

## EXTENSIONS OF REMARKS

HONORING CONGRESSMAN MARTIN OLAV SABO'S CAREER OF PUBLIC SERVICE

### HON. BETTY McCOLLUM

OF MINNESOTA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, December 27, 2006

Ms. McCOLLUM of Minnesota. Mr. Speaker, I rise to congratulate a fellow Minnesotan, Congressman MARTIN SABO of Minneapolis, on his distinguished career of public service.

The neighboring cities of St. Paul and Minneapolis, MN, are known as the "Twin Cities." As the representative from St. Paul, it has been my privilege to serve in Congress with my "Twin brother" MARTIN SABO. After I was first elected to the U.S. House, he immediately became an expert mentor, always generous with time-tested insights. I will never forget the much-needed help he and his staff offered me as I made a difficult transition into Congress following the death of my predecessor, Congressman Bruce Vento. Six years on, we are partners working to solve the problems facing the families of St. Paul and Minneapolis. Through these collaborations, I have come to admire his wisdom—garnered through his personal experience, knowledge and integrity—and recognize what the Congress will lose following his much-deserved retirement.

Martin's public life began 45 years ago when he was elected to the Minnesota State House of Representatives at the young age of 22. He went on to serve with distinction as both House Speaker and minority leader until his election to Congress in 1978.

During his nine terms in the U.S. House of Representatives, Mr. SABO's patient dedication to results and sound governance earned him the respect and trust of his colleagues. In his position on the powerful Appropriations Committee, Congressman SABO directed federal funds to advance Minnesota's transportation system and improve the quality of life for U.S. soldiers and their families. As Chairman of the House Budget Committee in 1993, he played a central role in shaping and supporting President Clinton's landmark budget, which righted America's fiscal course and set the stage for years of unprecedented economic growth and prosperity.

Outside of the House Chamber and Capitol Hill committee rooms, Mr. SABO championed causes close to his heart. He promoted educational and cultural exchanges between the United States and Norway as a co-founder of the Friends of Norway Caucus in the House. As a fellow Norwegian, I can attest to the success of these exchanges in reinforcing the bonds between Minnesota and Norway. Mr. SABO also combined his passion for Minnesota Twins baseball with big league Washington politics by serving as the long-time manager for the Democratic squad at the annual congressional baseball game where, in my opinion, he equaled Minnesota Twin greats Tom Kelly and Ron Gardenhire.

Congressman SABO's tactical mastery and commonsense approach in the dugout is an

honest metaphor for his model of leadership in Congress. He worked on behalf of Minnesota in the tradition of Minnesotans—with quiet dignity, progressive ideals and intent of purpose. His instinct for good policy and a focus on the needs of real people over partisan politics has served his constituents and his country well. We are honored to inherit his legacy of a public life, honorably lived. While I am certain his wife Sylvia and his children and grandchildren look forward to spending more time with him, he will be dearly missed by his colleagues at the Capitol.

HONORING MR. GEORGE MARTIN FOR HIS LIFELONG COMMITMENT TO PEACE AND JUSTICE

### HON. GWEN MOORE

OF WISCONSIN

IN THE HOUSE OF REPRESENTATIVES

Wednesday, December 27, 2006

Ms. MOORE of Wisconsin. Mr. Speaker, I rise today to pay tribute to my constituent, Mr. George Paz Martin, a longtime activist, community leader and cherished friend who is being honored this month with the Lifetime Peacemaker Award by the Wisconsin Network for Peace and Justice. I can think of no more appropriate recipient for this award. Throughout his life, Mr. Martin has exhibited tireless activism, a limitless command of skills and approaches, and a relentless pursuit of justice and peace.

There is scarcely a social justice issue on which George Martin has not served a crucial leadership role. Coming of age in the civil rights movement, he fought for equality and desegregation in housing, education, and employment, among other things. He has served numerous organizations that provide community development and services for housing, healthcare, and economic development. An internationally renowned peace activist and Green Party leader, he is also extremely involved in local efforts to address the needs of the veterans' community.

Not only do his social justice interests know no bounds, but his combination of skills and approaches to the pursuit of justice make him a relentless champion. Having worked in the corporate world, he understands the utility of marketing and promotions in broadening the peace movement. He has built local, national and international coalitions against violence within neighborhoods and among nations. He is a highly sought-after public speaker, who has participated in nearly every major peace rally since the invasion of Iraq. He has traveled throughout the world building relationships with other peace movements, and serving as a witness to the devastation caused by war and violence.

Finally, Mr. Martin demonstrates seemingly limitless personal commitment. He brings care and compassion to every struggle. It is the hallmark of his style that he has crafted a movement against the Iraq war that takes ac-

count of the humanity of everyone involved, including those involved in the fighting, the policymakers, the peace leaders and those who support the war.

I am indebted to George for his expertise, his friendship, and the example of his leadership and I am honored to have this opportunity to thank him for his lifelong commitment to equality, peace, non-violence and justice.

PERSONAL EXPLANATION

### HON. CHAKA FATAH

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, December 27, 2006

Mr. FATAH. Mr. Speaker, had I been present for the vote on H. Res. 1088 and H. Res. 1091, I would have voted "yea."

COMMENDING CHAIRMAN HENRY HYDE

### HON. BETTY McCOLLUM

OF MINNESOTA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, December 27, 2006

Ms. McCOLLUM of Minnesota. Mr. Speaker, I rise today to commend Chairman HENRY HYDE on a remarkable career and to congratulate him on his retirement from the U.S. Congress.

Chairman HYDE has honorably served the citizens of Illinois' 6th District since 1975. He has an impressive record of legislative accomplishments, has led two powerful committees and has been conferred 8 honorary degrees.

I have had the honor to serve under Chairman HYDE on the House International Relations Committee for the past four years. During a time of growing international pressures, he has led this committee with skill and dignity. His commitment to the integrity of the House has taught me a great deal about the legislative process. His respect for the minority, interest in listening to all voices and his common-sense leadership has been critical in ensuring civil debate and productive solutions to extremely difficult problems.

This leadership was evident during the successful passage of the President's Emergency Plan for AIDS Relief, PEPFAR, which has helped to bring needed urgency and attention to this global crisis. Mr. HYDE and his committee staff enabled me, as a first term member, to ensure that my amendment to set aside 10 percent of funding for orphans and vulnerable children was passed as part of this bill. The enactment of this legislation is a testament to Mr. HYDE's ability to bring people and ideas together to make a real difference for families around the world.

In March of 2005, I had the pleasure of traveling with a congressional delegation led by Chairman HYDE to Mexico and Panama. We had the opportunity to meet with President

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

Matter set in this typeface indicates words inserted or appended, rather than spoken, by a Member of the House on the floor.

Vincente Fox of Mexico and President Torrijos of Panama to discuss issues of mutual importance to our countries. It was a wonderful experience for me to see firsthand the respect that leaders around the world have for Mr. HYDE.

Chairman HYDE has been a mentor and a friend and I will miss his leