such service ending with the last day such individual was employed by such entity—

''(i) such service did not constitute 'employment' as defined in section 210, or

''(ii) such service was being performed while in the service of the Federal Government, and constituted 'employment' as so defined solely by reason of—

''(I) clause (ii) or (iii) of subparagraph (G) of section 210(a)(5), where the lump-sum payment described in such clause (ii) or the cessation of coverage described in such clause (iii) (whichever is applicable) was received or occurred on or after January 1, 1988, or

''(II) an election to become subject to the Federal Employees' Retirement System provided in chapter 84 of title 5, United States Code, or the Foreign Service Pension System provided in subchapter II of chapter 8 of title I of the Foreign Service Act of 1980 made pursuant to law after December 31, 1987,

unless subparagraph (B) applies.

The amount of the reduction in any benefit under this subparagraph, if not a multiple of $0.10, shall be rounded to the next higher multiple of $0.10.

''(B)(i) Subparagraph (A)(i) shall not apply with respect to monthly periodic benefits based wholly on service as a member of a uniformed service (as defined in section 210(m)).

''(ii) Subparagraph (A)(ii) shall not apply with respect to monthly periodic benefits based in whole or in part on service which constituted 'employment' as defined in section 210 if such service was performed for at least 60 months in the aggregate during the period beginning January 1, 1988, and ending with the close of the first calendar month as of the end of which such individual is eligible for benefits under this subsection and has made a valid application for such benefits.

''(C) For purposes of this paragraph, any periodic benefit which otherwise meets the requirements of subparagraph (A), but which is paid on other than a monthly basis, shall be allocated on a basis equivalent to a monthly benefit (as determined by the Commissioner of Social Security) and such equivalent monthly benefit shall constitute a monthly periodic benefit for purposes of subparagraph (A). For purposes of this subparagraph, the term 'periodic benefit' includes a benefit payable in a lump sum if it is a commutation of, or a substitute for, periodic payments.''.

(b) CONFORMING AMENDMENTS.—

(1) WIFE'S INSURANCE BENEFITS.—Section 202(b) of the Social Security Act (42 U.S.C. 402(b)) is amended—

(A) in paragraph (2), by striking ''subsection (q) and paragraph (4) of this subsection'' and inserting ''subsections (k)(5) and (q)''; and

(B) by striking paragraph (4) and redesignating paragraph (5) as paragraph (4).

(2) HUSBAND'S INSURANCE BENEFITS.—Section 202(c) of the Social Security Act (42 U.S.C. 402(c)) is amended—

(A) by striking paragraph (2) and redesignating paragraphs (3) through (5) as paragraphs (2) through (4), respectively; and

(B) in paragraph (2) as so redesignated, by striking ''subsection (q) and paragraph (2) of this subsection'' and inserting ''subsections (k)(5) and (q)''.

(3) WIDOW'S INSURANCE BENEFITS.—Section 202(e) of the Social Security Act (42 U.S.C. 402(e)) is amended—

(A) in paragraph (2)(A), by striking ''subsection (q), paragraph (7) of this subsection,'' and inserting ''subsection (k)(5), subsection (q),''; and

(B) by striking paragraph (7) and redesignating paragraphs (8) and (9) as paragraphs (7) and (8), respectively.

(4) WIDOWER'S INSURANCE BENEFITS.—

(A) IN GENERAL.—Section 202(f) of the Social Security Act (42 U.S.C. 402(f)) is amended—

(i) by striking paragraph (2) and redesignating paragraphs (3) through (9) as paragraphs (2) through (8), respectively; and

(ii) in paragraph (2) as so redesignated, by striking ''subsection (q), paragraph (2) of this subsection,'' and inserting ''subsection (k)(5), subsection (q),''.

(B) CONFORMING AMENDMENTS.—

(i) Section 202(f)(1)(B) of the Social Security Act (42 U.S.C. 402(f)(1)(B)) is amended by striking ''paragraph (5)'' and inserting ''paragraph (4)''.

(ii) Section 202(f)(1)(F) of the Social Security Act (42 U.S.C. 402(f)(1)(F)) is amended by striking ''paragraph (6)'' and ''paragraph (5)'' (in clauses (i) and (ii)) and inserting ''paragraph (5)'' and ''paragraph (4)'', respectively.

(iii) Section 202(f)(5)(A)(ii) of the Social Security Act (as redesignated by subparagraph (A)(i)) is amended by striking ''paragraph (5)'' and inserting ''paragraph (4)''.

(iv) Section 202(k)(2)(B) of the Social Security Act (42 U.S.C. 402(k)(2)(B)) is amended by striking ''or (f)(4)'' each place it appears and inserting ''or (f)(3)''.

(v) Section 202(k)(3)(A) of the Social Security Act (42 U.S.C. 402(k)(3)(A)) is amended by striking ''or (f)(3)'' and inserting ''or (f)(2)''.

(vi) Section 202(k)(3)(B) of the Social Security Act (42 U.S.C. 402(k)(3)(B)) is amended by striking ''or (f)(4)'' and inserting ''or (f)(3)''.

(vii) Section 226(e)(1)(A)(i) of the Social Security Act (42 U.S.C. 426(e)(1)(A)(i)) is amended by striking ''and 202(f)(5)'' and inserting ''and 202(f)(4)''.

(5) MOTHER'S AND FATHER'S INSURANCE BENEFITS.—Section 202(g) of the Social Security Act (42 U.S.C. 402(g)) is amended—

(A) in paragraph (2), by striking ''Except as provided in paragraph (4) of this subsection, such'' and inserting ''Such''; and

(B) by striking paragraph (4).

(c) EFFECTIVE DATE AND TRANSITIONAL RULE.—

(1) IN GENERAL.—The amendments made by this section shall apply with respect to applications for benefits under title II of the Social Security Act filed on or after the first day of the first month that begins after the date of enactment of this Act, except that such amendments shall not apply in connection with monthly periodic benefits of any individual based on earnings while in service described in section 202(k)(5)(A) of the Social Security Act (in the matter preceding clause (i) thereof) if the last day of such service occurs before July 1, 2004.

(2) TRANSITIONAL RULE.—In the case of any individual whose last day of service described in subparagraph (A) of section 202(k)(5) of the Social Security Act (as added by subsection (a) of this section) occurs within 5 years after the date of enactment of this Act—

(A) the 60-month period described in such subparagraph (A) shall be reduced (but not to less than 1 month) by the number of months of such service (in the aggregate and without regard to whether such months of service were continuous) which—

(i) were performed by the individual under the same retirement system on or before the date of enactment of this Act, and

(ii) constituted ''employment'' as defined in section 210 of the Social Security Act; and

(B) months of service necessary to fulfill the 60-month period as reduced by subparagraph (A) of this paragraph must be performed after the date of enactment of this Act.

SEC. 419. DISCLOSURE TO WORKERS OF EFFECT OF WINDFALL ELIMINATION PROVISION AND GOVERNMENT PENSION OFFSET PROVISION.

(a) INCLUSION OF NONCOVERED EMPLOYEES AS ELIGIBLE INDIVIDUALS ENTITLED TO SOCIAL SECURITY ACCOUNT STATEMENTS.—Section 1143(a)(3) of the Social Security Act (42 U.S.C. 1320b–13(a)(3)) is amended—

(1) by striking ''who'' after ''an individual'' and inserting ''who'' before ''has'' in each of subparagraphs (A) and (B);

(2) by inserting ''(i) who'' after ''(C)''; and

(3) by inserting before the period the following: '', or (ii) with respect to whom the Commissioner has information that the pattern of

wages or self-employment income indicate a likelihood of noncovered employment''.

(b) EXPLANATION IN SOCIAL SECURITY ACCOUNT STATEMENTS OF POSSIBLE EFFECTS OF PERIODIC BENEFITS UNDER STATE AND LOCAL RETIREMENT SYSTEMS ON SOCIAL SECURITY BENEFITS.—Section 1143(a)(2) of the Social Security Act (42 U.S.C. 1320b–13(a)(2)) is amended—

(1) in subparagraph (C), by striking ''and'' at the end;

(2) in subparagraph (D), by striking the period and inserting ''; and''; and

(3) by adding at the end the following:

''(E) in the case of an eligible individual described in paragraph (3)(C)(ii), an explanation, in language calculated to be understood by the average eligible individual, of the operation of the provisions under sections 202(k)(5) and 215(a)(7) and an explanation of the maximum potential effects of such provisions on the eligible individual's monthly retirement, survivor, and auxiliary benefits.''.

(c) TRUTH IN RETIREMENT DISCLOSURE TO GOVERNMENTAL EMPLOYEES OF EFFECT OF NONCOVERED EMPLOYMENT ON BENEFITS UNDER TITLE II.—Section 1143 of the Social Security Act (42 U.S..C. 1320b–13) is amended further by adding at the end the following:

''Disclosure to Governmental Employees of Effect of Noncovered Employment

''(d)(1) In the case of any individual commencing employment on or after January 1, 2005, in any agency or instrumentality of any State (or political subdivision thereof, as defined in section 218(b)(2)) in a position in which service performed by the individual does not constitute 'employment' as defined in section 210, the head of the agency or instrumentality shall ensure that, prior to the date of the commencement of the individual's employment in the position, the individual is provided a written notice setting forth an explanation, in language calculated to be understood by the average individual, of the maximum effect on computations of primary insurance amounts (under section 215(a)(7)) and the effect on benefit amounts (under section 202(k)(5)) of monthly periodic payments or benefits payable based on earnings derived in such service. Such notice shall be in a form which shall be prescribed by the Commissioner of Social Security.

''(2) The written notice provided to an individual pursuant to paragraph (1) shall include a form which, upon completion and signature by the individual, would constitute certification by the individual of receipt of the notice. The agency or instrumentality providing the notice to the individual shall require that the form be completed and signed by the individual and submitted to the agency or instrumentality and to the pension, annuity, retirement, or similar fund or system established by the governmental entity involved responsible for paying the monthly periodic payments or benefits, before commencement of service with the agency or instrumentality.''.

(d) EFFECTIVE DATES.—The amendments made by subsections (a) and (b) of this section shall apply with respect to social security account statements issued on or after January 1, 2007.

SEC. 420. POST-1956 MILITARY WAGE CREDITS.

(a) PAYMENT TO THE SOCIAL SECURITY TRUST FUNDS IN SATISFACTION OF OUTSTANDING OBLIGATIONS.—Section 201 of the Social Security Act (42 U.S.C. 401) is amended by adding at the end the following:

''(n) Not later than July 1, 2004, the Secretary of the Treasury shall transfer, from amounts in the general fund of the Treasury that are not otherwise appropriated—

''(1) $624,971,854 to the Federal Old-Age and Survivors Insurance Trust Fund;

''(2) $105,379,671 to the Federal Disability Insurance Trust Fund; and

''(3) $173,306,134 to the Federal Hospital Insurance Trust Fund.

Amounts transferred in accordance with this subsection shall be in satisfaction of certain outstanding obligations for deemed wage credits for 2000 and 2001.''.

(b) CONFORMING AMENDMENTS.—

(1) REPEAL OF AUTHORITY FOR ANNUAL APPROPRIATIONS AND RELATED ADJUSTMENTS TO COMPENSATE THE SOCIAL SECURITY TRUST FUND FOR MILITARY WAGE CREDITS.—Section 229 of the Social Security Act (42 U.S.C. 429) is amended—

(A) by striking ''(a)''; and

(B) by striking subsection (b).

(2) AMENDMENT TO REFLECT THE TERMINATION OF WAGE CREDITS EFFECTIVE AFTER CALENDAR YEAR 2001 BY SECTION 8134 OF PUBLIC LAW 107–117.—Section 229(a)(2) of the Social Security Act (42 U.S.C. 429(a)(2)), as amended by paragraph (1), is amended by inserting ''and before 2002'' after ''1977''.

SEC. 420A. ELIMINATION OF DISINCENTIVE TO RETURN-TO-WORK FOR CHILDHOOD DISABILITY BENEFICIARIES.

(a) IN GENERAL.—Section 202(d)(6)(B) of the Social Security Act (42 U.S.C. 402(d)(6)(B)) is amended—

(1) by inserting ''(i)'' after ''began''; and

(2) by adding after ''such disability,'' the following: ''or (ii) after the close of the 84th month following the month in which his most recent entitlement to child's insurance benefits terminated because he ceased to be under such disability due to performance of substantial gainful activity,''.

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall be effective with respect to benefits payable for months beginning with the 7th month that begins after the date of enactment of this Act.

Subtitle C—Technical Amendments

SEC. 421. TECHNICAL CORRECTION RELATING TO RESPONSIBLE AGENCY HEAD.

Section 1143 of the Social Security Act (42 U.S.C. 1320b–13) is amended—

(1) by striking ''Secretary'' the first place it appears and inserting ''Commissioner of Social Security''; and

(2) by striking ''Secretary'' each subsequent place it appears and inserting ''Commissioner''.

SEC. 422. TECHNICAL CORRECTION RELATING TO RETIREMENT BENEFITS OF MINISTERS.

(a) IN GENERAL.—Section 211(a)(7) of the Social Security Act (42 U.S.C. 411(a)(7)) is amended by inserting '', but shall not include in any such net earnings from self-employment the rental value of any parsonage or any parsonage allowance (whether or not excluded under section 107 of the Internal Revenue Code of 1986) provided after the individual retires, or any other retirement benefit received by such individual from a church plan (as defined in section 414(e) of such Code) after the individual retires'' before the semicolon.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to years beginning before, on, or after December 31, 1994.

SEC. 423. TECHNICAL CORRECTIONS RELATING TO DOMESTIC EMPLOYMENT.

(a) AMENDMENT TO INTERNAL REVENUE CODE.—Section 3121(a)(7)(B) of the Internal Revenue Code of 1986 is amended by striking ''described in subsection (g)(5)'' and inserting ''on a farm operated for profit''.

(b) AMENDMENT TO SOCIAL SECURITY ACT.—Section 209(a)(6)(B) of the Social Security Act (42 U.S.C. 409(a)(6)(B)) is amended by striking ''described in section 210(f)(5)'' and inserting ''on a farm operated for profit''.

(c) CONFORMING AMENDMENT.—Section 3121(g)(5) of such Code and section 210(f)(5) of such Act (42 U.S.C. 410(f)(5)) are amended by striking ''or is domestic service in a private home of the employer''.

SEC. 424. TECHNICAL CORRECTIONS OF OUTDATED REFERENCES.

(a) CORRECTION OF CITATION RESPECTING THE TAX DEDUCTION RELATING TO HEALTH INSURANCE COSTS OF SELF-EMPLOYED INDIVIDUALS.—Section 211(a)(15) of the Social Security Act (42 U.S.C. 411(a)(15)) is amended by striking ''section 162(m)'' and inserting ''section 162(l)''.

(b) ELIMINATION OF REFERENCE TO OBSOLETE 20-DAY AGRICULTURAL WORK TEST.—Section 3102(a) of the Internal Revenue Code of 1986 is amended by striking ''and the employee has not performed agricultural labor for the employer on 20 days or more in the calendar year for cash remuneration computed on a time basis''.

SEC. 425. TECHNICAL CORRECTION RESPECTING SELF-EMPLOYMENT INCOME IN COMMUNITY PROPERTY STATES.

(a) SOCIAL SECURITY ACT AMENDMENT.—Section 211(a)(5)(A) of the Social Security Act (42 U.S.C. 411(a)(5)(A)) is amended by striking ''all of the gross income'' and all that follows and inserting ''the gross income and deductions attributable to such trade or business shall be treated as the gross income and deductions of the spouse carrying on such trade or business or, if such trade or business is jointly operated, treated as the gross income and deductions of each spouse on the basis of their respective distributive share of the gross income and deductions;''.

(b) INTERNAL REVENUE CODE OF 1986 AMENDMENT.—Section 1402(a)(5)(A) of the Internal Revenue Code of 1986 is amended by striking ''all of the gross income'' and all that follows and inserting ''the gross income and deductions attributable to such trade or business shall be treated as the gross income and deductions of the spouse carrying on such trade or business or, if such trade or business is jointly operated, treated as the gross income and deductions of each spouse on the basis of their respective distributive share of the gross income and deductions; and''.

SEC. 426. TECHNICAL AMENDMENTS TO THE RAILROAD RETIREMENT AND SURVIVORS' IMPROVEMENT ACT OF 2001.

(a) QUORUM RULES.—Section 15(j)(7) of the Railroad Retirement Act of 1974 (45 U.S.C. 231n(j)(7)) is amended by striking ''entire Board of Trustees'' and inserting ''Trustees then holding office''.

(b) POWERS OF THE BOARD OF TRUSTEES.—Section 15(j)(4) of the Railroad Retirement Act of 1974 (45 U.S.C. 231n(j)(4)) is amended to read as follows:

''(4) POWERS OF THE BOARD OF TRUSTEES.—The Board of Trustees shall—

''(A) retain independent advisers to assist it in the formulation and adoption of its investment guidelines;

''(B) invest assets of the Trust in a manner consistent with such investment guidelines, either directly or through the retention of independent investment managers;

''(C) adopt bylaws and other rules to govern its operations;

''(D) employ professional staff, and contract with outside advisers, including the Railroad Retirement Board, to provide legal, accounting, investment advisory or management services (compensation for which may be on a fixed contract fee basis or on such other terms as are customary for such services), or other services necessary for the proper administration of the Trust;

''(E) sue and be sued and participate in legal proceedings, have and use a seal, conduct business, carry on operations, and exercise its powers within or without the District of Columbia, form, own, or participate in entities of any kind, enter into contracts and agreements necessary to carry out its business purposes, lend money for such purposes, and deal with property as security for the payment of funds so loaned, and possess and exercise any other powers appropriate to carry out the purposes of the Trust;

''(F) pay administrative expenses of the Trust from the assets of the Trust; and

''(G) transfer money to the disbursing agent or as otherwise provided in section 7(b)(4), to pay benefits payable under this Act from the assets of the Trust.''.

(c) STATE AND LOCAL TAXES.—Section 15(j)(6) of the Railroad Retirement Act of 1974 (45 U.S.C. 231n(j)(6)) is amended to read as follows:

''(6) STATE AND LOCAL TAXES.—The Trust shall be exempt from any income, sales, use, property, or other similar tax or fee imposed or levied by a State, political subdivision, or local taxing authority. The district courts of the United States shall have original jurisdiction over a civil action brought by the Trust to enforce this subsection and may grant equitable or declaratory relief requested by the Trust.''.

(d) FUNDING.—Section 15(j)(8) of the Railroad Retirement Act of 1974 (45 U.S.C. 231n(j)(8)) is repealed.

(e) TRANSFERS.—Section 15A(d)(2) of the Railroad Retirement Act of 1974 (45 U.S.C. 231n–1(d)(2)) is amended—

(1) by inserting ''or the Railroad Retirement Account'' after ''National Railroad Retirement Investment Trust'' the second place it appears;

(2) by inserting ''or the Railroad Retirement Board'' after ''National Railroad Retirement Investment Trust'' the third place it appears;

(3) by inserting ''(either directly or through a commingled account consisting only of such obligations)'' after ''United States'' the first place it appears; and

(4) in the third sentence, by inserting before the period at the end the following: ''or to purchase such additional obligations''.

(f) CLERICAL AMENDMENTS.—Section 15(j)(5) of the Railroad Retirement Act of 1974 (45 U.S.C. 231n(j)(5)) is amended—

(1) in subparagraph (B), by striking ''trustee's'' each place it appears and inserting ''Trustee's'';

(2) in subparagraph (C), by striking ''trustee'' and ''trustees'' each place it appears and inserting ''Trustee'' and ''Trustees'', respectively; and

(3) in the matter preceding clause (i) of subparagraph (D), by striking ''trustee'' and inserting ''Trustee''.

Subtitle D—Amendments Related to Title XVI

SEC. 430. EXCLUSION FROM INCOME FOR CERTAIN INFREQUENT OR IRREGULAR INCOME AND CERTAIN INTEREST OR DIVIDEND INCOME.

(a) INFREQUENT OR IRREGULAR INCOME.—Section 1612(b)(3) of the Social Security Act (42 U.S.C. 1382a(b)(3)) is amended to read as follows—

''(3) in any calendar quarter, the first—

''(A) $60 of unearned income, and

''(B) $30 of earned income,

of such individual (and such spouse, if any) which, as determined in accordance with criteria prescribed by the Commissioner of Social Security, is received too infrequently or irregularly to be included;''.

(b) INTEREST OR DIVIDEND INCOME.—Section 1612(b) of the Social Security Act (42 U.S.C. 1382a(b)) is amended—

(1) in paragraph (21), by striking ''and'' at the end;

(2) in paragraph (22), by striking the period and inserting ''; and''; and

(3) by adding at the end the following:

''(23) interest or dividend income from resources—

''(A) not excluded under section 1613(a), or

''(B) excluded pursuant to Federal law other than section 1613(a).''.

(c) EFFECTIVE DATE.—The amendments made by this section shall be effective with respect to benefits payable for months in calendar quarters that begin more than 90 days after the date of the enactment of this Act.

SEC. 431. UNIFORM 9-MONTH RESOURCE EXCLUSION PERIODS.

(a) UNDERPAYMENTS OF BENEFITS.—Section 1613(a)(7) of the Social Security Act (42 U.S.C. 1382b(a)(7)) is amended—

(1) by striking ''6'' and inserting ''9''; and

(2) by striking ''(or to the first 9 months following such month with respect to any amount so received during the period beginning October 1, 1987, and ending September 30, 1989)''.

(b) ADVANCEABLE TAX CREDITS.—Section 1613(a)(11) of the Social Security Act (42 U.S.C. 1382b(a)(11)) is amended to read as follows:

''(11) for the 9-month period beginning after the month in which received—

''(A) notwithstanding section 203 of the Economic Growth and Tax Relief Reconciliation Act of 2001, any refund of Federal income taxes made to such individual (or such spouse) under section 24 of the Internal Revenue Code of 1986 (relating to child tax credit) by reason of subsection (d) thereof; and

''(B) any refund of Federal income taxes made to such individual (or such spouse) by reason of section 32 of the Internal Revenue Code of 1986 (relating to earned income tax credit), and any payment made to such individual (or such spouse) by an employer under section 3507 of such Code (relating to advance payment of earned income credit);''.

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of enactment of this Act, and shall apply to amounts described in paragraph (7) of section 1613(a) of the Social Security Act and refunds of Federal income taxes described in paragraph (11) of such section, that are received by an eligible individual or eligible spouse on or after such date.

SEC. 432. ELIMINATION OF CERTAIN RESTRICTIONS ON THE APPLICATION OF THE STUDENT EARNED INCOME EXCLUSION.

(a) IN GENERAL.—Section 1612(b)(1) of the Social Security Act (42 U.S.C. 1382a(b)(1)) is amended by striking ''a child who'' and inserting ''under the age of 22 and''.

(b) EFFECTIVE DATE.—The amendment made by this section shall be effective with respect to benefits payable for months that begin on or after 1 year after the date of enactment of this Act.

SEC. 433. EXCEPTION TO RETROSPECTIVE MONTHLY ACCOUNTING FOR NONRECURRING INCOME.

(a) IN GENERAL.—Section 1611(c) of the Social Security Act (42 U.S.C. 1382(c)) is amended by adding at the end the following:

''(9)(A) Notwithstanding paragraphs (1) and (2), any nonrecurring income which is paid to an individual in the first month of any period of eligibility shall be taken into account in determining the amount of the benefit under this title of such individual (and his eligible spouse, if any) only for that month, and shall not be taken into account in determining the amount of the benefit for any other month.

''(B) For purposes of subparagraph (A), payments to an individual in varying amounts from the same or similar source for the same or similar purpose shall not be considered to be nonrecurring income.''.

(b) DELETION OF OBSOLETE MATERIAL.—Section 1611(c)(2)(B) of the Social Security Act (42 U.S.C. 1382(c)(2)(B)) is amended to read as follows:

''(B) in the case of the first month following a period of ineligibility in which eligibility is restored after the first day of such month, bear the same ratio to the amount of the benefit which would have been payable to such individual if eligibility had been restored on the first day of such month as the number of days in such month including and following the date of restoration of eligibility bears to the total number of days in such month.''.

(c) EFFECTIVE DATE.—The amendments made by this section shall be effective with respect to benefits payable for months that begin on or after 1 year after the date of enactment of this Act.

SEC. 434. REMOVAL OF RESTRICTION ON PAYMENT OF BENEFITS TO CHILDREN WHO ARE BORN OR WHO BECOME BLIND OR DISABLED AFTER THEIR MILITARY PARENTS ARE STATIONED OVERSEAS.

(a) IN GENERAL.—Section 1614(a)(1)(B)(ii) of the Social Security Act (42 U.S.C. 1382c(a)(1)(B)(ii)) is amended—

(1) by inserting ''and'' after ''citizen of the United States,''; and

(2) by striking '', and who,'' and all that follows and inserting a period.

(b) EFFECTIVE DATE.—The amendments made by this section shall be effective with respect to benefits payable for months beginning after the date of enactment of this Act, but only on the basis of an application filed after such date.

SEC. 435. TREATMENT OF EDUCATION-RELATED INCOME AND RESOURCES.

(a) EXCLUSION FROM INCOME OF GIFTS PROVIDED FOR TUITION AND OTHER EDUCATION-RELATED FEES.—Section 1612(b)(7) of the Social Security Act (42 U.S.C. 1382a(b)(7)) is amended by striking ''or fellowship received for use in paying'' and inserting ''fellowship, or gift (or portion of a gift) used to pay''.

(b) EXCLUSION FROM RESOURCES FOR 9 MONTHS OF GRANTS, SCHOLARSHIPS, FELLOWSHIPS, OR GIFTS PROVIDED FOR TUITION AND OTHER EDUCATION-RELATED FEES.—Section 1613(a) of the Social Security Act (42 U.S.C. 1382b(a)) (as amended by section 101(c)(2)) is amended—

(1) in paragraph (13), by striking ''and'' at the end;

(2) in paragraph (14), by striking the period and inserting ''; and''; and

(3) by inserting after paragraph (14) the following:

''(15) for the 9-month period beginning after the month in which received, any grant, scholarship, fellowship, or gift (or portion of a gift) used to pay the cost of tuition and fees at any educational (including technical or vocational education) institution.''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to benefits payable for months that begin more than 90 days after the date of enactment of this Act.

SEC. 436. MONTHLY TREATMENT OF UNIFORMED SERVICE COMPENSATION.

(a) TREATMENT OF PAY AS RECEIVED WHEN EARNED.—Section 1611(c) of the Social Security Act (42 U.S.C. 1382(c)), as amended by section 435(a), is amended by adding at the end the following:

''(10) For purposes of this subsection, remuneration for service performed as a member of a uniformed service may be treated as received in the month in which it was earned, if the Commissioner of Social Security determines that such treatment would promote the economical and efficient administration of the program authorized by this title.''.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to benefits payable for months that begin more than 90 days after the date of enactment of this Act.

WELCOMING PUBLIC APOLOGIES BY PRESIDENTS OF SERBIA AND MONTENEGRO, AND REPUBLIC OF CROATIA

Mr. FRIST. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar No. 378, S. Res. 237.

The PRESIDING OFFICER. The clerk will report the resolution by title.

The legislative clerk read as follows:

A resolution (S. Res. 237) welcoming the public apologies issued by the President of Serbia and Montenegro and the President of the Republic of Croatia and urging other leaders in the region to perform similar concrete acts of reconciliation.

There being no objection, the Senate proceeded to consider the resolution.

Mr. FRIST. Mr. President, I ask unanimous consent that the resolution

be agreed to, the preamble agreed to, the motions to reconsider be laid upon the table en bloc, and any statements relating to the resolution be printed in the RECORD.

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

The resolution (S. Res. 237) was agreed to.

The preamble was agreed to.

The resolution, with its preamble, reads as follows:

S. RES. 237

Whereas the President of Serbia and Montenegro and the President of the Republic of Croatia each issued on September 10, 2003, a public statement of apology for the crimes committed by citizens of each country against citizens of the other country; and

Whereas the countries of Southeast Europe are struggling to move beyond the problems of the past and toward a brighter future that includes membership in both the European Union and NATO: Now, therefore, be it

Resolved, That the Senate—

(1) welcomes the public apologies issued on September 10, 2003, by the President of Serbia and Montenegro and the President of the Republic of Croatia;

(2) commends the initiative and personal courage demonstrated by their actions;

(3) recognizes the value of such apologies in the important process of reconciliation in Southeast Europe;

(4) notes public support within the region for these efforts;

(5) calls upon the governments in the region to continue their efforts to encourage and advance reconciliation; and

(6) reiterates the importance of resolving post-conflict issues, including—

(A) by ensuring that refugees and internally displaced persons have the right to return home; and

(B) by bringing persons indicted for war crimes to justice, including through cooperation with the International Criminal Tribunal on the Former Yugoslavia.

CONGO BASIN FOREST PARTNERSHIP ACT OF 2003

Mr. FRIST. Mr. President, I ask unanimous consent that the Foreign Relations Committee be discharged from further consideration of H.R. 2264, and the Senate proceed to its immediate consideration.

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

The clerk will report the bill by title.

The legislative clerk read as follows:

A bill (H.R. 2264) to authorize appropriations for fiscal years 2004 and 2005 to carry out the Congo Basin Forest Partnership (CBFP) program, and for other purposes.

There being no objection, the Senate proceeded to consider the bill.

Mr. FRIST. Mr. President, I ask unanimous consent that the Alexander amendment at the desk be agreed to, the bill, as amended, be read a third time and passed, the title amendment be agreed to, the motions to reconsider be laid upon the table en bloc, and that any statements relating to the bill be printed in the RECORD.

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

The amendments (Nos. 2228 and 2229) were agreed to as follows:

AMENDMENT NO. 2228

(Purpose: To strike the authorization of appropriations for fiscal year 2005)

Beginning on page 5, strike line 24 and all that follows through page 6, line 11, and insert the following:

(a) IN GENERAL.—There are authorized to be appropriated to the President to carry out the Congo Basin Forest Partnership (CBFP) program $18,600,000 for fiscal year 2004.

(b) CARPE.—Of the amounts appropriated pursuant to the authorization of appropriations in subsection (a), $16,000,000 is authorized to be made available to the Central Africa Regional Program for the Environment (CARPE) of the United States Agency for International Development.

(c) AVAILABILITY.—Amounts appropriated pursuant to the authorization of appropriations under subsection (a) are authorized to remain available until expended.

AMENDMENT NO. 2229

(Purpose: To amend the title)

Amend the title so as to read: ''To authorize appropriations for fiscal year 2004 to carry out the Congo Basin Forest Partnership program, and for other purposes.''.

The bill (H.R. 2264), as amended, was read the third time and passed.

DISTRICT OF COLUMBIA BUDGET AUTONOMY ACT OF 2003

Mr. FRIST. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar No. 418, S. 1267.

The PRESIDING OFFICER. The clerk will report the bill by title.

The legislative clerk read as follows:

A bill (S. 1267) to amend the District of Columbia Home Rule Act to provide the District of Columbia with autonomy over its budgets, and for other purposes.

There being no objection, the Senate proceeded to consider the bill, which had been reported from the Committee on Governmental Affairs with an amendment, as follows:

S. 1267

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

SECTION 1. SHORT TITLE.

This Act may be cited as the ''District of Columbia Budget Autonomy Act of 2003''.

SEC. 2. ENACTMENT OF DISTRICT OF COLUMBIA LOCAL BUDGET.

(a) IN GENERAL.—Section 446 of the District of Columbia Home Rule Act (sec. 1–204.46, D.C. Official Code) is amended to read as follows:

''ENACTMENT OF LOCAL BUDGET

''SEC. 446. (a) ADOPTION OF BUDGETS AND SUPPLEMENTS.—The Council, within 50 calendar days after receipt of the budget proposal from the Mayor, and after public hearing, shall by Act adopt the annual budget for the District of Columbia government. Any supplements thereto shall also be adopted by Act by the Council after public hearing.

''(b) TRANSMISSION TO PRESIDENT DURING CONTROL YEARS.—In the case of a budget for a fiscal year which is a control year, the budget so adopted shall be submitted by the Mayor to the President for transmission by him to the Congress, except that the Mayor shall not transmit any such budget, or amendments or supplements thereto, to the President until the completion of the budget procedures contained in this Act and the District of Columbia Financial Responsibility and Management Assistance Act of 1995.

''(c) PROHIBITING OBLIGATIONS AND EXPENDITURES NOT AUTHORIZED UNDER BUDGET.—Except as provided in section 445A(b), section 467(d), section 471(c), section 472(d), section 475(e), section 483(d), and subsections (f), (g), (h)(3), and (i)(3) of section 490, no amount may be obligated or expended by any officer or employee of the District of Columbia government unless—

''(1) such amount has been approved by an Act of the Council (and then only in accordance with such authorization) and a copy of such Act has been transmitted by the Chairman to the Congress; or

''(2) in the case of an amount obligated or expended during a control year, such amount has been approved by an Act of Congress (and then only in accordance with such authorization).

''(d) RESTRICTIONS ON REPROGRAMMING OF AMOUNTS.—After the adoption of the annual budget for a fiscal year (beginning with the annual budget for fiscal year 1995), no reprogramming of amounts in the budget may occur unless the Mayor submits to the Council a request for such reprogramming and the Council approves the request, but only if any additional expenditures provided under such request for an activity are offset by reductions in expenditures for another activity.

''(e) DEFINITION.—In this part, the term 'control year' has the meaning given such term in section 305(4) of the District of Columbia Financial Responsibility and Management Assistance Act of 1995.''.

(b) LENGTH OF CONGRESSIONAL REVIEW PERIOD FOR BUDGET ACTS.—Section 602(c) of such Act (sec. 1–206.02(c), D.C. Official Code) is amended—

(1) in the second sentence of paragraph (1), by striking ''paragraph (2)'' and inserting ''paragraphs (2) and (4)''; and

(2) by adding at the end the following new paragraph:

''(4) In the case of any Act transmitted under the first sentence of paragraph (1) to which section 446 applies and for which the fiscal year involved is not a control year, such Act shall take effect upon the expiration of the 30-calendar-day period beginning on the day such Act is transmitted, or upon the date prescribed by such Act, whichever is later, unless during such 30-day period, there has been enacted into law a joint resolution disapproving such Act. If such 30-day period expires on any day on which neither House is in session because of an adjournment sine die, a recess of more than three days, or an adjournment of more than three days, the period applicable under the previous sentence shall be extended for 5 additional days (excluding Saturdays, Sundays, and holidays, and any day on which neither House is in session because of an adjournment sine die, a recess of more than three days, or an adjournment of more than three days). In any case in which any such joint resolution disapproving such an Act has, within the applicable period, passed both Houses of Congress and has been transmitted to the President, such resolution, upon becoming law, subsequent to the expiration of such period, shall be deemed to have repealed such Act, as of the date such resolution becomes law. The provisions of section 604 shall apply with respect to any joint resolution disapproving any Act pursuant to this paragraph.''.

(c) CONFORMING AMENDMENTS.—(1) Sections 467(d), 471(c), 472(d)(2), 475(e)(2), and 483(d), and subsections (f), (g)(3), (h)(3), and (i)(3) of section 490 of such Act are each amended by striking ''The fourth sentence of section 446'' and inserting ''Section 446(c)''.

(2) The third sentence of section 412(a) of such Act (sec. 1–204.12(a), D.C. Official Code) is amended by inserting ''for a fiscal year which is a control year described in such section'' after ''section 446 applies''.

(3) Section 202(c)(2) of the District of Columbia Financial Responsibility and Management Assistance Act of 1995 (sec. 47–

392.02(c)(2), D.C. Official Code) is amended by striking ''the first sentence of section 446'' and inserting ''section 446(a)''.

(4) Section 202(d)(3)(A) of the District of Columbia Financial Responsibility and Management Assistance Act of 1995 (sec. 47–392.02(d)(3)(A), D.C. Official Code) is amended by striking ''the first sentence of section 446'' and inserting ''section 446(a)''.

(5) Section 11206 of the National Capital Revitalization and Self-Government Improvement Act of 1997 (sec. 24–106, D.C. Official Code) is amended by striking ''the fourth sentence of section 446'' and inserting ''section 446(c)''.

(d) CLERICAL AMENDMENT.—The item relating to section 446 in the table of contents of such Act is amended to read as follows:

''Sec. 446. Enactment of local budget.''.

SEC. 3. ACTION BY COUNCIL OF DISTRICT OF COLUMBIA ON LINE-ITEM VETOES BY MAYOR OF PROVISIONS OF BUDGET ACTS.

(a) IN GENERAL.—Section 404(f) of the District of Columbia Home Rule Act (sec. 1–204.4(f), D.C. Official Code) is amended by striking ''transmitted by the Chairman to the President of the United States'' both places it appears and inserting the following: ''incorporated in such Act (or, in the case of an item or provision contained in a budget act for a control year, transmitted by the Chairman to the President)''.

(b) CONFORMING AMENDMENT.—Section 404(f) of such Act (sec. 1–204.04(f), D.C. Official Code) is amended—

(1) by striking ''(f)'' and inserting ''(f)(1)'';

(2) in the fifth sentence, by striking ''(as defined in section 305(4) of the District of Columbia Financial Responsibility and Management Assistance Act of 1995), this subsection'' and inserting ''this paragraph''; and

(3) by adding at the end the following new paragraph:

''(2) In this subsection, the term 'control year' has the meaning given such term in section 305(4) of the District of Columbia Financial Responsibility and Management Assistance Act of 1995.''.

SEC. 4. PERMITTING EMPLOYEES TO BE HIRED IF POSITION AUTHORIZED BY ACT OF THE COUNCIL.

Section 447 of the District of Columbia Home Rule Act (sec. 1–204.47, D.C. Official Code) is amended—

(1) by striking ''Act of Congress'' each place it appears and inserting ''act of the Council (or Act of Congress, in the case of a year which is a control year)''; and

(2) by striking ''Acts of Congress'' and inserting ''acts of the Council (or Acts of Congress, in the case of a year which is a control year)''.

SEC. 5. OTHER CONFORMING AMENDMENTS RELATING TO CHANGES IN FEDERAL ROLE IN BUDGET PROCESS.

(a) FEDERAL AUTHORITY OVER BUDGET-MAKING PROCESS.—Section 603(a) of the District of Columbia Home Rule Act (sec. 1–206.03, D.C. Official Code) is amended by inserting before the period at the end the following: ''for a fiscal year which is a control year''.

(b) RESTRICTIONS APPLICABLE DURING CONTROL YEARS.—Section 603(d) of such Act (sec. 1–206.03(d), D.C. Official Code) is amended to read as follows:

''(d) In the case of a fiscal year which is a control year, the Council may not approve, and the Mayor may not forward to the President, any budget which is not consistent with the financial plan and budget established for the fiscal year under subtitle A of title II of the District of Columbia Financial Responsibility and Management Assistance Act of 1995.''.

(c) DEFINITION.—Section 603(f) of such Act (sec. 1–206.03(f), D.C. Official Code) is amended to read as follows:

''(f) In this section, the term 'control year' has the meaning given such term in section 305(4) of the District of Columbia Financial Responsibility and Management Assistance Act of 1995.''.

SEC. 6. CONTINUATION OF GENERAL PROVISIONS IN APPROPRIATIONS ACTS AND TREATMENT OF AMENDMENTS.

(a) CONTINUATION.—Any general provision contained in a general appropriation bill which includes the appropriation of Federal payments to the District of Columbia for a fiscal year (or, in the case of such a bill which is included as a division, title, or other portion of another general appropriation bill, any general provision contained in such division, title, or other portion) in effect on the date of enactment of this Act shall remain in effect until the date of the enactment of a general appropriation bill which includes the appropriation of Federal payments to the District of Columbia for the following fiscal year.

(b) AMENDMENTS IN THE SENATE.—In the case of the consideration in the Senate of a general appropriations bill that includes the appropriations of Federal payments to the District of Columbia, an amendment proposing a limitation on the use of any District of Columbia funds by the District of Columbia shall not constitute general legislation under paragraphs 2 and 4 of Rule XVI of the Standing Rules of the Senate.

SEC. 7. EFFECTIVE DATE.

The amendments made by this Act shall apply to budgets of the District of Columbia for fiscal years beginning on or after October 1, 2004.

TITLE II—DISTRICT OF COLUMBIA INDEPENDENCE OF THE CHIEF FINANCIAL OFFICER ACT OF 2003

SEC. 201. SHORT TITLE.

This title may be cited as the ''District of Columbia Independence of the Chief Financial Officer Act of 2003''.

SEC. 202. AMENDMENTS TO THE HOME RULE ACT.

(a) IN GENERAL.—Part B of title IV section 424 of the District of Columbia Home Rule Act is amended to read as follows:

''OFFICE OF THE CHIEF FINANCIAL OFFICER OF THE DISTRICT OF COLUMBIA

''SEC. 424. (a) IN GENERAL.—

''(1) ESTABLISHMENT.—There is hereby established within the executive branch of the government of the District of Columbia an Office of the Chief Financial Officer of the District of Columbia ('Office'), which shall be headed by the Chief Financial Officer of the District of Columbia ('Chief Financial Officer').

''(2) ORGANIZATIONAL ANALYSIS.—

''(A) OFFICE OF BUDGET AND PLANNING.—The name of the Office of Budget and Management, established by Commissioner's Order 69–96, issued March 7, 1969, is changed to the Office of Budget and Planning.

''(B) OFFICE OF TAX AND REVENUE.—The name of the Department of Finance and Revenue, established by Commissioner's Order 69–96, issued March 7, 1969, is changed to the Office of Tax and Revenue.

''(C) OFFICE OF FINANCE AND TREASURY.—The name of the Office of Treasurer, established by Mayor's Order 89–244, dated October 23, 1989, is changed to the Office of Finance and Treasury.

''(D) OFFICE OF FINANCIAL OPERATIONS AND SYSTEMS.—The Office of the Controller, established by Mayor's Order 89–243, dated October 23, 1989, and the Office of Financial Information Services, established by Mayor's Order 89–244, dated October 23, 1989, are consolidated into the Office of Financial Operations and Systems.

''(3) TRANSFERS.—Effective with the appointment of the first Chief Financial Officer under subsection (b), the functions and personnel of the following offices are established as subordinate offices within the Office of the Chief Financial Officer:

''(A) The Office of Budget and Planning, headed by the Deputy Chief Financial Officer for the Office of Budget and Planning.

''(B) The Office of Tax and Revenue, headed by the Deputy Chief Financial Officer for the Office of Tax and Revenue.

''(C) The Office of Research and Analysis, headed by the Deputy Chief Financial Officer for the Office of Research and Analysis.

''(D) The Office of Financial Operations and Systems, headed by the Deputy Chief Financial Officer for the Office of Financial Operations and Systems.

''(E) The Office of Finance and Treasury, headed by the District of Columbia Treasurer.

''(F) The Lottery and Charitable Games Control Board, established by the Law to Legalize Lotteries, Daily Numbers Games, and Bingo and Raffles for Charitable Purposes in the District of Columbia, effective March 10, 1981 (D.C. Law 3–172; D.C. Official Code § 3–1301 et seq.).

''(4) SUPERVISOR.—The heads of the offices listed in paragraph (3) of this section shall serve at the pleasure of the Chief Financial Officer.

''(5) APPOINTMENT AND REMOVAL OF OFFICE EMPLOYEES.—The Chief Financial Officer shall appoint the heads of the subordinate offices designated in paragraph (3), after consultation with the Mayor and the Council. The Chief Financial Officer may remove the heads of the offices designated in paragraph (3), after consultation with the Mayor and the Council.

''(6) ANNUAL BUDGET SUBMISSION.—The Chief Financial Officer of the District of Columbia shall prepare and annually submit to the Mayor of the District of Columbia, for inclusion in the annual budget of the District of Columbia government for a fiscal year, annual estimates of the expenditures and appropriations necessary for the year for the operation of the Office of the Chief Financial Officer and all other District of Columbia accounting, budget, and financial management personnel (including personnel of executive branch independent agencies) that report to the Office of the Chief Financial Officer pursuant to this Act.

''(b) APPOINTMENT OF THE CHIEF FINANCIAL OFFICER.—

''(1) IN GENERAL.—The Chief Financial Officer shall be appointed by the Mayor with the advice and consent, by resolution, of the Council.

''(2) TERM.—

''(A) IN GENERAL.—All appointments made after June 30, 2007, shall be for a term of 5 years, except for appointments made for the remainder of unexpired terms. The appointments shall have an anniversary date of July 1.

''(B) TEMPORARY.—The term of office of the Chief Financial Officer first appointed pursuant to subsection (a) shall begin upon the date of enactment of the District of Columbia Independence of the Chief Financial Officer Act of 2003. The initial term shall end on June 30, 2007.

''(C) CONTINUANCE.—Any Chief Financial Officer may continue to serve beyond his term until a successor takes office.

''(D) VACANCIES.—Any vacancy in the Office of Chief Financial Officer shall be filled in the same manner as the original appointment under paragraph (1).

''(E) PAY.—The Chief Financial Officer shall be paid at an annual rate equal to the rate of basic pay payable for level I of the Executive Schedule.

''(c) REMOVAL OF THE CHIEF FINANCIAL OFFICER.—The Chief Financial Officer may only be removed for cause by the Mayor.

''(d) DUTIES OF THE CHIEF FINANCIAL OFFICER.—The Chief Financial Officer shall have the following duties and shall take such steps as are necessary to perform these duties:

''(1) Preparing the financial plan and the budget for the use of the Mayor for purposes of subpart B of subchapter VII of chapter 3 of title 47 of the D.C. Code and preparing the 5-year financial plan based upon the adopted budget for

submission with the District of Columbia budget by the Mayor to Congress.

''(2) Preparing the budgets of the District of Columbia for the year for the use of the Mayor for purposes of sections 441–444, 446, 448–452, 455 of the District of Columbia Home Rule Act, approved (87 Stat. 798–803; D.C. Official Code §§ 1–204.41 through 1–204.44, 1–204.46, 1–204.48 through 1–204.52, 1–204.55), section 445a of the District of Columbia Home Rule Act, approved August 6, 1996 (110 Stat. 1698; D.C. Official Code § 1–204.45a), section 453 of the District of Columbia Home Rule Act, approved April 17, 1991 (105 Stat. 539; D.C. Official Code § 1–204.53), sections 456(a) through 456(d) of the District of Columbia Home Rule Act, approved October 19, 1994 (108 Stat. 3488; D.C. Official Code §§ 1–204.56a through 1–204.56d), and section 456(e) of the District of Columbia Home Rule Act, approved April 17, 1995 (109 Stat. 140; D.C. Official Code § 1–204.56e).

''(3) Implementing appropriate procedures and instituting such programs, systems, and personnel policies within the Officer's authority, to ensure that budget, accounting, and personnel control systems and structures are synchronized for budgeting and control purposes on a continuing basis and to ensure that appropriations are not exceeded.

''(4) Preparing and submitting to the Mayor and the Council and making public—

''(A) annual estimates of all revenues of the District of Columbia (without regard to the source of such revenues), including proposed revenues, which shall be binding on the Mayor and the Council for purposes of preparing and submitting the budget of the District government for the year under sections 441 through 444, 446, 448 through 452, and 455 of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 798–803; D.C. Official Code §§ 1–204.41 through 1–204.44, 1–204.46, 1–204.48 through 1–204.52, 1–204.55), section 445a of the District of Columbia Home Rule Act, approved August 6, 1996 (110 Stat. 1698; D.C. Official Code § 1–204.45a), section 453 of the District of Columbia Home Rule Act, approved April 17, 1991 (105 Stat. 539; D.C. Official Code § 1–204.53), sections 456(a) through 456(d) of the District of Columbia Home Rule Act, approved October 19, 1994 (108 Stat. 3488; D.C. Official Code §§ 1–204.56a through 1–204.56d), and section 456(e) of the District of Columbia Home Rule Act, approved April 17, 1995 (109 Stat. 140; D.C. Official Code § 1–204.56e), except that the Mayor and the Council may prepare the budget based on estimates of revenues which are lower than those prepared by the Chief Financial Officer; and

''(B) quarterly re-estimates of the revenues of the District of Columbia during the year.

''(5) Supervising and assuming responsibility for financial transactions to ensure adequate control of revenues and resources.

''(6) Maintaining systems of accounting and internal control designed to provide—

''(A) full disclosure of the financial impact of the activities of the District government;

''(B) adequate financial information needed by the District government for management purposes;

''(C) accounting for all funds, property, and other assets of the District of Columbia; and

''(D) reliable accounting results to serve as the basis for preparing and supporting agency budget requests and controlling the execution of the budget.

''(7) Submitting to the Council a financial statement of the District government, containing such details and at such times as the Council may specify.

''(8) Supervising and assuming responsibility for the assessment of all property subject to assessment and special assessments within the corporate limits of the District of Columbia for taxation, preparing tax maps, and providing such notice of taxes and special assessments (as may be required by law).

''(9) Supervising and assuming responsibility for the levying and collection of all taxes, special assessments, licensing fees, and other revenues of the District of Columbia (as may be required by law), and receiving all amounts paid to the District of Columbia from any source (including the District of Columbia Financial Responsibility and Management Assistance Authority).

''(10) Maintaining custody of all public funds belonging to or under the control of the District government (or any department or agency of the District government), and depositing all amounts paid in such depositories and under such terms and conditions as may be designated by the Council.

''(11) Maintaining custody of all investment and invested funds of the District government or in possession of the District government in a fiduciary capacity, and maintaining the safekeeping of all bonds and notes of the District government and the receipt and delivery of District government bonds and notes for transfer, registration, or exchange.

''(12) Apportioning the total of all appropriations and funds made available during the year for obligation so as to prevent obligation or expenditure in a manner which would result in a deficiency or a need for supplemental appropriations during the year, and (with respect to appropriations and funds available for an indefinite period and all authorizations to create obligations by contract in advance of appropriations) apportioning the total of such appropriations, funds, or authorizations in the most effective and economical manner.

''(13) Certifying all contracts and leases (whether directly or through delegation) prior to execution as to the availability of funds to meet the obligations expected to be incurred by the District government under such contracts and leases during the year.

''(14) Prescribing the forms of receipts, vouchers, bills, and claims to be used by all agencies, offices, and instrumentalities of the District government.

''(15) Certifying and approving prior to payment of all bills, invoices, payrolls, and other evidences of claims, demands, or charges against the District government, and determining the regularity, legality, and correctness of such bills, invoices, payrolls, claims, demands, or charges.

''(16) In coordination with the Inspector General of the District of Columbia, performing internal audits of accounts and operations and records of the District government, including the examination of any accounts or records of financial transactions, giving due consideration to the effectiveness of accounting systems, internal control, and related administrative practices of the departments and agencies of the District government.

''(17) Exercising responsibility for the administration and supervision of the District of Columbia Treasurer (except that the Chief Financial Officer may delegate any portion of such responsibility as the Chief Financial Officer considers appropriate and consistent with efficiency).

''(18) Supervising and administering all borrowing programs secured by the full faith and credit of the District government for the issuance of long-term and short-term indebtedness.

''(19) Administering the cash management program of the District government, including the investment of surplus funds in governmental and non-governmental interest-bearing securities and accounts.

''(20) Administering the centralized District government payroll and retirement systems.

''(21) Governing the accounting policies and systems applicable to the District government.

''(22) Preparing appropriate annual, quarterly, and monthly financial reports of the accounting and financial operations of the District government.

''(23) Not later than 120 days after the end of each fiscal year, preparing the complete financial statement and report on the activities of the District government for such fiscal year, for the use of the Mayor under section 448(a)(4) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 801; D.C. Official Code § 1–204.48(a)(4)).

''(24) Preparing fiscal impact statements on regulations, multiyear contracts, contracts over $1,000,000 and on legislation, as required by section 4a of the General Legislative Procedures Act of 1975.

''(25) Preparing under the direction of the Mayor, who has the specific responsibility for formulating budget policy using Chief Financial Officer technical and human resources, the budget for submission by the Mayor to the Council and to the public and upon final adoption to Congress and to public.

''(26) Certifying all collective bargaining agreements and nonunion pay proposals prior to submission to the Council for approval as to the availability of funds to meet the obligations expected to be incurred by the District government under such collective bargaining agreements and nonunion pay proposals during the year.

''(e) APPOINTMENT OF CERTAIN EXECUTIVE BRANCH AGENCY CHIEF FINANCIAL OFFICERS.—The chief financial officers of all District of Columbia executive branch subordinate and independent agencies not included in subsection a(3) and associate chief financial officers shall be appointed by the Chief Financial Officer, in consultation with the agency head, where applicable. The appointment shall be made from a list of qualified candidates developed by the Chief Financial Officer.

''(f) FUNCTIONS OF TREASURER.—At all times, the Treasurer shall have the following duties:

''(1) Assisting the Chief Financial Officer in reporting revenues received by the District government, including submitting annual and quarterly reports concerning the cash position of the District government not later than 60 days after the last day of the quarter (or year) involved which shall include—

''(A) comparative reports of revenue and other receipts by source, including tax, nontax, and Federal revenues, grants and reimbursements, capital program loans, and advances. Each source shall be broken down into specific components;

''(B) statements of the cash flow of the District government for the preceding quarter or year, including receipts, disbursements, net changes in cash inclusive of the beginning balance, cash and investment, and the ending balance, inclusive of cash and investment. Such statements shall reflect the actual, planned, better or worse dollar amounts and the percentage change with respect to the current quarter, year-to-date, and fiscal year;

''(C) quarterly cash flow forecast for the quarter or year involved, reflecting receipts, disbursements, net change in cash inclusive of the beginning balance, cash and investment, and the ending balance, inclusive of cash and investment with respect to the actual dollar amounts for the quarter or year, and projected dollar amounts for each of the 3 succeeding quarters;

''(D) monthly reports reflecting a detailed summary analysis of all District of Columbia government investments, including—

''(i) the total of long-term and short-term investments;

''(ii) a detailed summary analysis of investments by type and amount, including purchases, sales (maturities), and interest;

''(iii) an analysis of investment portfolio mix by type and amount, including liquidity, quality/risk of each security, and similar information;

''(iv) an analysis of investment strategy, including near-term strategic plans and projects of investment activity, as well as forecasts of future investment strategies based on anticipated market conditions, and similar information; and

''(v) an analysis of cash utilization, including—

''(I) comparisons of budgeted percentages of total cash to be invested with actual percentages of cash invested and the dollar amounts;

''(II) comparisons of the next return on invested cash expressed in percentages (yield) with comparable market indicators and established District of Columbia government yield objectives; and

''(III) comparisons of estimated dollar return against actual dollar yield; and

''(E) monthly reports reflecting a detailed summary analysis of long-term and short-term borrowings inclusive of debt as authorized by §1–206.03, in the current fiscal year and the amount of debt for each succeeding fiscal year not to exceed 5 years; all such reports shall reflect—

''(i) the amount of debt outstanding by type of instrument;

''(ii) the amount of authorized and unissued debt, including availability of short-term lines of credit, United States Treasury borrowings, and similar information;

''(iii) a maturity schedule of the debt;

''(iv) the rate of interest payable upon the debt; and

''(v) the amount of debt service requirements and related debt service reserves.

''(2) Such other functions assigned to the Chief Financial Officer under subsection (d) as the Chief Financial Officer may delegate.

''(g) TRANSITION PROVISIONS.—

''(1) CFO.—Any Chief Financial Officer appointed by the Mayor prior to the date of enactment of the District of Columbia Independence of the Chief Financial Officer Act of 2003 may continue to serve in that capacity without reappointment until a new appointment under subsection (a) becomes effective.

''(2) EXECUTIVE BRANCH CFO.—Any executive branch agency chief financial officer appointed prior to the date of enactment of the District of Columbia Independence of the Chief Financial Officer Act of 2003 may continue to serve in that capacity without reappointment.''.

SEC. 203. CLARIFICATION OF DUTIES OF CHIEF FINANCIAL OFFICER AND MAYOR.

(a) RELATION TO FINANCIAL DUTIES OF MAYOR.—Section 448(a) of such Act (section 1–204.48(a), D.C. Official Code) is amended by striking ''section 603,'' and inserting ''section 603 and except to the extent provided under section 424(d),''.

(b) RELATION TO MAYOR'S DUTIES REGARDING ACCOUNTING SUPERVISION AND CONTROL.—Section 449 of such Act (section 1–204.49, D.C. Official Code) is amended by striking ''The Mayor'' and inserting ''Except to the extent provided under section 424(d), the Mayor''.

SEC. 204. RULE REGARDING PERSONNEL AUTHORITY.

(a) IN GENERAL.—The Home Rule Act is amended by adding by adding after section 424g the following:

''AUTHORITY OVER PERSONNEL OF OFFICE AND OTHER FINANCIAL PERSONNEL

''SEC. 424h. (a) IN GENERAL.—Notwithstanding any provision of law or regulation, employees of the Office of the Chief Financial Officer, including personnel described in subsection (b), shall be appointed by, shall serve at the pleasure of, and shall act under the direction and control of the Chief Financial Officer of the District of Columbia, and shall be considered at-will employees, except that the Chief Financial Officer shall comply with any collective bargaining agreement entered into by the Office of the Chief Financial Officer.

''(b) PERSONNEL.—The personnel described in this subsection are as follows:

''(1) The Office of the General Counsel within the Office of the Chief Financial Officer of the District of Columbia, such office shall include the General Counsel to the Chief Financial Officer and individuals hired or retained as attorneys by the Chief Financial Officer or any office under the personnel authority of the Office of the Chief Financial Officer, all such attorneys shall act under the direction and control of the General Counsel to the Chief Financial Officer.

''(2) Personnel of the Office not described in paragraph (1).

''(3) The heads and all personnel of the offices described in subsection (c) and the Chief Financial Officers of all District of Columbia executive branch subordinate and independent agencies, Associate chief financial officers, together with all other District of Columbia accounting, budget, and financial management personnel (including personnel of executive branch independent agencies).

''(c) OFFICES DESCRIBED.—The offices referred to in this subsection are as follows:

''(1) The Office of Finance and Treasury (or any successor office).

''(2) The Office of Financial Operations and Systems (or any successor office).

''(3) The Office of the Budget and Planning (or any successor office).

''(4) The Office of Tax and Revenue (or any successor office).

''(5) The District of Columbia Lottery and Charitable Games Control Board.

''(d) INDEPENDENT AUTHORITY OVER LEGAL PERSONNEL.—Sections 851 through 862 of the District of Columbia Government Comprehensive Merit Personnel Act of 1978, effective March 3, 1979 (D.C. Law 2–260; D.C. Official Code §1–608.51–1–608.62) shall not apply to attorneys employed by the Office of the Chief Financial Officer.''

(b) CONFORMING AMENDMENT.—Section 862 of the District of Columbia Government Comprehensive Merit Personnel Act of 1978 (D.C. Law 2–260; D.C. Official Code §1–608.62) is amended by striking paragraph (2).

SEC. 205. PROCUREMENT AUTHORITY.

(a) MAINTENANCE OF A PROCUREMENT OFFICE INDEPENDENT OF THE MAYOR'S PROCUREMENT OFFICE.—Section 104(c) of the District of Columbia Procurement Practices Act of 1986, effective February 21, 1986 (D.C. Law 6–85; D.C. Official Code §2–301.04), is amended by striking beginning with ''During a control year, as defined by §47–393(4),'' through ''Chief Financial Officer shall be bound by the provisions contained in this Act.''.

(b) HOME RULE ACT.—The Home Rule Act is amended by adding after section 424h the following:

''PROCUREMENT AUTHORITY OF THE CHIEF FINANCIAL OFFICER

''SEC. 424i. The Office of the Chief Financial Officer's procurement practices shall be governed by the provisions of chapter 3 of title 2 of the D.C. Official Code, except that the Office of the Chief Financial Officer shall maintain a procurement office or division that shall operate independent of, and shall not be governed by, the Office of Contracting and Procurement, established by section 2–301.05, or its successor office.''.

(c) EFFECTIVE DATE.—This section and the amendments made by this section shall take effect 6 months after the date of enactment of this Act.

SEC. 206. FISCAL IMPACT STATEMENTS.

The General Legislative Procedures Act of 1975, effective September 23, 1975 (D.C. Law 1–17; D.C. Official §§Code 1–301.45 through 1–301.47), is amended by adding after section 4 the following:

''FISCAL IMPACT STATEMENTS

''SEC. 4a. (a) BILLS AND RESOLUTIONS.—

''(1) IN GENERAL.—Notwithstanding any other law, except as provided in subsection (c), all permanent bills and resolutions shall be accompanied by a fiscal impact statement before final adoption by the Council.

''(2) CONTENTS.—The fiscal impact statement shall include the estimate of the costs which will be incurred by the District as a result of the enactment of the measure in the current and each of the first four fiscal years for which the act or resolution is in effect, together with a statement of the basis for such estimate.

''(b) APPROPRIATIONS.—Permanent and emergency acts which are accompanied by fiscal impact statements which reflect unbudgeted costs, shall be subject to appropriations prior to becoming effective.

''(c) APPLICABILITY.—Subsection (a) shall not apply to emergency declaration, ceremonial, confirmation, and sense of the Council resolutions.''.

Mr. FRIST. Mr. President, I ask unanimous consent that the committee amendment be agreed to.

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

The committee amendment was agreed to.

Mr. FRIST. Mr. President, I understand that Senator LEVIN has an amendment at the desk. I ask that the amendment be considered and agreed to, the motion to reconsider be laid upon the table; that the bill, as amended, be read three times, passed, the motion to reconsider be laid upon the table without any intervening action or debate, and that any statements relating to the bill be printed in the RECORD.

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

The amendment (No. 2230) was agreed to as follows:

AMENDMENT NO. 2230

(Purpose: To provide for metered cabs in the District of Columbia)

At the appropriate place, insert the following: (p. 10, after l. 2)

SEC. ___. METERED CABS IN THE DISTRICT OF COLUMBIA.

(a) IN GENERAL.—Except as provided in subsection (b) and not later than 1 year after the date of enactment of this Act, the District of Columbia shall require all cabs licensed in the District of Columbia to charge fares by a metered system.

(b) DISTRICT OF COLUMBIA OPT OUT.—The District of Columbia may cancel the requirements of subsection (a) by adopting an ordinance that specifically states that the District of Columbia opts out of the requirement to implement a metered system under subsection (a).

The bill (S. 1267), as amended, was read the third time and passed.

THE TRAFFICKING VICTIMS PROTECTION ACT OF 2000

Mr. FRIST. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of H.R. 2620, which is at the desk.

The PRESIDING OFFICER. The clerk will state the bill by title.

The legislative clerk read as follows:

A bill (H.R. 2620) to authorize appropriations for fiscal years 2004 and 2005 for the Trafficking Victims Protection Act of 2000, and for other purposes.

There being no objection, the Senate proceeded to consider the bill.

Mr. FRIST. Mr. President, I ask unanimous consent that the bill be read the third time and passed, the motion to reconsider be laid upon the table, and that any statements related to the bill be printed in the RECORD.

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

The bill (H.R. 2620) was read the third time and passed.

POISON CONTROL CENTER ENHANCEMENT AND AWARENESS ACT AMENDMENTS OF 2003

Mr. FRIST. Mr. President, I ask the Chair lay before the Senate a message from the House of Representatives on the bill (S. 686) to provide assistance for poison prevention and to stabilize the funding of regional poison control centers.

The Presiding Officer laid before the Senate the following message from the House of Representatives:

S. 686

Resolved, That the bill from the Senate (S. 686) entitled ''An Act to provide assistance for poison prevention and to stabilize the funding of regional poison control centers'', do pass with the following amendment:

Strike out all after the enacting clause and insert:

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Poison Control Center Enhancement and Awareness Act Amendments of 2003''.

SEC. 2. FINDINGS.

The Congress finds the following:

(1) Poison control centers are our Nation's primary defense against injury and deaths from poisoning. Twenty-four hours a day, the general public as well as health care practitioners contact their local poison centers for help in diagnosing and treating victims of poisoning and other toxic exposures.

(2) Poisoning is the third most common form of unintentional death in the United States. In any given year, there will be between 2,000,000 and 4,000,000 poison exposures. More than 50 percent of these exposures will involve children under the age of 6 who are exposed to toxic substances in their home. Poisoning accounts for 285,000 hospitalizations, 1,200,000 days of acute hospital care, and 13,000 fatalities annually.

(3) Stabilizing the funding structure and increasing accessibility to poison control centers will promote the utilization of poison control centers, and reduce the inappropriate use of emergency medical services and other more costly health care services.

(4) The tragic events of September 11, 2001, and the anthrax cases of October 2001, have dramatically changed our Nation. During this time period, poison centers in many areas of the country were answering thousands of additional calls from concerned residents. Many poison centers were relied upon as a source for accurate medical information about the disease and the complications resulting from prophylactic antibiotic therapy.

(5) The 2001 Presidential Task Force on Citizen Preparedness in the War on Terrorism recommended that the Poison Control Centers be used as a source of public information and public education regarding potential biological, chemical, and nuclear domestic terrorism.

(6) The increased demand placed upon poison centers to provide emergency information in the event of a terrorist event involving a biological, chemical, or nuclear toxin will dramatically increase call volume.

SEC. 3. AMENDMENT TO PUBLIC HEALTH SERVICE ACT.

Title XII of the Public Health Service Act (42 U.S.C. 300d et seq.) is amended by adding at the end the following:

''PART G—POISON CONTROL

''SEC. 1271. MAINTENANCE OF A NATIONAL TOLL-FREE NUMBER.

''(a) IN GENERAL.—The Secretary shall provide coordination and assistance to regional poison control centers for the establishment of a nationwide toll-free phone number to be used to access such centers.

''(b) RULE OF CONSTRUCTION.—Nothing in this section shall be construed as prohibiting the establishment or continued operation of any privately funded nationwide toll-free phone number used to provide advice and other assistance for poisonings or accidental exposures.

''(c) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this section $2,000,000 for each of the fiscal years 2000 through 2009. Funds appropriated under this subsection shall not be used to fund any toll-free phone number described in subsection (b).

''SEC. 1272. NATIONWIDE MEDIA CAMPAIGN TO PROMOTE POISON CONTROL CENTER UTILIZATION.

''(a) IN GENERAL.—The Secretary shall establish a national media campaign to educate the public and health care providers about poison prevention and the availability of poison control resources in local communities and to conduct advertising campaigns concerning the nationwide toll-free number established under section 1271.

''(b) CONTRACT WITH ENTITY.—The Secretary may carry out subsection (a) by entering into contracts with 1 or more nationally recognized media firms for the development and distribution of monthly television, radio, and newspaper public service announcements.

''(c) EVALUATION.—The Secretary shall—

''(1) establish baseline measures and benchmarks to quantitatively evaluate the impact of the nationwide media campaign established under this section; and

''(2) prepare and submit to the appropriate congressional committees an evaluation of the nationwide media campaign on an annual basis.

''(d) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section $600,000 for each of fiscal years 2000 through 2005 and such sums as may be necessary for each of fiscal years 2006 through 2009.

''SEC. 1273. MAINTENANCE OF THE POISON CONTROL CENTER GRANT PROGRAM.

''(a) REGIONAL POISON CONTROL CENTERS.—The Secretary shall award grants to certified regional poison control centers for the purposes of achieving the financial stability of such centers, and for preventing and providing treatment recommendations for poisonings.

''(b) OTHER IMPROVEMENTS.—The Secretary shall also use amounts received under this section to—

''(1) develop standardized poison prevention and poison control promotion programs;

''(2) develop standard patient management guidelines for commonly encountered toxic exposures;

''(3) improve and expand the poison control data collection systems, including, at the Secretary's discretion, by assisting the poison control centers to improve data collection activities;

''(4) improve national toxic exposure surveillance by enhancing activities at the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry;

''(5) expand the toxicologic expertise within poison control centers; and

''(6) improve the capacity of poison control centers to answer high volumes of calls during times of national crisis.

''(c) CERTIFICATION.—Except as provided in subsection (d), the Secretary may make a grant to a center under subsection (a) only if—

''(1) the center has been certified by a professional organization in the field of poison control, and the Secretary has approved the organization as having in effect standards for certification that reasonably provide for the protection of the public health with respect to poisoning; or

''(2) the center has been certified by a State government, and the Secretary has approved the State government as having in effect standards for certification that reasonably provide for the protection of the public health with respect to poisoning.

''(d) WAIVER OF CERTIFICATION REQUIREMENTS.—

''(1) IN GENERAL.—The Secretary may grant a waiver of the certification requirement of subsection (c) with respect to a noncertified poison control center or a newly established center that applies for a grant under this section if such center can reasonably demonstrate that the center will obtain such a certification within a reasonable period of time as determined appropriate by the Secretary.

''(2) RENEWAL.—The Secretary may renew a waiver under paragraph (1).

''(3) LIMITATION.—In no instance may the sum of the number of years for a waiver under paragraph (1) and a renewal under paragraph (2) exceed 5 years. The preceding sentence shall take effect as if enacted on February 25, 2000.

''(e) SUPPLEMENT NOT SUPPLANT.—Amounts made available to a poison control center under this section shall be used to supplement and not supplant other Federal, State, or local funds provided for such center.

''(f) MAINTENANCE OF EFFORT.—A poison control center, in utilizing the proceeds of a grant under this section, shall maintain the expenditures of the center for activities of the center at a level that is not less than the level of such expenditures maintained by the center for the fiscal year preceding the fiscal year for which the grant is received.

''(g) MATCHING REQUIREMENT.—The Secretary may impose a matching requirement with respect to amounts provided under a grant under this section if the Secretary determines appropriate.

''(h) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section $25,000,000 for each of the fiscal years 2000 through 2004 and $27,500,000 for each of fiscal years 2005 through 2009.

''SEC. 1274. RULE OF CONSTRUCTION.

''Nothing in this part may be construed to ease any restriction in Federal law applicable to the amount or percentage of funds appropriated to carry out this part that may be used to prepare or submit a report.''.

SEC. 4. CONFORMING AMENDMENT.

The Poison Control Center Enhancement and Awareness Act (42 U.S.C. 14801 et seq.) is hereby repealed.

Mr. FRIST. Mr. President, I ask unanimous consent that the Senate concur in the House amendment, the motion to reconsider be laid upon the table, and that any statements relating to the bill be printed in the RECORD.

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

ARREST OF MIKHAIL B. KHODORKOVSKY BY THE RUSSIAN FEDERATION

Mr. FRIST. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar No. 380, S. Res. 258.

The PRESIDING OFFICER. The clerk will state the resolution by title.

The legislative clerk read as follows:

A resolution (S. Res. 258) expressing the sense of the Senate on the arrest of Mikhail B. Khodorkovsky by the Russian Federation.

There being no objection, the Senate proceeded to consider the resolution.

Mr. FRIST. Mr. President, I ask unanimous consent that the resolution be agreed to, the preamble be agreed to, the motion to reconsider be laid upon the table en bloc, and that any

statements relating to the bill be printed in the RECORD.

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

The resolution (S. Res. 258) was agreed to.

The preamble was agreed to.

The resolution, with its preamble, reads as follows:

S. RES. 258

Whereas the Russian Federation is now a member of the family of democratic countries;

Whereas the United States supports the development of democracy, free markets, and civil society in the Russian Federation and in other states of the former Soviet Union;

Whereas the rule of law, the impartial application of the law, and equal justice for all in courts of law are pillars of all democratic societies;

Whereas investment, both foreign and domestic, in the economy of Russia is necessary for the growth of the economy and raising the standard of living of the citizens of the Russian Federation;

Whereas property rights are a bulwark of civil society against encroachment by the state, and a fundamental building block of democracy; and

Whereas reports of the arrest of Mikhail B. Khodorkovsky and the freezing of shares of the oil conglomerate YUKOS have raised questions about the possible selective application of the law in the Russian Federation and may have compromised investor confidence in business conditions there: Now, therefore, be it

Resolved, That it is the sense of the Senate that—

(1) the law enforcement and judicial authorities of the Russian Federation should ensure that Mikhail B. Khodorkovsky is accorded the full measure of his rights under the Russian Constitution to defend himself against any and all charges that may be brought against him, in a fair and transparent process, so that individual justice may be done, but also so that the efforts the Russian Federation has been making to reform its system of justice may be seen to be moving forward; and

(2) such authorities of the Russian Federation should make every effort to dispel growing international concerns that—

(A) the cases against Mikhail B. Khodorkovsky and other business leaders are politically motivated; and

(B) the potential remains for misuse of the justice system in the Russian Federation.

CONGRATULATING THE SAN JOSE EARTHQUAKES

Mr. FRIST. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of S. Res. 280, submitted earlier today by Senators BOXER and FEINSTEIN.

The PRESIDING OFFICER. The clerk will report the resolution by title.

The legislative clerk read as follows:

A resolution (S. Res. 280) congratulating the San Jose Earthquakes for winning the 2003 Major League Soccer Cup.

There being no objection, the Senate proceeded to consider the resolution.

Mrs. BOXER. Mr. President, on November 23, the San Jose Earthquakes became only the second team in Major League Soccer, MLS, history to win the MLS Cup more than once, beating the Chicago Fire 4–2 in a well-fought match.

In the championship game against Chicago, San Jose delighted a capacity crowd in Carson, CA by scoring four goals and saving one penalty kick. The game matched the excitement of the Western Conference final game, in which Landon Donovan—the two-time recipient of the U.S. National Team Player of the Year award—secured the Earthquakes' place in the Championship by netting a dramatic golden goal in the 117th minute.

Californians should take great pride in this impressive accomplishment by the San Jose Earthquakes. The Earthquakes' success on the field was earned through the hard work of their outstanding athletes and coaches, and the encouragement of their fans. I congratulate them on their win and their second MLS Cup.

Mr. FRIST. Mr. President, I ask unanimous consent that the resolution and preamble be agreed to, en bloc; that the motion to reconsider be laid upon the table; and that any statements relating to the resolution be printed in the RECORD.

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

The resolution (S. Res. 280) was agreed to.

The preamble was agreed to.

The resolution, with its preamble, reads as follows:

S. RES. 280

Whereas on November 23, 2003, the San Jose Earthquakes defeated the Chicago Fire to win the 2003 Major League Soccer Cup;

Whereas the San Jose Earthquakes achieved a 14–7–9 regular season record to finish first in the Major League Soccer Western Conference;

Whereas the San Jose Earthquakes finished an extraordinary season by overcoming injuries, adversity, and multiple-goal deficits to reach the Major League Soccer Cup championship match;

Whereas in the championship match, the San Jose Earthquakes and the Chicago Fire scored 6 goals combined, breaking the Major League Soccer Cup championship match scoring record;

Whereas head coach Frank Yallop led the San Jose Earthquakes to victory;

Whereas the San Jose Earthquakes is a team of world-class players, including Jeff Agoos, Arturo Alvarez, Brian Ching, Jon Conway, Ramiro Corrales, Troy Dayak, Dwayne De Rosario, Landon Donovan, Todd Dunivant, Ronnie Ekelund, Rodrigo Faria, Manny Lagos, Roger Levesque, Brain Mullan, Richard Mulrooney, Pat Onstad, Eddie Robinson, Chris Roner, Ian Russell, Josh Saunders, Craig Waibel, and Jamil Walker, all of whom contributed extraordinary performances throughout the regular season, playoffs and Major League Soccer Cup;

Whereas San Jose Earthquakes midfielder Ronnie Ekelund scored in the fifth minute of play, tying Eduardo Hurtado for the fastest goal scored in a Major League Soccer Cup championship match;

Whereas with the victory, San Jose Earthquakes captain Jeff Agoos won his second Major League Soccer Cup for the San Jose Earthquakes and his fifth Major League Soccer Cup overall;

Whereas San Jose Earthquakes forward Landon Donovan, who has been named United States National Team Player of the Year twice, scored 2 goals on 2 shots in the championship match, earning the Honda Major League Soccer Cup Most Valuable Player Award;

Whereas by winning the 2003 Major League Soccer Cup, the San Jose Earthquakes join DC United to become the second team in Major League Soccer history to win the Major League Soccer Cup more than once;

Whereas the San Jose Earthquakes have brought great pride to the City of San Jose and to the State of California;

Whereas Major League Soccer has become extremely popular in only 8 seasons; and

Whereas the success of Major League Soccer has contributed to the growing popularity of soccer in the United States in recent years: Now, therefore, be it

Resolved, That the Senate—

(1) congratulates the San Jose Earthquakes for winning the 2003 Major League Soccer Cup;

(2) recognizes the achievement of the players, coaches, staff, and supporters of the San Jose Earthquakes in bringing the 2003 Major League Soccer Cup to San Jose;

(3) commends the San Jose community for its enthusiastic support of the San Jose Earthquakes; and

(4) expresses the hope that Major League Soccer will continue to inspire fans and young players in the United States and around the world by producing teams of the high caliber of the San Jose Earthquakes.

PREVENT ALL CIGARETTE TRAFFICKING ACT

Mr. FRIST. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar No. 241, S. 1177.

The PRESIDING OFFICER. The clerk will report the bill by title.

The legislative clerk read as follows:

A bill (S. 1177) to ensure the collection of all cigarette taxes, and for other purposes.

There being no objection, the Senate proceeded to consider the bill which had been reported from the Committee on the Judiciary with an amendment and an amendment to the title, as follows:

[Strike the part in black brackets and insert the part printed in italic.]

S. 1177

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

[SECTION 1. SHORT TITLE.

[This Act may be cited as the ''Prevent All Cigarette Trafficking Act'' or ''PACT Act''.

[SEC. 2. COLLECTION OF STATE CIGARETTE TAXES.

[(a) DEFINITIONS.—Section 1 of the Act of October 19, 1949 (15 U.S.C. 375; commonly referred to as the ''Jenkins Act''), is amended—

[(1) in paragraph (1), by inserting ''and other legal entities'' after ''individuals'';

[(2) by striking paragraph (3);

[(3) by redesignating paragraphs (4) through (7) as paragraphs (3) through (6), respectively; and

[(4) by adding at the end the following new paragraphs:

[''(7) The term 'delivery sale' means any sale of cigarettes to a consumer if—

[''(A) the consumer submits the order for such sale by means of a telephone or other

method of voice transmission, the mails, or the Internet or other online service; or

''(B) the cigarettes are delivered by use of a common carrier.

''(8) The term 'common carrier' means any person (other than a local messenger service or the United States Postal Service (as defined in section 102 of title 39, United States Code)) that holds itself out to the general public as a provider for hire of the transportation by water, land, or air of merchandise, whether or not the person actually operates the vessel, vehicle, or aircraft by which the transportation is provided, between a port or place and a port or place in the United States.''.

(b) REPORTS TO STATE TOBACCO TAX ADMINISTRATORS.—Section 2 of that Act (15 U.S.C. 376) is amended—

(1) in subsection (a)—

(A) by striking ''or transfers'' and inserting '', transfers, or ships''; and

(B) by striking ''to other than a distributor licensed by or located in such State,''; and

(2) in subsection (b)—

(A) by striking ''(1)''; and

(B) by striking '', and (2)'' and all that follows and inserting a period.

(c) REQUIREMENTS FOR DELIVERY SALES.—That Act is further amended by inserting after section 2 the following new section:

''SEC. 2A. (a) Each person making a delivery sale into a State shall comply with—

''(1) the shipping requirements set forth in subsection (b);

''(2) the recordkeeping requirements set forth in subsection (c); and

''(3) all laws of the State generally applicable to sales of cigarettes that occur entirely within the State, including laws imposing—

''(A) excise taxes;

''(B) sales taxes;

''(C) licensing and tax-stamping requirements; and

''(D) other payment obligations.

''(b)(1) Each person who takes a delivery sale order shall include on the bill of lading included with the shipping package containing cigarettes sold pursuant to such order a clear and conspicuous statement providing as follows: 'CIGARETTES: FEDERAL LAW REQUIRES THE PAYMENT OF ALL APPLICABLE EXCISE AND SALES TAXES, AND COMPLIANCE WITH APPLICABLE LICENSING AND TAX-STAMPING OBLIGATIONS'.

''(2) Any shipping package described in paragraph (1) that is not labeled in accordance with that paragraph shall be treated as non-deliverable matter by common carriers.

''(c)(1) Each person making delivery sales into a State shall keep a record of all delivery sales so made, organized by State into which such delivery sales are so made.

''(2) Records of delivery sales shall be kept under paragraph (1) in the year in which made and for the next four years.

''(3) Records kept under paragraph (1) shall be made available to tobacco tax administrators of the States in order to ensure the compliance of persons making delivery sales with the requirements of this Act.

''(d) Each State shall have the authority to require any person making a delivery sale of cigarettes into such State—

''(1) to collect or pay the taxes referred to in subsection (a)(3); and

''(2) to provide evidence that the manufacturer of the cigarettes sold in such State is in compliance with all Federal, State, or local laws generally applicable to the sale or distribution of cigarettes.''.

(d) PENALTIES.—Section 3 of that Act (15 U.S.C. 377) is amended—

(1) by inserting ''(a)'' before ''Whoever'';

(2) in subsection (a), as so designated, by striking ''shall be guilty of a misdemeanor and shall be fined not more than $1,000, or imprisoned not more than 6 months'' and inserting ''shall be fined not more than $100,000, imprisoned not more than 2 years''; and

(3) by adding at the end the following new subsection:

''(b)(1) Whoever violates any provision of this Act shall be subject to a civil penalty in an amount not to exceed 2 percent of the gross sales of cigarettes of such person during the one-year period ending on the date of the violation.

''(2) A civil penalty under paragraph (1) for a violation of this Act is in addition to any criminal penalty under subsection (a) for the violation.''.

(e) INJUNCTIONS.—Section 4 of that Act (15 U.S.C. 378) is amended—

(1) by inserting ''(a)'' before ''The United States district courts''; and

(2) by adding at the end the following new subsections:

''(b)(1) A State, through its attorney general, or any person who holds a permit under section 5712 of the Internal Revenue Code of 1986, may bring an action in the United States district courts to prevent and restrain violations of this Act by any person (or by any person controlling such person).

''(2) Nothing in this section shall be construed to prohibit an authorized State official from proceeding in State court on the basis of an alleged violation of State law.

''(c) The Attorney General, acting through the Director of the Bureau of Alcohol, Tobacco, Firearms, and Explosives, shall administer and enforce the provisions of this Act.''.

SEC. 3. TREATMENT OF CIGARETTES AS NONMAILABLE MATTER.

Section 1716 of title 18, United States Code, is amended—

(1) by redesignating subsection (j) as subsection (k); and

(2) by inserting after subsection (i) the following new subsection (j):

''(j) The transmission in the mails of cigarettes (as that term is defined in section 2341(1) of this title) for purposes of sale is prohibited, and cigarettes for such purposes are nonmailable and shall not be deposited in or carried through the mails.''.

SEC. 4. PENAL PROVISIONS REGARDING TRAFFICKING IN CONTRABAND CIGARETTES.

(a) THRESHOLD QUANTITY FOR TREATMENT AS CONTRABAND.—(1) Section 2341(2) of title 18, United States Code, is amended by striking ''60,000 cigarettes'' and inserting ''10,000 cigarettes''.

(2) Section 2342(b) of that title is amended by striking ''60,000'' and inserting ''10,000''.

(3) Section 2343 of that title is amended—

(A) in subsection (a), by striking ''60,000'' and inserting ''10,000''; and

(B) in subsection (b), by striking ''60,000'' and inserting ''10,000''.

(b) RECORDKEEPING, REPORTING, AND INSPECTION.—Section 2343 of that title, as amended by subsection (a)(3) of this section, is further amended—

(1) in subsection (a)—

(A) in the matter preceding paragraph (1), by striking ''only—'' and inserting ''such information as the Attorney General considers appropriate for purposes of enforcement of this chapter, including—''; and

(B) in the flush matter following paragraph (3), by striking the second sentence;

(2) by redesignating subsection (b) as subsection (c);

(3) by inserting after subsection (a) the following new subsection (b):

''(b) Any person who engages in a delivery sale, and who ships, sells, distributes, or receives any quantity in excess of 10,000 cigarettes within a single month, shall submit to the Attorney General, pursuant to rules or regulations prescribed by the Attorney General, a report that sets forth the following:

''(1) The person's beginning and ending inventory of cigarettes (in total) for such month.

''(2) The total quantity of cigarettes that the person received within such month from each other person (itemized by name and address).

''(3) The total quantity of cigarettes that the person distributed within such month to each person (itemized by name and address) other than a retail purchaser.''; and

(4) by adding at the end the following new subsections:

''(d) Any report required to be submitted under this chapter to the Attorney General shall also be submitted to the Secretary of the Treasury.

''(e) In this section:

''(1) The term 'delivery sale' means any sale of cigarettes to a consumer if—

''(A) the consumer submits the order for such sale by means of a telephone or other method of voice transmission, the mails, or the Internet or other online service; or

''(B) the cigarettes are delivered by use of a common carrier.

''(2) The term 'common carrier' means any person (other than a local messenger service or the United States Postal Service (as defined in section 102 of title 39, United States Code)) that holds itself out to the general public as a provider for hire of the transportation by water, land, or air of merchandise, whether or not the person actually operates the vessel, vehicle, or aircraft by which the transportation is provided, between a port or place and a port or place in the United States.''.

(c) DISPOSAL OR USE OF FORFEITED CIGARETTES.—Section 2344(c) of that title is amended by striking ''seizure and forfeiture,'' and all that follows and inserting ''seizure and forfeiture, and any cigarettes so seized and forfeited shall be either—

''(1) destroyed and not resold; or

''(2) used for undercover investigative operations for the detection and prosecution of crimes, and then destroyed and not resold.''.

(d) ENFORCEMENT.—Section 2346 of that title is amended—

(1) by inserting ''(a)'' before ''The Attorney General''; and

(2) by adding at the end the following new subsection:

''(b) A State, through its attorney general, or any person who holds a permit under section 5712 of the Internal Revenue Code of 1986, may bring an action in the United States district courts to prevent and restrain violations of this chapter by any person (or by any person controlling such person).''.

(e) CONFORMING AND CLERICAL AMENDMENTS.—(1) The section heading for section 2343 of that title is amended to read as follows:

''§ 2343. Recordkeeping, reporting, and inspection''.

(2) The table of sections at the beginning of chapter 114 of that title is amended by striking the item relating to section 2343 and inserting the following new item:

''2343. Recordkeeping, reporting, and inspection.''.

SEC. 5. COMPLIANCE WITH MODEL STATUTE OR QUALIFYING STATUTE.

(a) IN GENERAL.—An interstate tobacco seller may not sell in, deliver to, or place for delivery to a State that is a party to the

Master Settlement Agreement any cigarette manufactured by a Tobacco Product Manufacturer that is not in full compliance with the terms of the Model Statute or Qualifying Statute enacted by such State requiring funds to be placed into a qualified escrow account under specified conditions, or any regulations promulgated pursuant to such statute.

[(b) PENALTIES.—(1) Whoever shall knowingly and willfully violate subsection (a) shall be fined not more than $100,000, imprisoned not more than 2 years, or both.

[(2) Whoever shall violate subsection (a) shall be subject to a civil penalty in an amount not to exceed 2 percent of the gross sales of cigarettes of such person during the one-year period ending on the date of the violation.

[(3) A civil penalty under paragraph (2) for a violation of subsection (a) is in addition to any criminal penalty under paragraph (1) for the violation.

[(c) JURISDICTION TO PREVENT AND RESTRAIN VIOLATIONS.—(1) The United States district courts shall have jurisdiction to prevent and restrain violations of subsection (a).

[(2) A State, through its attorney general, or any person who holds a permit under section 5712 of the Internal Revenue Code of 1986, may bring an action in the United States district courts to prevent and restrain violations of subsection (a) by any person (or by any person controlling such person).

[(3) Nothing in this subsection shall be construed to prohibit an authorized State official from proceeding in State court on the basis of an alleged violation of State law.

[(4) The Attorney General, acting through the Director of the Bureau of Alcohol, Tobacco, Firearms, and Explosives, shall administer and enforce subsection (a).

[(d) DEFINITIONS.—In this section:

[(1) MASTER SETTLEMENT AGREEMENT.—The term ''Master Settlement Agreement'' means the agreement executed November 23, 1998, by the Attorneys General of 46 States, the District of Columbia, the Commonwealth of Puerto Rico, and four Territories of the United States, on the one hand, and certain tobacco manufacturers on the other hand.

[(2) TOBACCO PRODUCT MANUFACTURER.—The term ''Tobacco Product Manufacturer'' has the meaning given that term in section II(uu) of the Master Settlement Agreement.

[(3) MODEL STATUTE; QUALIFYING STATUTE.—The terms ''Model Statute'' and ''Qualifying Statute'' means a statute as defined in section IX(d)(2)(e) of the Master Settlement Agreement.

[SEC. 6. UNDERCOVER CRIMINAL INVESTIGATIONS OF THE BUREAU OF ALCOHOL, TOBACCO, FIREARMS, AND EXPLOSIVES.

[(a) IN GENERAL.—(1) Commencing as of the date of the enactment of this Act and without fiscal year limitation, the authorities in section 102(b) of the Department of Justice and Related Agencies Appropriations Act, 1993 (title I of Public Law 102–395; 106 Stat. 1838) shall be available to the Bureau of Alcohol, Tobacco, Firearms, and Explosives for undercover investigative operations of the Bureau which are necessary for the detection and prosecution of crimes against the United States.

[(2) For purposes of the exercise of the authorities referred to in paragraph (1) by the Bureau, a reference in such section 102(b) to the Federal Bureau of Investigation shall be deemed to be a reference to the Bureau of Alcohol, Tobacco, Firearms, and Explosives, and a reference to the Director of the Federal Bureau of Investigation shall be deemed to be a reference to the Director of the Bureau of Alcohol, Tobacco, Firearms, and Explosives.

[(b) LIMITATIONS IN APPROPRIATIONS ACTS.—The exercise of the authorities referred to in subsection (a)(1) by the Bureau of Alcohol, Tobacco, Firearms, and Explosives shall be subject to the provisions of appropriations Acts.

[SEC. 7. INSPECTION BY BUREAU OF ALCOHOL, TOBACCO, FIREARMS, AND EXPLOSIVES OF RECORDS OF CERTAIN CIGARETTE SELLERS.

[(a) IN GENERAL.—Any officer of the Bureau of Alcohol, Tobacco, Firearms and Explosives may, during normal business hours, enter the premises of any person described in subsection (b) for the purposes of inspecting—

[(1) any records or information required to be maintained by such person under the provisions of law referred to in subsection (c); or

[(2) any cigarettes kept or stored by such person at such premises.

[(b) COVERED PERSONS.—A person described in this subsection is any person who engages in a delivery sale, and who ships, sells, distributes, or receives any quantity in excess of 10,000 cigarettes within a single month.

[(c) COVERED PROVISIONS OF LAW.—The provisions of law referred to in this subsection are as follows:

[(1) The Act of October 19, 1949 (15 U.S.C. 375; commonly referred to as the ''Jenkins Act'').

[(2) Chapter 114 of title 18, United States Code.

[(3) This Act.

[(d) DELIVERY SALE DEFINED.—In this section, the term ''delivery sale'' has the meaning given that term in 2343(e)(1) of title 18, United States Code, as amended by section 4(b)(3) of this Act.

[SEC. 8. EFFECTIVE DATE.

[(a) IN GENERAL.—Except as provided in subsection (b), this Act shall take effect 90 days after the date of the enactment of this Act.

[(b) ATFE AUTHORITY.—

[(1) IN GENERAL.—Sections 6 and 7 shall take effect on the date of the enactment of this Act.

[(2) DEFINITION.—For purposes of section 7, the definition of delivery sale in section 2343(e)(1) of title 18, United States Code, as amended by section 4(b)(3) of this Act, shall take effect on the date of the enactment of this Act.]

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Prevent All Cigarette Trafficking Act'' or ''PACT Act''.

SEC. 2. COLLECTION OF STATE CIGARETTE AND SMOKELESS TOBACCO TAXES.

(a) DEFINITIONS.—Section 1 of the Act of October 19, 1949 (15 U.S.C. 375; commonly referred to as the ''Jenkins Act''), is amended—

(1) by striking paragraphs (1), (2), and (3) and inserting the following new paragraphs:

''(1) The term 'attorney general', with respect to a State, means the attorney general or other chief law enforcement officer of the State, or the designee of that officer.

''(2) The term 'cigarette' means—

''(A) any roll of tobacco wrapped in paper or in any substance not containing tobacco which is to be heated or burned;

''(B) any roll of tobacco wrapped in any substance containing tobacco that, because of its appearance, the type of tobacco used in the filler, or its packaging or labeling, is likely to be offered to, or purchased by, consumers as a cigarette described in subparagraph (A);

''(C) any roll of tobacco wrapped in any substance that because of its appearance, the type of tobacco used in the filler, or its packaging or labeling, is likely to be offered to, or purchased by, consumers as a cigarette; or

''(D) loose rolling tobacco that, because of its appearance, type, packaging, or labeling, is likely to be offered to, or purchased by, consumers as tobacco for making cigarettes.

''(3) The term 'smokeless tobacco' means any finely cut, ground, powdered, or leaf tobacco that is intended to be placed in the oral or nasal cavity or otherwise consumed without being combusted.'';

(2) by striking paragraph (6) and inserting the following new paragraph (6):

''(6) The term 'delivery sale' means any sale of cigarettes or smokeless tobacco in interstate commerce to a consumer if—

''(A) the consumer submits the order for such sale by means of a telephone or other method of voice transmission, the mails, or the Internet or other online service, or the seller is otherwise not in the physical presence of the buyer when the request for purchase or order is made; or

''(B) the cigarettes or smokeless tobacco are delivered by use of a common carrier, private delivery service, or the mails, or the seller is not in the physical presence of the buyer when the buyer obtains personal possession of the delivered cigarettes or smokeless tobacco.''; and

(3) by adding at the end the following new paragraphs:

''(8) The term 'delivery seller' means a person who makes a delivery sale.

''(9) The term 'common carrier' means any person (other than a local messenger service or the United States Postal Service (as defined in section 102 of title 39, United States Code)) that holds itself out to the general public as a provider for hire of the transportation by water, land, or air of merchandise, whether or not the person actually operates the vessel, vehicle, or aircraft by which the transportation is provided, between a port or place and a port or place in the United States.

''(10) The term 'interstate commerce' means commerce between a State and any place outside the State, commerce between a State and any Indian lands in the State, or commerce between points in the same State but though any place outside the State or through any Indian lands.

''(11) The term 'person' means an individual, corporation, company, association, firm, partnership, society, State government, local government, Indian tribal government, governmental organization of such government, or joint stock company.

''(12) The term 'State' means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or possession of the United States.''.

(b) REPORTS TO STATE TOBACCO TAX ADMINISTRATORS.—Section 2 of that Act (15 U.S.C. 376) is amended—

(1) by striking ''cigarettes'' each place it appears and inserting ''cigarettes or smokeless tobacco'';

(2) in subsection (a)—

(A) in the matter preceding paragraph (1)—

(i) by striking ''or transfers'' and inserting '', transfers, or ships''; and

(ii) by striking ''to other than a distributor licensed by or located in such State,'';

(B) in paragraph (1), by inserting before the semicolon the following: '', as well as telephone numbers for each place of business, a principal electronic mail address, any website addresses, and the name, address, and telephone number of an agent in the State authorized to accept service on behalf of such person''; and

(C) in paragraph (2), by striking ''and the quantity thereof'' and inserting ''the quantity thereof, and the name, address, and phone number of the person delivering the shipment to the recipient on behalf of the delivery seller''; and

(3) in subsection (b)—

(A) by striking ''(1)''; and

(B) by striking '', and (2)'' and all that follows and inserting a period.

(c) REQUIREMENTS FOR DELIVERY SALES.—That Act is further amended by inserting after section 2 the following new section:

''SEC. 2A. (a) Each delivery seller shall comply with—

''(1) the shipping requirements set forth in subsection (b);

''(2) the recordkeeping requirements set forth in subsection (c);

''(3) all State and other laws generally applicable to sales of cigarettes or smokeless tobacco that occur entirely within the State, including laws imposing—

''(A) excise taxes;

''(B) sales taxes;

''(C) licensing and tax-stamping requirements; and

''(D) other payment obligations or legal requirements relating to the sale, distribution, or delivery of cigarettes or smokeless tobacco; and

''(4) the tax collection requirements set forth in subsection (d).

''(b)(1) Each delivery seller shall include on the bill of lading included with the shipping package containing cigarettes or smokeless tobacco sold pursuant to such order a clear and conspicuous statement providing as follows: 'CIGARETTES/SMOKELESS TOBACCO: FEDERAL LAW REQUIRES THE PAYMENT OF ALL APPLICABLE EXCISE AND SALES TAXES, AND COMPLIANCE WITH APPLICABLE LICENSING AND TAX-STAMPING OBLIGATIONS'.

''(2) Any shipping package described in paragraph (1) that is not labeled in accordance with that paragraph shall be treated as non-deliverable matter by a common carrier or the United States Postal Service if the common carrier or the United States Postal Service, as the case may be, knows or should know the contents of the package.

''(c)(1) Each delivery seller shall keep a record of all delivery sales so made, including all of the information described in section 2(a)(2), organized by State into which such delivery sales are so made.

''(2) Records of delivery sales shall be kept under paragraph (1) in the year in which made and for the next four years.

''(3) Records kept under paragraph (1) shall be made available to tobacco tax administrators of the States, attorneys general of the States, and the Attorney General of the United States in order to ensure the compliance of persons making delivery sales with the requirements of this Act.

''(d) Unless the law of the State and place in which cigarettes or smokeless tobacco are delivered pursuant to a delivery sale in interstate commerce requires otherwise for the payment to the government of an excise tax imposed on the delivery sale, or provides, for delivery sales of smokeless tobacco, for the delivery seller to collect the excise tax from the consumer and remit the excise tax to the government, the cigarettes or smokeless tobacco may not be delivered to the buyer unless in advance of the delivery—

''(1) the excise tax has been paid to the government; and

''(2) any required stamps or other indicia that the excise tax has been paid are properly affixed or applied to the cigarettes or smokeless tobacco.

''(e)(1) Each State may compile a list of delivery sellers who are in compliance with this Act with respect to such State. If a State posts a list pursuant to this subsection that specifically refers to this subsection, no common carrier or other person may knowingly deliver cigarettes or smokeless tobacco to consumers in such State unless the delivery seller is on the list at the time of delivery.

''(2)(A) Each State may compile a list of delivery sellers who are not in compliance with this Act with respect to such State.

''(B) A State may provide such a list to a common carrier, the United States Postal Service, or other person. Such a list shall be confidential, and a common carrier, the United States Postal Service, or other person that receives such a list shall maintain the confidentiality of such list.

''(C) If a State provides such a list pursuant to this subsection that specifically refers to this subsection, no common carrier, the United States Postal Service, or other person may knowingly deliver any item to a consumer in such State for a delivery seller on such list unless the common carrier, the United States Postal Service, or person in good faith determines that the item does not include cigarettes or smokeless tobacco.

''(f) For purposes of this Act, a delivery sale shall be deemed to have occurred in the State and place where the buyer obtains personal possession of the cigarettes or smokeless tobacco, and a delivery pursuant to a delivery sale is deemed to have been initiated or ordered by the delivery seller.''.

(d) PENALTIES.—Section 3 of that Act (15 U.S.C. 377) is amended—

(1) by inserting ''(a)'' before ''Whoever'';

(2) in subsection (a), as so designated, by striking ''shall be guilty of a misdemeanor and shall be fined not more than $1,000, or imprisoned not more than 6 months'' and inserting ''shall be guilty of a felony, fined under subchapter C of chapter 227 of title 18, imprisoned not more than three years, or both''; and

(3) by adding at the end the following new subsection:

''(b)(1) Whoever violates any provision of this Act shall be subject to a civil penalty in an amount not to exceed the greater of—

''(A) $5,000 in the case of the first violation, or $10,000 for any other violation; or

''(B) for any violation, 2 percent of the gross sales of cigarettes or smokeless tobacco of such person during the one-year period ending on the date of the violation.

''(2) A civil penalty under paragraph (1) for a violation of this Act is in addition to any criminal penalty under subsection (a) for the violation.''.

(e) ENFORCEMENT.—Section 4 of that Act (15 U.S.C. 378) is amended—

(1) by inserting ''(a)'' before ''The United States district courts'';

(2) in subsection (a), as so designated, by inserting before the period the following: '', and to provide other appropriate injunctive or equitable relief, including money damages, for such violations''; and

(3) by adding at the end the following new subsections:

''(b)(1) A State, through its attorney general, or any person who holds a permit under section 5712 of the Internal Revenue Code of 1986, may bring an action in the United States district courts to prevent and restrain violations of this Act by any person (or by any person controlling such person).

''(2) A State, through its attorney general, may in a civil action under this Act obtain any other appropriate relief for violations of this Act by any person (or from any person controlling such person), including civil penalties, money damages, and injunctive or other equitable relief.

''(3) The remedies available under paragraphs (1) and (2) are in addition to any other remedies available under Federal, State, or other law.

''(4) Nothing in this Act shall be construed to prohibit an authorized State official from proceeding in State court, or taking other enforcement actions, on the basis of an alleged violation of State or other law.

''(c) The Attorney General shall administer and enforce the provisions of this Act.

''(d)(1) Any person who holds a permit under section 5712 of the Internal Revenue Code of 1986 who commences a civil action under paragraph (1) shall inform the Attorney General of the United States of the action.

''(2) It is the sense of Congress that any attorney general of a State who commences a civil action under paragraph (1) or (2) should inform the Attorney General of the United States of the action.

''(e) The Attorney General of the United States shall make available to the public information about all actions under subsection (a), and the resolution of such actions, including by posting such information on the Internet and by other means.''.

SEC. 3. TREATMENT OF CIGARETTES AND SMOKELESS TOBACCO AS NONMAILABLE MATTER.

Section 1716 of title 18, United States Code, is amended—

(1) by redesignating subsections (j) and (k) as subsections (k) and (l), respectively; and

(2) by inserting after subsection (i) the following new subsection (j):

''(j) The transmission in the mails of any tobacco product, including cigarettes (as that term is defined in section 1(2) of the Act of October 19, 1949 (15 U.S.C. 375; commonly referred to as the 'Jenkins Act')) and smokeless tobacco (as that term is defined in section 1(3) of that Act), is prohibited, and tobacco products are nonmailable and shall not be deposited in or carried through the mails.''.

SEC. 4. PENAL PROVISIONS REGARDING TRAFFICKING IN CONTRABAND CIGARETTES OR SMOKELESS TOBACCO.

(a) THRESHOLD QUANTITY FOR TREATMENT AS CONTRABAND CIGARETTES.—(1) Section 2341(2) of title 18, United States Code, is amended by striking ''60,000 cigarettes'' and inserting ''10,000 cigarettes''.

(2) Section 2342(b) of that title is amended by striking ''60,000'' and inserting ''10,000''.

(3) Section 2343 of that title is amended—

(A) in subsection (a), by striking ''60,000'' and inserting ''10,000''; and

(B) in subsection (b), by striking ''60,000'' and inserting ''10,000''.

(b) CONTRABAND SMOKELESS TOBACCO.—(1) Section 2341 of that title is amended—

(A) in paragraph (4), by striking ''and'' at the end;

(B) in paragraph (5), by striking the period at the end and inserting a semicolon; and

(C) by adding at the end the following new paragraphs:

''(6) the term 'smokeless tobacco' means any finely cut, ground, powdered, or leaf tobacco that is intended to be placed in the oral or nasal cavity or otherwise consumed without being combusted; and

''(7) the term 'contraband smokeless tobacco' means a quantity in excess of 500 single-unit consumer-sized cans or packages of smokeless tobacco, or their equivalent, that are in the possession of any person other than—

''(A) a person holding a permit issued pursuant to chapter 52 of the Internal Revenue Code of 1986 as manufacturer of tobacco products or as an export warehouse proprietor, a person operating a customs bonded warehouse pursuant to section 311 or 555 of the Tariff Act of 1930 (19 U.S.C. 1311, 1555), or an agent of such person;

''(B) a common carrier transporting such smokeless tobacco under a proper bill of lading or freight bill which states the quantity, source, and designation of such smokeless tobacco;

''(C) a person who—

''(i) is licensed or otherwise authorized by the State where such smokeless tobacco is found to engage in the business of selling or distributing tobacco products; and

''(ii) has complied with the accounting, tax, and payment requirements relating to such license or authorization with respect to such smokeless tobacco; or

''(D) an officer, employee, or agent of the United States or a State, or any department, agency, or instrumentality of the United States or a State (including any political subdivision of a State), having possession of such smokeless tobacco in connection with the performance of official duties.''.

(2) Section 2342(a) of that title is amended by inserting ''or contraband smokeless tobacco'' after ''contraband cigarettes''.

(3) Section 2343(a) of that title is amended by inserting '', or any quantity of smokeless tobacco in excess of 500 single-unit consumer-sized

cans or packages,'' before ''in a single transaction''.

(4) Section 2344(c) of that title is amended by inserting ''or contraband smokeless tobacco'' after ''contraband cigarettes''.

(5) Section 2345 of that title is amended by inserting ''or smokeless tobacco'' after ''cigarettes'' each place it appears.

(c) RECORDKEEPING, REPORTING, AND INSPECTION.—Section 2343 of that title, as amended by this section, is further amended—

(1) in subsection (a)—

(A) in the matter preceding paragraph (1), by striking ''only—'' and inserting ''such information as the Attorney General considers appropriate for purposes of enforcement of this chapter, including—''; and

(B) in the flush matter following paragraph (3), by striking the second sentence;

(2) by redesignating subsection (b) as subsection (c);

(3) by inserting after subsection (a) the following new subsection (b):

''(b) Any person who engages in a delivery sale, and who ships, sells, or distributes any quantity in excess of 10,000 cigarettes, or any quantity in excess of 500 single-unit consumer-sized cans or packages of smokeless tobacco, or their equivalent, within a single month, shall submit to the Attorney General, pursuant to rules or regulations prescribed by the Attorney General, a report that sets forth the following:

''(1) The person's beginning and ending inventory of cigarettes and cans or packages of smokeless tobacco (in total) for such month.

''(2) The total quantity of cigarettes and cans or packages of smokeless tobacco that the person received within such month from each other person (itemized by name and address).

''(3) The total quantity of cigarettes and cans or packages of smokeless tobacco that the person distributed within such month to each person (itemized by name and address) other than a retail purchaser.''; and

(4) by adding at the end the following new subsections:

''(d) Any report required to be submitted under this chapter to the Attorney General shall also be submitted to the Secretary of the Treasury and to the attorneys general and the tax administrators of the States from where the shipments, deliveries, or distributions both originated and concluded.

''(e) In this section, the term 'delivery sale' means any sale of cigarettes or smokeless tobacco in interstate commerce to a consumer if—

''(A) the consumer submits the order for such sale by means of a telephone or other method of voice transmission, the mails, or the Internet or other online service, or by any other means where the consumer is not in the same physical location as the seller when the purchase or offer of sale is made; or

''(B) the cigarettes or smokeless tobacco are delivered by use of the mails, common carrier, private delivery service, or any other means where the consumer is not in the same physical location as the seller when the consumer obtains physical possession of the cigarettes or smokeless tobacco.

''(f) In this section, the term 'interstate commerce' means commerce between a State and any place outside the State, commerce between a State and any Indian lands in the State, or commerce between points in the same State but through any place outside the State or though any Indian lands.''.

(d) DISPOSAL OR USE OF FORFEITED CIGARETTES AND SMOKELESS TOBACCO.—Section 2344(c) of that title, as amended by this section, is further amended by striking ''seizure and forfeiture,'' and all that follows and inserting ''seizure and forfeiture, and any cigarettes or smokeless tobacco so seized and forfeited shall be either—

''(1) destroyed and not resold; or

''(2) used for undercover investigative operations for the detection and prosecution of crimes, and then destroyed and not resold.''.

(e) ENFORCEMENT.—Section 2346 of that title is amended—

(1) by inserting ''(a)'' before ''The Attorney General''; and

(2) by adding at the end the following new subsection:

''(b)(1) A State, through its attorney general, or any person who holds a permit under section 5712 of the Internal Revenue Code of 1986, may bring an action in the United States district courts to prevent and restrain violations of this chapter by any person (or by any person controlling such person).

''(2) A State, through its attorney general, may in a civil action under paragraph (1) also obtain any other appropriate relief for violations of this chapter from any person (or by any person controlling such person), including civil penalties, money damages, and injunctive or other equitable relief.

''(3) The remedies under paragraphs (1) and (2) are an addition to any other remedies under Federal, State, or other law.

''(4) Nothing in this subsection shall be construed to prohibit an authorized State official from proceeding in State court, or taking other enforcement actions, on the basis of an alleged violation of State or other law.''.

(f) CONFORMING AND CLERICAL AMENDMENTS.—(1) The section heading for section 2343 of that title is amended to read as follows:

''§ 2343. Recordkeeping, reporting, and inspection''.

(2) The table of sections at the beginning of chapter 114 of that title is amended by striking the item relating to section 2343 and inserting the following new item:

''2343. Recordkeeping, reporting, and inspection.''.

(3)(A) The heading for chapter 114 of that title is amended to read as follows:

''CHAPTER 114—TRAFFICKING IN CONTRABAND CIGARETTES AND SMOKELESS TOBACCO''.

(B) The table of chapters at the beginning of part I of that title is amended by striking the item relating to section 114 and inserting the following new item:

''114. Trafficking in contraband cigarettes and smokeless tobacco ..... 2341''.

SEC. 5. COMPLIANCE WITH MODEL STATUTE OR QUALIFYING STATUTE.

(a) IN GENERAL.—An interstate tobacco seller may not sell in, deliver to, or place for delivery sale in a State that is a party to the Master Settlement Agreement any cigarette manufactured by a Tobacco Product Manufacturer that is not in full compliance with the terms of the Model Statute or Qualifying Statute enacted by such State requiring funds to be placed into a qualified escrow account under specified conditions, or any regulations promulgated pursuant to such terms.

(b) PENALTIES.—(1) Whoever shall knowingly and willfully violate subsection (a) shall be fined not more than $100,000, imprisoned not more than 2 years, or both.

(2) Whoever shall violate subsection (a) shall be subject to a civil penalty in an amount not to exceed 2 percent of the gross sales of cigarettes of such person during the one-year period ending on the date of the violation.

(3) A civil penalty under paragraph (2) for a violation of subsection (a) is in addition to any criminal penalty under paragraph (1) for the violation and in addition to any other damages or relief available under law.

(c) JURISDICTION TO PREVENT AND RESTRAIN VIOLATIONS.—(1) The United States district courts shall have jurisdiction to prevent and restrain violations of subsection (a).

(2) A State, through its attorney general, or any person who holds a permit under section 5712 of the Internal Revenue Code of 1986, may bring an action in the United States district courts to prevent and restrain violations of subsection (a) by any person (or by any person controlling such person).

(3) A State, through its attorney general, may in a civil action against any person violating subsection (a) obtain any appropriate relief for violations of this section from any person (or by any person controlling such person), including civil penalties, money damages, and injunctive or other equitable relief.

(4) The remedies available under paragraphs (2) and (3) are in addition to any other remedies available under Federal, State, or other law.

(5) Nothing in this subsection shall be construed to prohibit an authorized State official from proceeding in State court or taking other enforcement actions on the basis of an alleged violation of State or other law.

(6) The Attorney General shall administer and enforce subsection (a).

(d) DEFINITIONS.—In this section:

(1) MASTER SETTLEMENT AGREEMENT.— The term ''Master Settlement Agreement'' means the agreement executed November 23, 1998, by the Attorneys General of 46 States, the District of Columbia, the Commonwealth of Puerto Rico, and four Territories of the United States, on the one hand, and certain tobacco manufacturers on the other hand.

(2) TOBACCO PRODUCT MANUFACTURER.—The term ''Tobacco Product Manufacturer'' has the meaning given that term in section II(uu) of the Master Settlement Agreement.

(3) MODEL STATUTE; QUALIFYING STATUTE.— The terms ''Model Statute'' and ''Qualifying Statute'' means a statute as defined in section IX(d)(2)(e) of the Master Settlement Agreement.

(4) DELIVERY SALE.—The term ''delivery sale'' means any sale of cigarettes or smokeless tobacco in interstate commerce to a consumer if—

(A) the consumer submits the order for such sale by means of a telephone or other method of voice transmission, the mails, or the Internet or other online service, or the seller is otherwise not in the physical presence of the buyer when the request for purchase or order is made; or

(B) the cigarettes or smokeless tobacco are delivered by use of a common carrier, private delivery service, or the mails, or the seller is not in the physical presence of the buyer when the buyer obtains personal possession of the delivered cigarettes or smokeless tobacco.

(5) INTERSTATE COMMERCE.—The term ''interstate commerce'' means commerce between a State and any place outside the State, commerce between a State and any Indian lands in the State, or commerce between points in the same State but through any place outside the State or through any Indian lands.

SEC. 6. UNDERCOVER CRIMINAL INVESTIGATIONS OF THE BUREAU OF ALCOHOL, TOBACCO, FIREARMS, AND EXPLOSIVES.

(a) IN GENERAL.—(1) Commencing as of the date of the enactment of this Act and without fiscal year limitation, the authorities in section 102(b) of the Department of Justice and Related Agencies Appropriations Act, 1993 (title I of Public Law 102–395; 106 Stat. 1838) shall be available to the Bureau of Alcohol, Tobacco, Firearms, and Explosives for undercover investigative operations of the Bureau which are necessary for the detection and prosecution of crimes against the United States.

(2) For purposes of the exercise of the authorities referred to in paragraph (1) by the Bureau, a reference in such section 102(b) to the Federal Bureau of Investigation shall be deemed to be a reference to the Bureau of Alcohol, Tobacco, Firearms, and Explosives, and a reference to the Director of the Federal Bureau of Investigation shall be deemed to be a reference to the Director of the Bureau of Alcohol, Tobacco, Firearms, and Explosives.

(b) LIMITATIONS IN APPROPRIATIONS ACTS.—The exercise of the authorities referred to in

subsection (a)(1) by the Bureau of Alcohol, Tobacco, Firearms, and Explosives shall be subject to the provisions of appropriations Acts.

SEC. 7. INSPECTION BY BUREAU OF ALCOHOL, TOBACCO, FIREARMS, AND EXPLOSIVES OF RECORDS OF CERTAIN CIGARETTE AND SMOKELESS TOBACCO SELLERS.

(a) IN GENERAL.—Any officer of the Bureau of Alcohol, Tobacco, Firearms, and Explosives may, during normal business hours, enter the premises of any person described in subsection (b) for the purposes of inspecting—

(1) any records or information required to be maintained by such person under the provisions of law referred to in subsection (d); or

(2) any cigarettes or smokeless tobacco kept or stored by such person at such premises.

(b) COVERED PERSONS.—A person described in this subsection is any person who engages in a delivery sale, and who ships, sells, distributes, or receives any quantity in excess of 10,000 cigarettes, or any quantity in excess of 500 single-unit consumer-sized cans or packages of smokeless tobacco, within a single month.

(c) RELIEF.—(1) The district courts of the United States shall have the authority in a civil action under this subsection to compel inspections authorized by subsection (a).

(2) Whoever violates subsection (a) or an order issued pursuant to paragraph (1) shall be subject to a civil penalty in an amount not to exceed $10,000 for each violation.

(d) COVERED PROVISIONS OF LAW.—The provisions of law referred to in this subsection are as follows:

(1) The Act of October 19, 1949 (15 U.S.C. 375; commonly referred to as the ''Jenkins Act'').

(2) Chapter 114 of title 18, United States Code.

(3) This Act.

(e) DELIVERY SALE DEFINED.—In this section, the term ''delivery sale'' has the meaning given that term in 2343(e)(1) of title 18, United States Code, as amended by section 4(b)(3) of this Act.

SEC. 8. EFFECTIVE DATE.

(a) IN GENERAL.—Except as provided in subsection (b), this Act shall take effect 90 days after the date of the enactment of this Act.

(b) BATFE AUTHORITY.—

(1) IN GENERAL.—Sections 6 and 7 shall take effect on the date of the enactment of this Act.

(2) DEFINITION.—For purposes of section 7, the definition of delivery sale in section 2343(e)(1) of title 18, United States Code, as amended by section 4(b)(3) of this Act, shall take effect on the date of the enactment of this Act.

Amend the title so as to read: ''A bill to prevent tobacco smuggling, to ensure the collection of all tobacco taxes, and for other purposes.''.

Mr. LEAHY. Mr. President, I am pleased that today the Senate is taking up and passing the Prevent All Cigarette Trafficking, PACT, Act, S. 1177. I commend Chairman HATCH and Senator KOHL for introducing this legislation and thank them for working with me, among others, to craft the compromise language that we will consider today to crack down on the growing problem of cigarette smuggling, both interstate and international, as well as to address the connection between cigarette smuggling activities and terrorist funding. I am proud to join Senator HATCH, Senator KOHL and others as a cosponsor of the underlying bill.

I also thank the National Association of Attorneys General and the Campaign for Tobacco-Free Kids, for working with us and contributing to the substitute language. I want to say a special thanks to Vermont Attorney General Bill Sorrell, who also serves as the current Chair of the NAAG Tobacco Committee, for his valuable input on the problems with cigarette smuggling that States are facing and his support for this compromise measure. I also want to thank the Vermont Grocers Association, the Vermont Retail Association, the Vermont Association of Chiefs of Police, and the National Conference of State Legislatures for their support for this measure.

The movement of cigarettes from low-tax areas to high-tax areas in order to avoid the payment of taxes when the cigarettes are resold has become a public health problem in recent years. As State after State chooses to raise its tobacco excise taxes as a means of reducing tobacco use and as a source of revenue, many smokers have sought cheaper means by which to purchase cigarettes. Smokers can often purchase cigarettes and tobacco from remote sellers, Internet or mail order at substantial discounts due to avoidance of State taxes. These sellers, however, are evading their tax obligations because they neither collect nor pay the proper State and local excise taxes for cigarette and other tobacco product sales.

We have the ability to dramatically reduce smuggling without imposing undue burdens on manufacturers or law abiding citizens. By reducing smuggling, we will also increase government revenues by minimizing tax avoidance. My friend General Sorrell has told me that this has become a rapidly growing problem in Vermont as more and more tobacco product manufacturers fail to collect and pay cigarette taxes. Criminals are getting away with smuggling and not paying tobacco taxes because of weak punishments, products that are often poorly labeled, the lack of tax stamps and the inability of the current distribution system to track sales from State to State. These lapses point to a need for uniform rules governing group sales to individuals.

The PACT Act will give States the authority to collect millions of dollars in lost State tax revenue resulting from online and other remote sales of cigarette and smokeless tobacco. It also ensures that every tobacco retailer, whether a brick-and-mortar or remote retailer of tobacco products, play by the same rules by equalizing the tax burdens.

Moreover, the PACT Act gives States the authority necessary to enforce the Jenkins Act, a law passed in 1949, which requires cigarette vendors to report interstate sales of cigarettes. This legislation enhances States' abilities to collect all excise taxes and verify the deposit of all required escrow payments for cigarette and smokeless tobacco sales in interstate commerce, including internet sales. In addition, it provides Federal and State law enforcement with additional resources to enforce State tobacco excise tax laws.

Finally, at the request of the National Association of attorneys general and many State attorneys general, we have added a new section to provide the States with authority to enforce the Imported Cigarette Compliance Act to crack down on international tobacco smuggling. This additional authority should further reduce tax evasion and eliminate a lucrative funding source for terrorist organizations.

We must not turn a blind eye to the problem of illegal tobacco smuggling. Those who smuggle cigarettes are criminals. I look forward to the Senate approving the bipartisan PACT Act today to close the loopholes that allow cigarette smuggling to continue. I urge the leaders of the House to follow our lead and pass this legislation.

Mr. KOHL. Mr. President, the proceeds of cigarette smuggling from low tax States has developed into a popular means of generating revenue for organized crime and even terrorist organizations. A recent investigation by the Bureau of Alcohol, Tobacco, Firearms, and Explosives, BATFE, disrupted a smuggling scheme between North Carolina and Michigan, where the revenue generated was being funneled to Hezbollah, a terrorist organization. It is evident that the consequences of permitting this behavior to continue unchecked cannot be underestimated.

To make matters worse, this problem is on the rise. According to the BATFE, 10 cigarette smuggling cases were initiated in 1998. That has grown to approximately 160 in 2002.

Moreover, the sale of tobacco products over the Internet facilitates the avoidance of State cigarette taxes, denying States the ability to collect tax dollars they are owed—money the States need now more than ever.

The PACT Act take a commonsense approach to addressing these problems. It increases penalties, provides more tools for enforcement, and closes loopholes in current law. These moderate, but important, changes will further enable Federal, State, local, and tribal officials to crack down on tobacco smugglers and ensure that Internet tobacco sellers pay applicable taxes.

Despite being passed unanimously by the Judiciary Committee, some raised concerns over the legislation, particularly with respect to its effect on Indian Tribal sovereignty. After intensive negotiations with numerous interested parties, including the Campaign for Tobacco Free Kids, the National Association of Attorneys General, the Department of Justice and various tribal groups, we have been able to craft language that will achieve the goals we set out to attain—to put an end to both cigarette trafficking and tobacco tax avoidance—while leaving the important principles of Indian Tribal sovereignty unaffected.

Tobacco companies and antitobacco groups, State law enforcement and Federal law enforcement, and Republicans and Democrats all agree that this is an issue begging to be addressed. Today, we begin to provide the relevant law enforcement authorities

with the tools they need to put an end to these dangerous practices.

Mr. FRIST. Mr. President, I ask unanimous consent that the Hatch amendment, which is at the desk, be agreed to; that the committee substitute amendment, as amended, be agreed to; that the bill, as amended, be read the third time and passed; that the title amendment be agreed to; that the motions to reconsider be laid upon the table, en bloc; and that any statements relating to the bill be printed in the RECORD.

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

The amendment (No. 2231) was agreed to.

(The amendment is printed in today's RECORD under ''Text of Amendments.'')

The committee amendment in the nature of a substitute, as amended, was agreed to.

The title amendment was agreed to.

The bill (S. 1177), as amended, was read the third time and passed, as follows:

S. 1177

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

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Prevent All Cigarette Trafficking Act'' or ''PACT Act''.

SEC. 2. COLLECTION OF STATE CIGARETTE AND SMOKELESS TOBACCO TAXES.

(a) DEFINITIONS.—Section 1 of the Act of October 19, 1949 (15 U.S.C. 375; commonly referred to as the ''Jenkins Act''), is amended—

(1) by striking paragraphs (1), (2), and (3) and inserting the following new paragraphs:

''(1) The term 'attorney general', with respect to a State, means the attorney general or other chief law enforcement officer of the State, or the designee of that officer.

''(2) The term 'cigarette' means—

''(A) any roll of tobacco wrapped in paper or in any substance not containing tobacco which is to be heated or burned;

''(B) any roll of tobacco wrapped in any substance containing tobacco that, because of its appearance, the type of tobacco used in the filler, or its packaging or labeling, is likely to be offered to, or purchased by, consumers as a cigarette described in subparagraph (A);

''(C) any roll of tobacco wrapped in any substance that because of its appearance, the type of tobacco used in the filler, or its packaging or labeling, is likely to be offered to, or purchased by, consumers as a cigarette; or

''(D) loose rolling tobacco that, because of its appearance, type, packaging, or labeling, is likely to be offered to, or purchased by, consumers as tobacco for making cigarettes.

''(3) The term 'smokeless tobacco' means any finely cut, ground, powdered, or leaf tobacco that is intended to be placed in the oral or nasal cavity or otherwise consumed without being combusted.'';

(2) in paragraph (5)—

(A) by inserting '', local, or Tribal'' after ''the State'';

(B) by striking ''administer the cigarette tax law'' and inserting ''collect the tobacco tax or administer the tax law''; and

(C) by inserting '', locality, or Tribe, respectively'' after ''a State''.

(3) by striking paragraph (6) and inserting the following new paragraph (6):

''(6) The term 'delivery sale' means any sale of cigarettes or smokeless tobacco in interstate commerce to a consumer if—

''(A) the consumer submits the order for such sale by means of a telephone or other method of voice transmission, the mails, or the Internet or other online service, or the seller is otherwise not in the physical presence of the buyer when the request for purchase or order is made; or

''(B) the cigarettes or smokeless tobacco are delivered by use of a common carrier, private delivery service, or the mails, or the seller is not in the physical presence of the buyer when the buyer obtains personal possession of the delivered cigarettes or smokeless tobacco.''; and

(4) by adding at the end the following new paragraphs:

''(8) The term 'delivery seller' means a person who makes a delivery sale.

''(9) The term 'common carrier' means any person (other than a local messenger service or the United States Postal Service (as defined in section 102 of title 39, United States Code)) that holds itself out to the general public as a provider for hire of the transportation by water, land, or air of merchandise, whether or not the person actually operates the vessel, vehicle, or aircraft by which the transportation is provided, between a port or place and a port or place in the United States.

''(10) The term 'interstate commerce' means commerce between a State and any place outside the State, commerce between a State and any Indian lands in the State, or commerce between points in the same State but though any place outside the State or through any Indian lands.

''(11) The term 'person' means an individual, corporation, company, association, firm, partnership, society, State government, local government, Indian tribal government, governmental organization of such government, or joint stock company.

''(12) The term 'State' means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or possession of the United States.

''(13) The term 'Indian Country' has the meaning given that term in section 1151 of title 18, United States Code, except that within the State of Alaska that term applies only to the Metlakatla Indian Community, Annette Island Reserve.

''(14) The term 'Indian Tribe', 'Tribe', or 'Tribal' refers to an Indian tribe as defined in the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b(e)) or as listed pursuant to section 104 of the Federally Recognized Indian Tribe List Act of 1994 (Public Law 103–454; 25 U.S.C. 479a–1).

''(15) The term 'tobacco tax administrator', in the case of a State, local, or Tribal government, means the official of the government duly authorized to collect the tobacco tax or administer the tax law of the government.''.

(b) REPORTS TO STATE TOBACCO TAX ADMINISTRATORS.—Section 2 of that Act (15 U.S.C. 376) is amended—

(1) by striking ''cigarettes'' each place it appears and inserting ''cigarettes or smokeless tobacco'';

(2) in subsection (a)—

(A) in the matter preceding paragraph (1)—

(i) by striking ''or transfers'' and inserting '', transfers, or ships'';

(ii) by inserting '', locality, or Indian Country of an Indian Tribe'' after ''a State''; and

(iii) by striking ''to other than a distributor licensed by or located in such State,'';

(B) in paragraph (1)—

(i) by striking ''administrator of the State'' and inserting ''administrators of the State and place''; and

(ii) by striking ''; and'' and inserting the following: '', as well as telephone numbers for each place of business, a principal electronic mail address, any website addresses, and the name, address, and telephone number of an agent in the State authorized to accept service on behalf of such person;'';

(C) in paragraph (2), by striking ''and the quantity thereof.'' and inserting ''the quantity thereof, and the name, address, and phone number of the person delivering the shipment to the recipient on behalf of the delivery seller, with all invoice or memoranda information relating to specific customers to be organized by city or town and by zip code; and''; and

(D) by adding at the end the following new paragraph:

''(3) with respect to each memorandum or invoice filed with a State under paragraph (2), also file copies of such memorandum or invoice with the tobacco tax administrators and chief law enforcement officers of the local governments and Indian Tribes operating within the borders of the State that apply their own local or Tribal taxes on cigarettes or smokeless tobacco.''; and

(3) in subsection (b)—

(A) by striking ''(1)''; and

(B) by striking '', and (2)'' and all that follows and inserting a period.

(c) REQUIREMENTS FOR DELIVERY SALES.—That Act is further amended by inserting after section 2 the following new section:

''SEC. 2A. (a) With respect to delivery sales into a specific State and place, each delivery seller shall comply with—

''(1) the shipping requirements set forth in subsection (b);

''(2) the recordkeeping requirements set forth in subsection (c);

''(3) all State, local, Tribal, and other laws generally applicable to sales of cigarettes or smokeless tobacco as if such delivery sales occurred entirely within the specific State and place, including laws imposing—

''(A) excise taxes;

''(B) licensing and tax-stamping requirements; and

''(C) other payment obligations or legal requirements relating to the sale, distribution, or delivery of cigarettes or smokeless tobacco; and

''(4) the tax collection requirements set forth in subsection (d).

''(b)(1) Each delivery seller shall include on the bill of lading included with the shipping package containing cigarettes or smokeless tobacco sold pursuant to such order a clear and conspicuous statement providing as follows: 'CIGARETTES/SMOKELESS TOBACCO: FEDERAL LAW REQUIRES THE PAYMENT OF ALL APPLICABLE EXCISE TAXES, AND COMPLIANCE WITH APPLICABLE LICENSING AND TAX-STAMPING OBLIGATIONS'.

''(2) Any shipping package described in paragraph (1) that is not labeled in accordance with that paragraph shall be treated as non-deliverable matter by a common carrier or the United States Postal Service if the common carrier or the United States Postal Service, as the case may be, knows or should know the contents of the package.

''(c)(1) Each delivery seller shall keep a record of all delivery sales so made, including all of the information described in section 2(a)(2), organized by the State, and within such State, by the city or town and by zip code, into which such delivery sales are so made.

''(2) Records of delivery sales shall be kept under paragraph (1) in the year in which made and for the next four years.

''(3) Records kept under paragraph (1) shall be made available to tobacco tax administrators of the States, to local governments and Indian Tribes that apply their own local or Tribal taxes on cigarettes or smokeless tobacco, to the attorneys general of the States,

to the chief law enforcement officers of such local governments and Indian Tribes, and to the Attorney General of the United States in order to ensure the compliance of persons making delivery sales with the requirements of this Act.

''(d)(1) Except as provided in paragraph (2), no cigarettes or smokeless tobacco may be delivered pursuant to a delivery sale in interstate commerce unless in advance of the delivery—

''(A) any cigarette or smokeless tobacco excise tax that is imposed by the State in which the cigarettes or smokeless tobacco are to be delivered has been paid to the State;

''(B) any cigarette or smokeless tobacco excise tax that is imposed by the local government of the place in which the cigarette or smokeless tobacco are to be delivered has been paid to the local government; and

''(C) any required stamps or other indicia that such excise tax has been paid are properly affixed or applied to the cigarettes or smokeless tobacco.

''(2) Paragraph (1) does not apply to a delivery sale of smokeless tobacco if the law of the State or local government of the place where the smokeless tobacco is to be delivered requires or otherwise provides that delivery sellers collect the excise tax from the consumer and remit the excise tax to the State or local government, and the delivery seller complies with the requirement.

''(e)(1) Each State, and each local government or Indian Tribal government that levies a tax subject to subsection (a)(3), may compile a list of delivery sellers who are in compliance with this Act with respect to such State, locality, or Indian Tribe. If a State, local government, or Indian Tribe posts a list pursuant to this subsection that specifically refers to this subsection, no common carrier or other person may knowingly deliver cigarettes or smokeless tobacco to consumers in such State or locality or in the Indian Country of such Indian Tribe unless the delivery seller is on the list at the time of delivery.

''(2)(A) Each State, and each local government or Indian Tribal government that levies a tax subject to subsection (a)(3), may compile a list of delivery sellers who are not in compliance with this Act with respect to such State, locality, or Indian Tribe.

''(B) A State, locality, or Indian Tribal government may provide such a list to a common carrier, the United States Postal Service, or other person. Such a list shall be confidential, and a common carrier, the United States Postal Service, or other person that receives such a list shall maintain the confidentiality of such list.

''(C) If a State, local government, or Indian Tribal government provides such a list pursuant to this subsection that specifically refers to this subsection, no common carrier, the United States Postal Service, or other person may knowingly deliver any item to a consumer in such State or locality or in the Indian Country of such Indian Tribe for a delivery seller on such list unless the common carrier, the United States Postal Service, or person in good faith determines that the item does not include cigarettes or smokeless tobacco.

''(f) For purposes of this Act, a delivery sale shall be deemed to have occurred in the State and place where the buyer obtains personal possession of the cigarettes or smokeless tobacco, and a delivery pursuant to a delivery sale is deemed to have been initiated or ordered by the delivery seller.''.

(d) PENALTIES.—Section 3 of that Act (15 U.S.C. 377) is amended—

(1) by inserting ''(a)'' before ''Whoever'';

(2) in subsection (a), as so designated—

(A) by inserting ''(except for a State, local, or Tribal government)'' after ''this Act''; and

(B) by striking ''shall be guilty of a misdemeanor and shall be fined not more than $1,000, or imprisoned not more than 6 months'' and inserting ''shall be guilty of a felony, fined under subchapter C of chapter 227 of title 18, United States Code, imprisoned not more than three years, or both''; and

(3) by adding at the end the following new subsection:

''(b)(1) Whoever violates any provision of this Act shall be subject to a civil penalty in an amount not to exceed the greater of—

''(A) $5,000 in the case of the first violation, or $10,000 for any other violation; or

''(B) for any violation, 2 percent of the gross sales of cigarettes or smokeless tobacco of such person during the one-year period ending on the date of the violation.

''(2) A civil penalty under paragraph (1) for a violation of this Act is in addition to any criminal penalty under subsection (a) for the violation.''.

(e) ENFORCEMENT.—Section 4 of that Act (15 U.S.C. 378) is amended—

(1) by inserting ''(a)'' before ''The United States district courts'';

(2) in subsection (a), as so designated, by inserting before the period the following: '', and to provide other appropriate injunctive or equitable relief, including money damages, for such violations''; and

(3) by adding at the end the following new subsections:

''(b) The Attorney General of the United States shall administer and enforce the provisions of this Act.

''(c)(1)(A) A State, through its attorney general (or a designee thereof), or a local government or Indian Tribe that levies a tax subject to section 2A(a)(3), through its chief law enforcement officer (or a designee thereof), may bring an action in the United States district courts to prevent and restrain violations of this Act by any person (or by any person controlling such person) or to obtain any other appropriate relief from any person (or from any person controlling such person) for violations of this Act, including civil penalties, money damages, and injunctive or other equitable relief.

''(B) Nothing in this Act shall be deemed to abrogate or constitute a waiver of any sovereign immunity of a State or local government or Indian Tribe against any unconsented lawsuit under this Act, or otherwise to restrict, expand, or modify any sovereign immunity of a State or local government or Indian Tribe.

''(2) A State, through its attorney general, or a local government or Indian Tribe that levies a tax subject to section 2A(a)(3), through its chief law enforcement officer (or a designee thereof), may provide evidence of a violation of this Act by any person not subject to State, local, or Tribal government enforcement actions for violations of this Act to the Attorney General of the United States or a United State Attorney, who shall take appropriate actions to enforce the provisions of this Act.

''(3)(A) Notwithstanding any other provision of law and subject to subparagraph (B), an amount equal to 50 percent of any criminal and civil penalties collected by the United States Government in enforcing the provisions of this Act shall be available to the Department of Justice for purposes of enforcing the provisions of this Act and other laws relating to contraband tobacco products.

''(B) Of the amount available to the Department under subparagraph (A), not less than 50 percent shall be made available only to the agencies and offices within the Department that were responsible for the enforcement actions in which the penalties concerned were imposed.

''(4) The remedies available under this subsection are in addition to any other remedies available under Federal, State, local, Tribal, or other law.

''(5) Nothing in this Act shall be construed to expand, restrict, or otherwise modify any right of an authorized State official to proceed in State court, or take other enforcement actions, on the basis of an alleged violation of State or other law.

''(6) Nothing in this Act shall be construed to expand, restrict, or otherwise modify any right of an authorized Indian Tribal government official to proceed in Tribal court, or take other enforcement actions, on the basis of an alleged violation of Tribal law.

''(7) Nothing in this Act shall be construed to expand, restrict, or otherwise modify any right of an authorized local government official to proceed in State court, or take other enforcement actions, on the basis of an alleged violation of local or other law.

''(d) Any person who holds a permit under section 5712 of the Internal Revenue Code of 1986 may bring an action in the United States district courts to prevent and restrain violations of this Act by any person (or by any person controlling such person) other than a State, local, or Tribal government.

''(e)(1) Any person who commences a civil action under subsection (d) shall inform the Attorney General of the United States of the action.

''(2) It is the sense of Congress that any attorney general of a State, or chief law enforcement officer of a locality or Tribe, who commences a civil action under this section should inform the Attorney General of the United States of the action.

''(f)(1) The Attorney General of the United States shall make available to the public, by posting such information on the Internet and by other means, information about all enforcement actions undertaken by the Attorney General or United States Attorneys, or reported to the Attorney General, under this section, including information on the resolution of such actions and, in particular, information on how the Attorney General and the United States Attorney have responded to referrals of evidence of violations pursuant to subsection (b)(2).

''(2) The Attorney General shall submit to Congress each year a report containing the information described in paragraph (1).''.

SEC. 3. TREATMENT OF CIGARETTES AND SMOKELESS TOBACCO AS NONMAILABLE MATTER.

Section 1716 of title 18, United States Code, is amended—

(1) by redesignating subsections (j) and (k) as subsections (k) and (l), respectively; and

(2) by inserting after subsection (i) the following new subsection (j):

''(j)(1) Except as provided in paragraph (2), the transmission in the mails of any tobacco product, including cigarettes (as that term is defined in section 1(2) of the Act of October 19, 1949 (15 U.S.C. 375; commonly referred to as the 'Jenkins Act')) and smokeless tobacco (as that term is defined in section 1(3) of that Act), is prohibited, and tobacco products are nonmailable and shall not be deposited in or carried through the mails.

''(2) Paragraph (1) shall apply only to States that are contiguous with at least one other State of the United States.''.

SEC. 4. PENAL PROVISIONS REGARDING TRAFFICKING IN CONTRABAND CIGARETTES OR SMOKELESS TOBACCO.

(a) THRESHOLD QUANTITY FOR TREATMENT AS CONTRABAND CIGARETTES.—(1) Section 2341(2) of title 18, United States Code, is amended by striking ''60,000 cigarettes'' and inserting ''10,000 cigarettes''.

(2) Section 2342(b) of that title is amended by striking ''60,000'' and inserting ''10,000''.

(3) Section 2343 of that title is amended—

(A) in subsection (a), by striking ''60,000'' and inserting ''10,000''; and

(B) in subsection (b), by striking ''60,000'' and inserting ''10,000''.

(b) CONTRABAND SMOKELESS TOBACCO.—(1) Section 2341 of that title is amended—

(A) in paragraph (4), by striking ''and'' at the end;

(B) in paragraph (5), by striking the period at the end and inserting a semicolon; and

(C) by adding at the end the following new paragraphs:

''(6) the term 'smokeless tobacco' means any finely cut, ground, powdered, or leaf tobacco that is intended to be placed in the oral or nasal cavity or otherwise consumed without being combusted;

''(7) the term 'contraband smokeless tobacco' means a quantity in excess of 500 single-unit consumer-sized cans or packages of smokeless tobacco, or their equivalent, that are in the possession of any person other than—

''(A) a person holding a permit issued pursuant to chapter 52 of the Internal Revenue Code of 1986 as manufacturer of tobacco products or as an export warehouse proprietor, a person operating a customs bonded warehouse pursuant to section 311 or 555 of the Tariff Act of 1930 (19 U.S.C. 1311, 1555), or an agent of such person;

''(B) a common carrier transporting such smokeless tobacco under a proper bill of lading or freight bill which states the quantity, source, and designation of such smokeless tobacco;

''(C) a person who—

''(i) is licensed or otherwise authorized by the State where such smokeless tobacco is found to engage in the business of selling or distributing tobacco products or, for smokeless tobacco found in Indian Country, is licensed or otherwise authorized by the Tribal government of such Indian Country to account for and pay smokeless tobacco taxes imposed by the Tribal government; and

''(ii) has complied with the accounting, tax, and payment requirements relating to such license or authorization with respect to such smokeless tobacco; or

''(D) an officer, employee, or agent of the United States or a State or a Tribe, or any department, agency, or instrumentality of the United States, a State (including any political subdivision of a State), or a Tribe (including any political subdivision of a Tribe), having possession of such smokeless tobacco in connection with the performance of official duties;''.

(2) Section 2342(a) of that title is amended by inserting ''or contraband smokeless tobacco'' after ''contraband cigarettes''.

(3) Section 2343(a) of that title is amended by inserting '', or any quantity of smokeless tobacco in excess of 500 single-unit consumer-sized cans or packages,'' before ''in a single transaction''.

(4) Section 2344(c) of that title is amended by inserting ''or contraband smokeless tobacco'' after ''contraband cigarettes''.

(5) Section 2345 of that title is amended by inserting ''or smokeless tobacco'' after ''cigarettes'' each place it appears.

(c) ADDITIONAL DEFINITIONAL MATTERS.—Section 2341 of such title is further amended—

(1) in paragraph (2), as amended by subsection (a)(1) of this section—

(A) in the matter preceding subparagraph (A), by striking ''State cigarette taxes in the State where such cigarettes are found, if the State'' and inserting ''State, local, or Tribal cigarette taxes in the State, locality, or Indian Country where such cigarettes are found, if the State, local or Tribal government'';

(B) in subparagraph (C)(i), by inserting before the semicolon the following: '', or, for cigarettes found in Indian County, is licensed or otherwise authorized by the Tribal government of such Indian Country to account for and pay cigarette taxes imposed by the Tribal government''; and

(C) in subparagraph (D)—

(i) by inserting ''or a Tribe'' after ''a State'' the first place it appears; and

(ii) by striking ''or a State (or any political subdivision of a State)'' and inserting '', a State (or any political subdivision of a State), or a Tribe (including any political subdivision of a Tribe)'';

(2) in paragraph (3), by inserting before the semicolon the following: '', or, for a carrier making a delivery entirely within Indian Country, under equivalent operating authority from the Indian Tribal government of such Indian Country''; and

(3) by adding at the end the following new paragraphs:

''(8) the term 'Indian Country' has the meaning given that term in section 1151 of title 18, United States Code, except that within the State of Alaska that term applies only to the Metlakatla Indian Community, Annette Island Reserve; and

''(9) the term 'Indian Tribe', 'Tribe', or 'Tribal' refers to an Indian tribe as defined in the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b(e)) or as listed pursuant to section 104 of the Federally Recognized Indian Tribe List Act of 1994 (Public Law 103–454; 25 U.S.C. 479a–1).''.

(d) RECORDKEEPING, REPORTING, AND INSPECTION.—Section 2343 of that title, as amended by this section, is further amended—

(1) in subsection (a)—

(A) in the matter preceding paragraph (1), by striking ''only—'' and inserting ''such information as the Attorney General considers appropriate for purposes of enforcement of this chapter, including—''; and

(B) in the flush matter following paragraph (3), by striking the second sentence;

(2) by redesignating subsection (b) as subsection (c);

(3) by inserting after subsection (a) the following new subsection (b):

''(b) Any person who engages in a delivery sale, and who ships, sells, or distributes any quantity in excess of 10,000 cigarettes, or any quantity in excess of 500 single-unit consumer-sized cans or packages of smokeless tobacco, or their equivalent, within a single month, shall submit to the Attorney General, pursuant to rules or regulations prescribed by the Attorney General, a report that sets forth the following:

''(1) The person's beginning and ending inventory of cigarettes and cans or packages of smokeless tobacco (in total) for such month.

''(2) The total quantity of cigarettes and cans or packages of smokeless tobacco that the person received within such month from each other person (itemized by name and address).

''(3) The total quantity of cigarettes and cans or packages of smokeless tobacco that the person distributed within such month to each person (itemized by name and address) other than a retail purchaser.''; and

(4) by adding at the end the following new subsections:

''(d) Any report required to be submitted under this chapter to the Attorney General shall also be submitted to the Secretary of the Treasury and to the attorneys general and the tax administrators of the States from where the shipments, deliveries, or distributions both originated and concluded, and to the chief law enforcement officer and tax administrator of the Tribe for shipments, deliveries or distributions that originated or concluded on the Indian Country of the Indian Tribe.

''(e) In this section, the term 'delivery sale' means any sale of cigarettes or smokeless tobacco in interstate commerce to a consumer if—

''(A) the consumer submits the order for such sale by means of a telephone or other method of voice transmission, the mails, or the Internet or other online service, or by any other means where the consumer is not in the same physical location as the seller when the purchase or offer of sale is made; or

''(B) the cigarettes or smokeless tobacco are delivered by use of the mails, common carrier, private delivery service, or any other means where the consumer is not in the same physical location as the seller when the consumer obtains physical possession of the cigarettes or smokeless tobacco.

''(f) In this section, the term 'interstate commerce' means commerce between a State and any place outside the State, commerce between a State and any Indian lands in the State, or commerce between points in the same State but through any place outside the State or though any Indian lands.''.

(e) DISPOSAL OR USE OF FORFEITED CIGARETTES AND SMOKELESS TOBACCO.—Section 2344(c) of that title, as amended by this section, is further amended by striking ''seizure and forfeiture,'' and all that follows and inserting ''seizure and forfeiture, and any cigarettes or smokeless tobacco so seized and forfeited shall be either—

''(1) destroyed and not resold; or

''(2) used for undercover investigative operations for the detection and prosecution of crimes, and then destroyed and not resold.''.

(f) EFFECT ON STATE, LOCAL, AND TRIBAL LAW.—Section 2345 of that title is amended—

(1) in subsection (a), by striking ''a State to enact and enforce'' and inserting ''a State, local government, or Tribe to enact and enforce its own''; and

(2) in subsection (b), by striking ''of States, through interstate compact or otherwise, to provide for the administration of State'' and inserting ''of State, local, or Tribal governments, through interstate compact or otherwise, to provide for the administration of State, local, or Tribal''.

(g) ENFORCEMENT.—Section 2346 of that title is amended—

(1) by inserting ''(a)'' before ''The Attorney General''; and

(2) by adding at the end the following new subsection:

''(b)(1) A State, through its attorney general, a local government or Indian Tribe, through its chief law enforcement officer (or a designee thereof), or any person who holds a permit under section 5712 of the Internal Revenue Code of 1986, may bring an action in the United States district courts to prevent and restrain violations of this chapter by any person (or by any person controlling such person), except that any person who holds a permit under section 5712 of the Internal Revenue Code of 1986 may not bring such an action against a State, local, or Tribal government.

''(2) A State, through its attorney general, or a local government or Indian Tribe, through its chief law enforcement officer (or a designee thereof), may in a civil action under paragraph (1) also obtain any other appropriate relief for violations of this chapter from any person (or by any person controlling such person), including civil penalties, money damages, and injunctive or other equitable relief. Nothing in this chapter shall be deemed to abrogate or constitute a waiver of any sovereign immunity of a State or local government or Indian Tribe against any unconsented lawsuit under this chapter, or otherwise to restrict, expand, or modify any sovereign immunity of a State or local government or Indian Tribe.

''(3) The remedies under paragraphs (1) and (2) are an addition to any other remedies under Federal, State, local, Tribal, or other law.

''(4) Nothing in this chapter shall be construed to expand, restrict, or otherwise modify any right of an authorized State official to proceed in State court, or take other enforcement actions, on the basis of an alleged violation of State or other law.

''(5) Nothing in this chapter shall be construed to expand, restrict, or otherwise modify any right of an authorized Indian Tribal government official to proceed in Tribal court, or take other enforcement actions, on the basis of an alleged violation of Tribal law.

''(6) Nothing in this chapter shall be construed to expand, restrict, or otherwise modify any right of an authorized local government official to proceed in State court, or take other enforcement actions, on the basis of an alleged violation of local or other law.''.

(h) CONFORMING AND CLERICAL AMENDMENTS.—(1) The section heading for section 2343 of that title is amended to read as follows:

''§ 2343. Recordkeeping, reporting, and inspection''.

(2) The section heading for section 2345 of such title is amended to read as follows:

''§ 2345. Effect on State, Tribal, and local law''.

(3) The table of sections at the beginning of chapter 114 of that title is amended—

(A) by striking the item relating to section 2343 and inserting the following new item:

''2343. Recordkeeping, reporting, and inspection.'';

and

(B) by striking the item relating to section 2345 and insert the following new item:

''2345. Effect on State, Tribal, and local law.''.

(4)(A) The heading for chapter 114 of that title is amended to read as follows:

''CHAPTER 114—TRAFFICKING IN CONTRABAND CIGARETTES AND SMOKELESS TOBACCO''.

(B) The table of chapters at the beginning of part I of that title is amended by striking the item relating to section 114 and inserting the following new item:

''114. Trafficking in contraband cigarettes and smokeless tobacco ..... 2341''.

SEC. 5. COMPLIANCE WITH MODEL STATUTE OR QUALIFYING STATUTE.

(a) IN GENERAL.—A Tobacco Product Manufacturer or importer may not sell in, deliver to, or place for delivery sale, or cause to be sold in, delivered to, or placed for delivery sale in, a State that is a party to the Master Settlement Agreement any cigarette manufactured by a Tobacco Product Manufacturer that is not in full compliance with the terms of the Model Statute or Qualifying Statute enacted by such State requiring funds to be placed into a qualified escrow account under specified conditions, or any regulations promulgated pursuant to such terms.

(b) JURISDICTION TO PREVENT AND RESTRAIN VIOLATIONS.—(1) The United States district courts shall have jurisdiction to prevent and restrain violations of subsection (a) in accordance with this subsection.

(2) A State, through its attorney general, may bring an action in the United States district courts to prevent and restrain violations of subsection (a) by any person (or by any person controlling such person).

(3) In any action under paragraph (2), a State, through its attorney general, shall be entitled to reasonable attorney fees from a person found to have willfully and knowingly violated subsection (a).

(4) The remedy available under paragraph (2) is in addition to any other remedies available under Federal, State, or other law.

(5) Nothing in this subsection shall be construed to prohibit an authorized State official from proceeding in State court or taking other enforcement actions on the basis of an alleged violation of State or other law.

(6) The Attorney General may administer and enforce subsection (a).

(c) DEFINITIONS.—In this section:

(1) MASTER SETTLEMENT AGREEMENT.— The term ''Master Settlement Agreement'' means the agreement executed November 23, 1998, by the Attorneys General of 46 States, the District of Columbia, the Commonwealth of Puerto Rico, and four Territories of the United States, on the one hand, and certain tobacco manufacturers on the other hand.

(2) TOBACCO PRODUCT MANUFACTURER.—The term ''Tobacco Product Manufacturer'' has the meaning given that term in section II(uu) of the Master Settlement Agreement.

(3) IMPORTER.—The term ''importer'' means each of the following:

(A) Any person in the United States to whom non-tax-paid tobacco products manufactured in a foreign country, Puerto Rico, the Virgin Islands, or a possession of the United States are shipped or consigned.

(B) Any person who removes cigars or cigarettes for sale or consumption in the United States from a customs bonded manufacturing warehouse.

(C) Any person who smuggles or otherwise unlawfully brings tobacco products into the United States.

(4) MODEL STATUTE; QUALIFYING STATUTE.— The terms ''Model Statute'' and ''Qualifying Statute'' means a statute as defined in section IX(d)(2)(e) of the Master Settlement Agreement.

(5) DELIVERY SALE.—The term ''delivery sale'' means any sale of cigarettes or smokeless tobacco in interstate commerce to a consumer if—

(A) the consumer submits the order for such sale by means of a telephone or other method of voice transmission, the mails, or the Internet or other online service, or the seller is otherwise not in the physical presence of the buyer when the request for purchase or order is made; or

(B) the cigarettes or smokeless tobacco are delivered by use of a common carrier, private delivery service, or the mails, or the seller is not in the physical presence of the buyer when the buyer obtains personal possession of the delivered cigarettes or smokeless tobacco.

(6) INTERSTATE COMMERCE.—The term ''interstate commerce'' means commerce between a State and any place outside the State, commerce between a State and any Indian lands in the State, or commerce between points in the same State but through any place outside the State or through any Indian lands.

SEC. 6. UNDERCOVER CRIMINAL INVESTIGATIONS OF THE BUREAU OF ALCOHOL, TOBACCO, FIREARMS, AND EXPLOSIVES.

(a) IN GENERAL.—(1) Commencing as of the date of the enactment of this Act and without fiscal year limitation, the authorities in section 102(b) of the Department of Justice and Related Agencies Appropriations Act, 1993 (title I of Public Law 102–395; 106 Stat. 1838) shall be available to the Bureau of Alcohol, Tobacco, Firearms, and Explosives for undercover investigative operations of the Bureau which are necessary for the detection and prosecution of crimes against the United States.

(2) For purposes of the exercise of the authorities referred to in paragraph (1) by the Bureau, a reference in such section 102(b) to the Federal Bureau of Investigation shall be deemed to be a reference to the Bureau of Alcohol, Tobacco, Firearms, and Explosives, and a reference to the Director of the Federal Bureau of Investigation shall be deemed to be a reference to the Director of the Bureau of Alcohol, Tobacco, Firearms, and Explosives.

(b) LIMITATIONS IN APPROPRIATIONS ACTS.—The exercise of the authorities referred to in subsection (a)(1) by the Bureau of Alcohol, Tobacco, Firearms, and Explosives shall be subject to the provisions of appropriations Acts.

SEC. 7. INSPECTION BY BUREAU OF ALCOHOL, TOBACCO, FIREARMS, AND EXPLOSIVES OF RECORDS OF CERTAIN CIGARETTE AND SMOKELESS TOBACCO SELLERS.

(a) IN GENERAL.—Any officer of the Bureau of Alcohol, Tobacco, Firearms, and Explosives may, during normal business hours, enter the premises of any person described in subsection (b) for the purposes of inspecting—

(1) any records or information required to be maintained by such person under the provisions of law referred to in subsection (d); or

(2) any cigarettes or smokeless tobacco kept or stored by such person at such premises.

(b) COVERED PERSONS.—A person described in this subsection is any person who engages in a delivery sale, and who ships, sells, distributes, or receives any quantity in excess of 10,000 cigarettes, or any quantity in excess of 500 single-unit consumer-sized cans or packages of smokeless tobacco, within a single month.

(c) RELIEF.—(1) The district courts of the United States shall have the authority in a civil action under this subsection to compel inspections authorized by subsection (a).

(2) Whoever violates subsection (a) or an order issued pursuant to paragraph (1) shall be subject to a civil penalty in an amount not to exceed $10,000 for each violation.

(d) COVERED PROVISIONS OF LAW.—The provisions of law referred to in this subsection are as follows:

(1) The Act of October 19, 1949 (15 U.S.C. 375; commonly referred to as the ''Jenkins Act'').

(2) Chapter 114 of title 18, United States Code.

(3) This Act.

(e) DELIVERY SALE DEFINED.—In this section, the term ''delivery sale'' has the meaning given that term in 2343(e)(1) of title 18, United States Code, as amended by section 4(b)(3) of this Act.

SEC. 8. COMPLIANCE WITH TARIFF ACT OF 1930.

(a) INAPPLICABILITY OF EXEMPTIONS FROM REQUIREMENTS FOR ENTRY OF CERTAIN CIGARETTES.—Subsection (b)(1) of section 802 of the Tariff Act of 1930 (19 U.S.C. 1681a) is amended by adding at the end the following new sentence: ''The preceding sentence shall not apply to any cigarettes sold in connection with a delivery sale (as that term is defined in section 1 of the Act of October 19, 1949 (15 U.S.C. 375; commonly referred to as the 'Jenkins Act')).''.

(b) STATE AND TRIBAL ACCESS TO CUSTOMS CERTIFICATIONS.—Section 802 of that Act is further amended by adding at the end the following new subsection:

''(d) STATE AND TRIBAL ACCESS TO CUSTOMS CERTIFICATIONS.—A State, through its attorney general, and an Indian tribe (as that term is defined in the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b(e)) through its chief law enforcement officer, shall be entitled to obtain copies of any certification required pursuant to subsection (c) directly—

''(1) upon request to the agency of the United States responsible for collecting such certification; or

''(2) upon request to the importer, manufacturer, or authorized official of such importer or manufacturer.''.

(c) ENFORCEMENT PROVISIONS.—Section 803 of such Act (19 U.S.C. 1681b) is amended—

(1) in subsection (b)—

(A) in the first sentence—

(i) by inserting ''any of'' before ''the United States'' the first and second places it appears; and

(ii) by inserting before the period the following: '', to any State in which such tobacco product, cigarette papers, or tube was imported, or to the Indian Tribe of any Indian Country (as that term is defined in section 1151 of title 18, United States Code) in which such tobacco product, cigarette papers, or tube was imported''; and

(B) in the second sentence, by inserting '', or to any State or Indian Tribe,'' after ''the United States''; and

(2) by adding at the end the following new subsection:

''(c) ACTIONS BY STATES AND OTHERS.—

''(1) IN GENERAL.—Any person who holds a permit under section 5712 of the Internal Revenue Code of 1986 may bring an action in the United States district courts to prevent and restrain violations of this title by any person (or by any person controlling such person), other than by a State, local, or Tribal government.

''(2) RELIEF FOR STATE, LOCAL, AND TRIBAL GOVERNMENTS.—A State, through its attorney general, or a local government or Tribe through its chief law enforcement officer (or a designee thereof), may in a civil action under this title to prevent and restrain violations of this title by any person (or by any person controlling such person) or to obtain any other appropriate relief for violations of this title by any person (or from any person controlling such person), including civil penalties, money damages, and injunctive or other equitable relief.

''(3) CONSTRUCTION GENERALLY.—

''(A) IN GENERAL.—Nothing in this subsection shall be deemed to abrogate or constitute a waiver of any sovereign immunity of a State or local government or Indian Tribe against any unconsented lawsuit under this title or to otherwise restrict, expand, of modify any sovereign immunity of a State local government or Indian Tribe.

''(B) CONSTRUCTION WITH OTHER RELIEF.—The remedies available under this subsection are in addition to any other remedies available under Federal, State, local, Tribal, or other law.

''(4) CONSTRUCTION WITH FORFEITURE PROVISIONS.—Nothing in this subsection shall be construed to require a State or Indian Tribe to first bring an action pursuant to paragraph (1) when pursuing relief under subsection (b).

''(d) CONSTRUCTION WITH OTHER AUTHORITIES.—

''(1) STATE AUTHORITIES.—Nothing in this title shall be construed to expand, restrict, or otherwise modify the right of an authorized State official from proceeding in State court, or taking other enforcement actions, on the basis of alleged violation of State or other law.

''(2) TRIBAL AUTHORITIES.—Nothing in this title shall be construed to expand, restrict, or otherwise modify the right of an authorized Indian Tribal government official from proceeding in Tribal court, or taking other enforcement actions, on the basis of alleged violation of Tribal law.

(d) INCLUSION OF SMOKELESS TOBACCO.—(1) Sections 802 and 803(a) of such Act are further amended by inserting ''or smokeless tobacco products'' after ''cigarettes'' each place it appears.

(2) Section 802 of such Act is further amended—

(A) in subsection (a)—

(i) in paragraph (1), by inserting ''or section 4 of the Comprehensive Smokeless Tobacco Health Education Act of 1986 (15 U.S.C. 4403), respectively'' after ''section 7 of the Federal Cigarette Labeling and Advertising Act (15 U.S.C. 1335a)'';

(ii) in paragraph (2), by inserting ''or section 3 of the Comprehensive Smokeless Tobacco Health Education Act of 1986 (15 U.S.C. 4402), respectively,'' after ''section 4 of the Federal Cigarette Labeling and Advertising Act (15 U.S.C. 1333)''; and

(iii) in paragraph (3), by inserting ''or section 3(c) of the Comprehensive Smokeless Tobacco Health Education Act of 1986 (15 U.S.C. 4402(c)), respectively,'' after ''section 4(c) of the Federal Cigarette Labeling and Advertising Act (15 U.S.C. 1333(c))'';

(B) in subsection (b)—

(i) in the paragraph caption of paragraph (1), by inserting ''OR SMOKELESS TOBACCO'' after ''CIGARETTES''; and

(ii) in the paragraph caption of paragraphs (2) and (3), by inserting ''OR SMOKELESS TOBACCO'' after ''CIGARETTES''; and

(C) in subsection (c)—

(i) in the subsection caption, by inserting ''OR SMOKELESS TOBACCO'' after ''CIGARETTE'';

(ii) in paragraph (1), by inserting ''or section 4 of the Comprehensive Smokeless Tobacco Health Education Act of 1986 (15 U.S.C. 4403), respectively'' after ''section 7 of the Federal Cigarette Labeling and Advertising Act (15 U.S.C. 1335a)'';

(iii) in paragraph (2)(A), ''or section 3 of the Comprehensive Smokeless Tobacco Health Education Act of 1986 (15 U.S.C. 4402), respectively,'' after ''section 4 of the Federal Cigarette Labeling and Advertising Act (15 U.S.C. 1333)''; and

(iv) in paragraph (2)(B), by inserting ''or section 3(c) of the Comprehensive Smokeless Tobacco Health Education Act of 1986 (15 U.S.C. 4402(c)), respectively'' after ''section 4(c) of the Federal Cigarette Labeling and Advertising Act (15 U.S.C. 1333(c))''.

(3) Section 803(c) of such Act, as amended by subsection (b)(1) of this section, is further amended by inserting '', or any smokeless tobacco product,'' after ''or tube'' the first place it appears.

(4)(A) The heading of title VIII of such Act is amended by inserting ''**AND SMOKELESS TOBACCO**'' after ''**CIGARETTES**''.

(B) The heading of section 802 of such Act is amended by inserting ''**AND SMOKELESS TOBACCO**'' after ''**CIGARETTES**''.

SEC. 9. EXCLUSIONS REGARDING INDIAN TRIBES AND TRIBAL MATTERS.

(a) IN GENERAL.—Nothing in this Act or the amendments made by this Act is intended nor shall be construed to affect, amend, or modify—

(1) any agreements, compacts, or other intergovernmental arrangements between any State or local government and any government of an Indian tribe (as that term is defined in the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b(e)) relating to the collection of taxes on cigarettes or smokeless tobacco sold in Indian Country (as that term is defined section 1151 of title 18, United States Code);

(2) any State laws that authorize or otherwise pertain to any such intergovernmental arrangements or create special rules or procedures for the collection of State, local, or tribal taxes on cigarettes or smokeless tobacco sold in Indian Country;

(3) any limitations under existing Federal law, including Federal common law and treaties, on State, local, and tribal tax and regulatory authority with respect to the sale, use, or distribution of cigarettes and smokeless tobacco by or to Indian Tribes or tribal members or in Indian Country;

(4) any existing Federal law, including Federal common law and treaties, regarding State jurisdiction, or lack thereof, over any Tribe, tribal members or tribal reservations; and

(5) any existing State or local government authority to bring enforcement actions against persons located in Indian Country.

(b) COORDINATION OF LAW ENFORCEMENT.—Nothing in this Act or the amendments made by this Act shall be construed to inhibit or otherwise affect any coordinated law enforcement effort by 1 or more States or other jurisdictions, including Indian Tribes, through interstate compact or otherwise, that—

(1) provides for the administration of tobacco product laws or laws pertaining to interstate sales or other sales of tobacco products;

(2) provides for the seizure of tobacco products or other property related to a violation of such laws; or

(3) establishes cooperative programs for the administration of such laws.

(c) TREATMENT OF STATE AND LOCAL GOVERNMENTS.—Notwithstanding any other provision of this Act, the provisions of this Act are not intended and shall not be construed to authorize, deputize, or commission States or local governments as instrumentalities of the United States.

(d) ENFORCEMENT WITHIN INDIAN COUNTRY.—Nothing in this Act or the amendments made by this Act is intended to prohibit, limit, or restrict enforcement by the Attorney General of the United States of the provisions herein within Indian Country.

(e) AMBIGUITY.—Any ambiguity between the language of this section or its application, and any other provision of this Act shall be resolved in favor of this section.

SEC. 10. EFFECTIVE DATE.

(a) IN GENERAL.—Except as provided in subsection (b), this Act shall take effect 90 days after the date of the enactment of this Act.

(b) BATFE AUTHORITY.—

(1) IN GENERAL.—Sections 6 and 7 shall take effect on the date of the enactment of this Act.

(2) DEFINITION.—For purposes of section 7, the definition of delivery sale in section 2343(e)(1) of title 18, United States Code, as amended by section 4(b)(3) of this Act, shall take effect on the date of the enactment of this Act.

Passed the Senate December 9, 2003.

MAKING FURTHER CONTINUING APPROPRIATIONS FOR FISCAL YEAR 2004

Mr. FRIST. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of H.J. Res. 82, making technical corrections to the continuing resolution. I further ask unanimous consent that the joint resolution be read the third time and passed and the motion to reconsider be laid upon the table.

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

The joint resolution (H.J. Res. 82) was read the third time and passed.

FUNDING TO ASSIST IN MEETING OFFICIAL EXPENSES

Mr. FRIST. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of S. Res. 282, submitted earlier today by Senator STEVENS.

The PRESIDING OFFICER. The clerk will report the resolution by title.

The legislative clerk read as follows:

A resolution (S. Res. 282) providing the funding to assist in meeting the official expenses of a preliminary meeting relative to the formation of a United States Senate-China interparliamentary group.

There being no objection, the Senate proceeded to consider the resolution.

Mr. FRIST. Mr. President, I ask unanimous consent that the resolution be agreed to; that the motion to reconsider be laid upon the table; and that any statements relating to this resolution be printed in the RECORD.

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

The resolution (S. Res. 282) was agreed to, as follows:

S. RES. 282

Resolved, That—

(1) there is authorized within the contingent fund of the Senate under the appropriation account ''MISCELLANEOUS ITEMS'' $75,000 for fiscal year 2004 to assist in meeting the official expenses of a preliminary meeting relative to the formation of a United States Senate-China interparliamentary group including travel, per diem, conference room expenses, hospitality expenses, and food and food-related expenses;

(2) such expenses shall be paid on vouchers to be approved by the President pro tempore of the Senate; and

(3) the Secretary of the Senate is authorized to advance such sums as necessary to carry out this resolution.

PROTECTING CHILDREN FROM INDECENT PROGRAMMING

Mr. FRIST. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration S. Res. 283, a sense-of-the-Senate resolution submitted earlier today by Senator SESSIONS.

The PRESIDING OFFICER. The clerk will report the resolution by title.

The legislative clerk read as follows:

A resolution (S. Res. 283) affirming the need to protect children in the United States from indecent programming.

There being no objection, the Senate proceeded to consider the resolution.

Mr. FRIST. Mr. President, I ask unanimous consent that the resolution be agreed to; that the preamble be agreed to; that the motions to reconsider be laid upon the table; and that any statements relating to the resolution be printed in the RECORD.

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

The resolution (S. Res. 283) was agreed to.

The preamble was agreed to.

The resolution, with its preamble, reads as follows:

S. RES. 283

Whereas millions of people in the United States are increasingly concerned with the patently offensive television and radio programming being sent into their homes;

Whereas millions of families in the United States are particularly concerned with the adverse impact of this programming on children;

Whereas indecent and offensive programming is contributing to a dramatic coarsening of civil society of the United States;

Whereas the Federal Communications Commission is charged with enforcing standards of decency in broadcast media;

Whereas the Federal Communications Commission established a standard defining what constitutes indecency in the declaratory order In the Matter of a Citizen's Complaint Against Pacifica Foundation Station WBAI(FM), 56 F.C.C.2d 94 (1975) (referred to in this Resolution as the ''Pacifica order'');

Whereas the Federal Communications Commission has not used all of its available authority to impose penalties on broadcasters that air indecent material even when egregious and repeated violations have been found in the cases of WKRK–FM, Detroit, MI, File No. EB–02–IH–0109 (Apr. 3, 2003) and WNEW–FM, New York, New York, EB–02–IH–0685 (Sept. 30, 2003).

Whereas the standard established in the Pacifica order focuses on protecting children from exposure to indecent language;

Whereas the standard established in the Pacifica order was upheld as constitutional by the United States Supreme Court in Federal Communications Commission v. Pacifica Foundation, 438 U.S. 726 (1978);

Whereas the Enforcement Bureau of the Federal Communications Commission has refused to sanction the airing of indecent language during the broadcast of the Golden Globe Awards, at a time when millions of children were in the potential audience; and

Whereas as of December 2003, an application for review is pending before the Federal Communications Commission, requesting that the full Commission review that decision of the Enforcement Bureau: Now, therefore, be it

(1) the Federal Communications Commission should return to vigorously and expeditiously enforcing its own United States Supreme Court-approved standard for indecency in broadcast media, as established in the declaratory order In the Matter of a Citizen's Complaint Against Pacifica Foundation Station WBAI(FM), 56 F.C.C.2d 94 (1975);

(2) the Federal Communications Commission should reassert its responsibility as defender of the public interest by undertaking new and serious efforts to sanction broadcast licensees that refuse to adhere to the standard established in that order;

(3) the Federal Communications Commission should make every reasonable and lawful effort to protect children from the degrading influences of indecent programming;

(4) The Federal Communications Commission should use all of its available authority to protect the public from indecent broadcasts including: (1) the discretion to impose fines up to a statutory maximum for each separate ''utterance'' or ''material'' found to be indecent; and (2) the initiation of license revocation proceedings for repeated violations of its indecency rules;

(5) The Federal Communications Commission should resolve all indecency complaints expeditiously; and should consider reviewing such companies at the full Commission level; and

(6) The Federal Communications Commission should aggressively investigate and enforce all indecency allegations.

THE CHANGING NATURE OF THE HOUSE SPEAKERSHIP: THE CANNON CENTENARY CONFERENCE

Mr. FRIST. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of H. Con. Res. 345 which is at the desk.

The PRESIDING OFFICER. The clerk will report the concurrent resolution by title.

The legislative clerk read as follows:

A concurrent resolution (H. Con. Res. 345) authorizing the printing as a House document of the transcripts of the proceedings of ''The Changing Nature of the House Speakership: The Cannon Centenary Conference,'' sponsored by the Congressional Research Service on November 12, 2003.

There being no objection, the Senate proceeded to consider the concurrent resolution.

Mr. FRIST. I ask unanimous consent that the concurrent resolution be agreed to, the motion to reconsider be laid upon the table, and that any statements relating to the concurrent resolution be printed in the RECORD.

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

The concurrent resolution (H. Con. Res. 345) was agreed to.

DEATH OF SENATOR PAUL SIMON

Mr. FRIST. I ask unanimous consent that the Senate proceed to the immediate consideration of S. Res. 281, a sense-of-the-Senate resolution submitted earlier today by Senators FITZGERALD, DURBIN, myself, and Senator DASCHLE.

The PRESIDING OFFICER. The clerk will report the resolution by title.

The legislative clerk read as follows:

A resolution (S. Res. 281) relative to the death of the Honorable Paul Simon, a former Senator from the State of Illinois.

There being no objection, the Senate proceeded to consider the resolution.

Mr. FRIST. I ask unanimous consent that the resolution be agreed to, the preamble be agreed to, the motions to reconsider be laid upon the table, and that any statements relating to this matter be printed in the RECORD.

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

The resolution (S. Res. 281) was agreed to.

The preamble was agreed to.

The resolution, with its preamble, reads as follows:

S. RES. 281

Whereas the Honorable Paul Simon at the age of 19 became the nation's youngest editor-publisher when he accepted a Lion's Club challenge to save the Troy Tribune in Troy, Illinois, and built a chain of 13 newspapers in southern and central Illinois;

Whereas the Honorable Paul Simon used his newspaper to expose criminal activities, and in 1951, at age 22, was called as a key witness to testify before the U.S. Senate's Crime Investigating Committee;

Whereas the Honorable Paul Simon served in the Illinois legislature for 14 years, winning the Independent Voters of Illinois' ''Best Legislator Award'' every session;

Whereas the Honorable Paul Simon was elected lieutenant governor in 1968 and was the first in Illinois' history to be elected to that post with a governor of another party;

Whereas the Honorable Paul Simon served Illinois in the United States House of Representatives and the United States Senate with devotion and distinction;

Whereas the Honorable Paul Simon is the only individual to have served in both the Illinois House of Representatives and the Illinois Senate, and the U.S. House of Representatives and U.S. Senate.

Whereas the Honorable Paul Simon was the founder and director of the Public Policy Institute at Southern Illinois University in Carbondale, Illinois, and taught there for more than six years in the service of the youth of our Nation;

Whereas the Honorable Paul Simon wrote over 20 books and held over 50 honorary degrees;

Whereas the Honorable Paul Simon was an unapologetic champion of the less fortunate and a constant example of caring and honesty in public service;

Whereas his efforts on behalf of Illinoisans and all Americans earned him the esteem and high regard of his colleagues; and

Whereas his tragic death has deprived his State and Nation of an outstanding lawmaker and public servant: Now, therefore, be it

Resolved, That the Senate has heard with profound sorrow and deep regret the announcement of the death of the Honorable Paul Simon, a former Senator from the State of Illinois.

Resolved, That the Secretary of the Senate communicate these resolutions to the House of Representatives and transmit an enrolled copy thereof to the family of the deceased.

Resolved, That when the Senate adjourns today, it stand adjourned as a further mark of respect to the memory of the deceased former Senator.

ORDERS FOR TUESDAY, JANUARY 20, 2004

Mr. FRIST. Mr. President, I ask unanimous consent that when the Senate completes its business today, it adjourn sine die under the provisions of H. Con. Res. 339. I further ask consent that when the Senate returns on Tuesday, January 20, as provided under H.J. Res. 80, it reconvene at 12 noon. I further ask that following the prayer and pledge, the morning hour be deemed expired, the Journal of proceedings be approved to date, the time for the two leaders be reserved for their use later in the day and the Senate then resume consideration of the conference report to accompany H.R. 2673, the omnibus appropriations language; provided that the time until 12:30 p.m. be equally divided between the chairman and ranking member of the Appropriations Committee or their designees for debate only. I further ask consent that the Senate recess from 12:30 p.m. to 2:15 p.m. for the weekly party luncheons. I further ask consent that the time from 2:15 p.m. to 2:50 p.m. be equally divided in the aforementioned manner with the time from 2:50 p.m. to 3 p.m. equally divided between the two leaders or their designees for debate only; provided that at 3 p.m. the Senate proceed to a cloture vote on the conference report as provided under the previous order.

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

PROGRAM

Mr. FRIST. Mr. President, the Senate will convene the second session of the 108th Congress on Tuesday, January 20, 2004. When the Senate reconvenes, we will begin and resume debate on the omnibus appropriations conference report. Earlier today, I filed a cloture motion on that conference report. That vote will occur at 3 p.m. on Tuesday, January 20. That vote will be the first vote of the second session. It is my hope and expectation that cloture will be invoked and we will be able to complete action on the appropriations process early that day.

I want to wish everyone a happy and a safe holiday season. I again want to thank all of those people who support us in this Chamber in our day-to-day activities for all of their assistance throughout the year. From the pages to the clerks, the doorkeepers, the police men and women and everyone who is part of the Senate family, I do say thank you for your efforts in keeping this institution functioning.

Lastly, let me thank the Democratic leader for his assistance throughout the year. Although we have not always agreed on policy—as a matter of fact, we have disagreed frequently on policy—I believe we have been able to communicate forthrightly with one another. As they say, we agree to disagree. I appreciate the candor of all of those conversations. To all of the Members, I thank them for their cooperation throughout the year. I wish all of our colleagues and their families a very happy holiday.

ADJOURNMENT SINE DIE

Mr. FRIST. If there is no further business to come before the Senate, I ask that the Senate stand in adjournment under the provisions of H. Con. Res. 339, and in accordance with S. Res. 281 as a further mark of respect for our deceased former colleague, Senator Paul Simon.

There being no objection, at 7:33 p.m., the Senate adjourned sine die.

NOMINATIONS

Executive nominations received by the Senate December 9, 2003:

DEPARTMENT OF THE TREASURY

SAMUEL W. BODMAN, OF MASSACHUSETTS, TO BE DEPUTY SECRETARY OF THE TREASURY, VICE KENNETH W. DAM, RESIGNED.

ROBERT JEPSON, OF GEORGIA, TO BE A MEMBER OF THE INTERNAL REVENUE SERVICE OVERSIGHT BOARD FOR A TERM EXPIRING SEPTEMBER 14, 2008, VICE KAREN HASTIE WILLIAMS, TERM EXPIRED.

PAUL JONES, OF COLORADO, TO BE A MEMBER OF THE INTERNAL REVENUE SERVICE OVERSIGHT BOARD FOR A TERM EXPIRING SEPTEMBER 14, 2008, VICE CHARLES L. KOLBE, TERM EXPIRED.

CHARLES L. KOLBE, OF IOWA, TO BE A MEMBER OF THE INTERNAL REVENUE SERVICE OVERSIGHT BOARD FOR THE REMAINDER OF THE TERM EXPIRING SEPTEMBER 14, 2004, VICE STEVE H. NICKLES, RESIGNED.

DONALD KORB, OF OHIO, TO BE CHIEF COUNSEL FOR THE INTERNAL REVENUE SERVICE AND AN ASSISTANT GENERAL COUNSEL IN THE DEPARTMENT OF THE TREASURY, VICE B. JOHN WILLIAMS, JR.

BRIAN CARLTON ROSEBORO, OF NEW JERSEY, TO BE AN UNDER SECRETARY OF THE TREASURY, VICE PETER R. FISHER, RESIGNED.

DEPARTMENT OF LABOR

LISA KRUSKA, OF VIRGINIA, TO BE AN ASSISTANT SECRETARY OF LABOR, VICE KATHLEEN M. HARRINGTON.

DEPARTMENT OF JUSTICE

LAFAYETTE COLLINS, OF TEXAS, TO BE UNITED STATES MARSHAL FOR THE WESTERN DISTRICT OF TEXAS FOR THE TERM OF FOUR YEARS, VICE JACK O. DEAN.

THE JUDICIARY

PETER W. HALL, OF VERMONT, TO BE UNITED STATES CIRCUIT JUDGE FOR THE SECOND CIRCUIT, VICE FRED I. PARKER, DECEASED.

JAMES L. ROBART, OF WASHINGTON, TO BE UNITED STATES DISTRICT JUDGE FOR THE WESTERN DISTRICT OF WASHINGTON, VICE THOMAS S. ZILLY, RETIRING.

DEPARTMENT OF JUSTICE

RONALD J. TENPAS, OF ILLINOIS, TO BE UNITED STATES ATTORNEY FOR THE SOUTHERN DISTRICT OF ILLINOIS FOR A TERM OF FOUR YEARS, VICE MIRIAM F. MIQUELON, RESIGNED.

IN THE AIR FORCE

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. THOMAS L. BAPTISTE, 0000

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT IN THE UNITED STATES AIR FORCE TO THE GRADE INDICATED UNDER TITLE 10, U.S.C., SECTION 601:

TO BE LIEUTENANT GENERAL

MAJ. GEN. DONALD J. WETEKAM, 0000

DEPARTMENT OF COMMERCE

RHONDA KEENUM, OF MISSISSIPPI, TO BE ASSISTANT SECRETARY OF COMMERCE AND DIRECTOR GENERAL OF THE UNITED STATES AND FOREIGN COMMERCIAL SERVICES, VICE MARIA CINO, RESIGNED.

CONFIRMATIONS

Executive Nominations Confirmed by the Senate December 9, 2003:

THE JUDICIARY

BRUCE E. KASOLD, OF VIRGINIA, TO BE A JUDGE OF THE UNITED STATES COURT OF APPEALS FOR VETERANS CLAIMS FOR THE TERM PRESCRIBED BY LAW.

AFRICAN DEVELOPMENT FOUNDATION

EPHRAIM BATAMBUZE, OF ILLINOIS, TO BE A MEMBER OF THE BOARD OF DIRECTORS OF THE AFRICAN DEVELOPMENT FOUNDATION FOR A TERM EXPIRING FEBRUARY 9, 2008.

JOHN W. LESLIE, JR., OF CONNECTICUT, TO BE A MEMBER OF THE BOARD OF DIRECTORS OF THE AFRICAN DEVELOPMENT FOUNDATION FOR A TERM EXPIRING SEPTEMBER 22, 2007.

DEPARTMENT OF LABOR

HOWARD RADZELY, OF MARYLAND, TO BE SOLICITOR FOR THE DEPARTMENT OF LABOR.

DEPARTMENT OF THE INTERIOR

DAVID WAYNE ANDERSON, OF MINNESOTA, TO BE AN ASSISTANT SECRETARY OF THE INTERIOR.

DEPARTMENT OF TRANSPORTATION

KARAN K. BHATIA, OF MARYLAND, TO BE AN ASSISTANT SECRETARY OF TRANSPORTATION.

METROPOLITAN WASHINGTON AIRPORTS AUTHORITY

CHARLES DARWIN SNELLING, OF PENNSYLVANIA, TO BE A MEMBER OF THE BOARD OF DIRECTORS OF THE METROPOLITAN WASHINGTON AIRPORTS AUTHORITY FOR THE REMAINDER OF THE TERM EXPIRING MAY 30, 2006.

DEPARTMENT OF STATE

EDWARD B. O'DONNELL, JR., OF TENNESSEE, A CAREER MEMBER OF THE SENIOR FOREIGN SERVICE, CLASS OF COUNSELOR, FOR THE RANK OF AMBASSADOR DURING HIS TENURE OF SERVICE AS SPECIAL ENVOY FOR HOLOCAUST ISSUES.

JON R. PURNELL, OF MASSACHUSETTS, A CAREER MEMBER OF THE SENIOR FOREIGN SERVICE, CLASS OF COUNSELOR, TO BE AMBASSADOR EXTRAORDINARY AND PLENIPOTENTIARY OF THE UNITED STATES OF AMERICA TO THE REPUBLIC OF UZBEKISTAN.

MARGARET DEBARDELEBEN TUTWILER, OF ALABAMA, TO BE UNDER SECRETARY OF STATE FOR PUBLIC DIPLOMACY.

LOUISE V. OLIVER, OF THE DISTRICT OF COLUMBIA, FOR THE RANK OF AMBASSADOR DURING HER TENURE OF SERVICE AS THE UNITED STATES PERMANENT REPRESENTATIVE TO THE UNITED NATIONS EDUCATIONAL, SCIENTIFIC, AND CULTURAL ORGANIZATION.

WILLIAM J. HUDSON, OF VIRGINIA, A CAREER MEMBER OF THE SENIOR FOREIGN SERVICE, CLASS OF MINISTER-COUNSELOR, TO BE AMBASSADOR EXTRAORDINARY AND PLENIPOTENTIARY OF THE UNITED STATES OF AMERICA TO THE REPUBLIC OF TUNISIA.

MARGARET SCOBEY, OF TENNESSEE, A CAREER MEMBER OF THE SENIOR FOREIGN SERVICE, CLASS OF MINISTER-COUNSELOR, TO BE AMBASSADOR EXTRAORDINARY AND PLENIPOTENTIARY OF THE UNITED STATES OF AMERICA TO THE SYRIAN ARAB REPUBLIC.

THOMAS THOMAS RILEY, OF CALIFORNIA, TO BE AMBASSADOR EXTRAORDINARY AND PLENIPOTENTIARY OF THE UNITED STATES OF AMERICA TO THE KINGDOM OF MOROCCO.

JACKIE WOLCOTT SANDERS, FOR THE RANK OF AMBASSADOR DURING HER TENURE OF SERVICE AS UNITED STATES REPRESENTATIVE TO THE CONFERENCE ON DISARMAMENT AND THE SPECIAL REPRESENTATIVE OF

THE PRESIDENT OF THE UNITED STATES FOR NON-PROLIFERATION OF NUCLEAR WEAPONS.

MARY KRAMER, OF IOWA, TO BE AMBASSADOR EXTRAORDINARY AND PLENIPOTENTIARY OF THE UNITED STATES OF AMERICA TO BARBADOS AND TO SERVE CONCURRENTLY AND WITHOUT ADDITIONAL COMPENSATION AS AMBASSADOR EXTRAORDINARY AND PLENIPOTENTIARY OF THE UNITED STATES OF AMERICA TO ST. KITTS AND NEVIS, SAINT LUCIA, ANTIGUA AND BARBUDA, THE COMMONWEALTH OF DOMINICA, GRENADA, AND SAINT VINCENT AND THE GRENADINES.

TIMOTHY JOHN DUNN, OF ILLINOIS, A CAREER MEMBER OF THE SENIOR FOREIGN SERVICE, CLASS OF COUNSELOR, FOR THE RANK OF AMBASSADOR DURING HIS TENURE OF SERVICE AS DEPUTY PERMANENT REPRESENTATIVE TO THE ORGANIZATION OF AMERICAN STATES.

JAMES CURTIS STRUBLE, OF CALIFORNIA, A CAREER MEMBER OF THE SENIOR FOREIGN SERVICE, CLASS OF MINISTER-COUNSELOR, TO BE AMBASSADOR EXTRAORDINARY AND PLENIPOTENTIARY OF THE UNITED STATES OF AMERICA TO THE REPUBLIC OF PERU.

INTER-AMERICAN DEVELOPMENT BANK

HECTOR E. MORALES, OF TEXAS, TO BE UNITED STATES ALTERNATE EXECUTIVE DIRECTOR OF THE INTER-AMERICAN DEVELOPMENT BANK.

DEPARTMENT OF STATE

MARGUERITA DIANNE RAGSDALE, OF VIRGINIA, A CAREER MEMBER OF THE SENIOR FOREIGN SERVICE, CLASS OF COUNSELOR, TO BE AMBASSADOR EXTRAORDINARY AND PLENIPOTENTIARY OF THE UNITED STATES OF AMERICA TO THE REPUBLIC OF DJIBOUTI.

STUART W. HOLLIDAY, OF TEXAS, TO BE ALTERNATE REPRESENTATIVE OF THE UNITED STATES OF AMERICA FOR SPECIAL POLITICAL AFFAIRS IN THE UNITED NATIONS, WITH THE RANK OF AMBASSADOR.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

JENNIFER YOUNG, OF OHIO, TO BE AN ASSISTANT SECRETARY OF HEALTH AND HUMAN SERVICES.

MICHAEL O'GRADY, OF MARYLAND, TO BE AN ASSISTANT SECRETARY OF HEALTH AND HUMAN SERVICES.

CHEMICAL SAFETY AND HAZARD INVESTIGATION BOARD

RIXIO ENRIQUE MEDINA, OF OKLAHOMA, TO BE A MEMBER OF THE CHEMICAL SAFETY AND HAZARD INVESTIGATION BOARD FOR A TERM OF FIVE YEARS.

DEPARTMENT OF TRANSPORTATION

JEFFREY A. ROSEN, OF VIRGINIA, TO BE GENERAL COUNSEL OF THE DEPARTMENT OF TRANSPORTATION.

CORPORATION FOR PUBLIC BROADCASTING

ELIZABETH COURTNEY, OF LOUISIANA, TO BE A MEMBER OF THE BOARD OF DIRECTORS OF THE CORPORATION FOR PUBLIC BROADCASTING FOR A TERM EXPIRING JANUARY 31, 2010.

ELIZABETH COURTNEY, OF LOUISIANA, TO BE A MEMBER OF THE BOARD OF DIRECTORS OF THE CORPORATION FOR PUBLIC BROADCASTING FOR THE REMAINDER OF THE TERM EXPIRING JANUARY 31, 2004.

DEPARTMENT OF COMMERCE

CHERYL FELDMAN HALPERN, OF NEW JERSEY, TO BE A MEMBER OF THE BOARD OF DIRECTORS OF THE CORPORATION FOR PUBLIC BROADCASTING FOR A TERM EXPIRING JANUARY 31, 2008.

DEPARTMENT OF THE TREASURY

ARNOLD I. HAVENS, OF VIRGINIA, TO BE GENERAL COUNSEL FOR THE DEPARTMENT OF THE TREASURY.

OFFICE OF SPECIAL COUNSEL

SCOTT J. BLOCH, OF KANSAS, TO BE SPECIAL COUNSEL, OFFICE OF SPECIAL COUNSEL, FOR THE TERM OF FIVE YEARS.

FEDERAL DEPOSIT INSURANCE CORPORATION

THOMAS J. CURRY, OF MASSACHUSETTS, TO BE A MEMBER OF THE BOARD OF DIRECTORS OF THE FEDERAL DEPOSIT INSURANCE CORPORATION FOR A TERM OF SIX YEARS.

FEDERAL HOUSING FINANCE BOARD

ALICIA R. CASTANEDA, OF THE DISTRICT OF COLUMBIA, TO BE A DIRECTOR OF THE FEDERAL HOUSING FINANCE BOARD FOR A TERM EXPIRING FEBRUARY 27, 2004.

ALICIA R. CASTANEDA, OF THE DISTRICT OF COLUMBIA, TO BE A DIRECTOR OF THE FEDERAL HOUSING FINANCE BOARD FOR A TERM EXPIRING FEBRUARY 27, 2011.

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.

DEPARTMENT OF STATE

DAVID C. MULFORD, OF ILLINOIS, TO BE AMBASSADOR EXTRAORDINARY AND PLENIPOTENTIARY OF THE UNITED STATES OF AMERICA TO INDIA.

JAMES C. OBERWETTER, OF TEXAS, TO BE AMBASSADOR EXTRAORDINARY AND PLENIPOTENTIARY OF THE UNITED STATES OF AMERICA TO THE KINGDOM OF SAUDI ARABIA.

EXPORT-IMPORT BANK OF THE UNITED STATES

JOSEPH MAX CLELAND, OF GEORGIA, TO BE A MEMBER OF THE BOARD OF DIRECTORS OF THE EXPORT-IMPORT BANK OF THE UNITED STATES FOR A TERM EXPIRING JANUARY 20, 2007.

APRIL H. FOLEY, OF NEW YORK, TO BE FIRST VICE PRESIDENT OF THE EXPORT-IMPORT BANK OF THE UNITED STATES FOR THE REMAINDER OF THE TERM EXPIRING JANUARY 20, 2005.

THE JUDICIARY

GEORGE W. MILLER, OF VIRGINIA, TO BE A JUDGE OF THE UNITED STATES COURT OF FEDERAL CLAIMS FOR THE TERM OF FIFTEEN YEARS.

UNITED STATES SENTENCING COMMISSION

WILLIAM K. SESSIONS III, OF VERMONT, TO BE A MEMBER OF THE UNITED STATES SENTENCING COMMISSION FOR A TERM EXPIRING OCTOBER 31, 2009.

DEPARTMENT OF JUSTICE

DAVID L. HUBER, OF KENTUCKY, TO BE UNITED STATES ATTORNEY FOR THE WESTERN DISTRICT OF KENTUCKY FOR THE TERM OF FOUR YEARS.

ELECTION ASSISTANCE COMMISSION

PAUL S. DEGREGORIO, OF MISSOURI, TO BE A MEMBER OF THE ELECTION ASSISTANCE COMMISSION FOR A TERM OF TWO YEARS.

GRACIA M. HILLMAN, OF THE DISTRICT OF COLUMBIA, TO BE A MEMBER OF THE ELECTION ASSISTANCE COMMISSION FOR A TERM OF TWO YEARS.

RAYMUNDO MARTINEZ III, OF TEXAS, TO BE A MEMBER OF THE ELECTION ASSISTANCE COMMISSION FOR A TERM OF FOUR YEARS.

DEFOREST B. SOARIES, JR., OF NEW JERSEY, TO BE A MEMBER OF THE ELECTION ASSISTANCE COMMISSION FOR A TERM OF FOUR YEARS.

THE JUDICIARY

D. MICHAEL FISHER, OF PENNSYLVANIA, TO BE UNITED STATES CIRCUIT JUDGE FOR THE THIRD CIRCUIT.

DEPARTMENT OF JUSTICE

JAMES B. COMEY, OF NEW YORK, TO BE DEPUTY ATTORNEY GENERAL.

FEDERICO LAWRENCE ROCHA, OF CALIFORNIA, TO BE UNITED STATES MARSHAL FOR THE NORTHERN DISTRICT OF CALIFORNIA FOR THE TERM OF FOUR YEARS.

THE JUDICIARY

LAWRENCE B. HAGEL, OF VIRGINIA, TO BE A JUDGE OF THE UNITED STATES COURT OF APPEALS FOR VETERANS CLAIMS FOR THE TERM PRESCRIBED BY LAW.

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

DAVID EISNER, OF MARYLAND, TO BE CHIEF EXECUTIVE OFFICER OF THE CORPORATION FOR NATIONAL AND COMMUNITY SERVICE.

CAROL KINSLEY, OF MASSACHUSETTS, TO BE A MEMBER OF THE BOARD OF DIRECTORS OF THE CORPORATION FOR NATIONAL AND COMMUNITY SERVICE FOR A TERM EXPIRING OCTOBER 6, 2006.

NATIONAL MEDIATION BOARD

READ VAN DE WATER, OF NORTH CAROLINA, TO BE A MEMBER OF THE NATIONAL MEDIATION BOARD FOR A TERM EXPIRING JULY 1, 2006.

DEPARTMENT OF LABOR

STEVEN J. LAW, OF THE DISTRICT OF COLUMBIA, TO BE DEPUTY SECRETARY OF LABOR.

WITHDRAWAL

Executive message transmitted by the President to the Senate on December 9, 2003, withdrawing from further Senate consideration the following nomination:

SUSAN C. SCHWAB, OF MARYLAND, TO BE DEPUTY SECRETARY OF THE TREASURY, WHICH WAS SENT TO THE SENATE ON JULY 17, 2003.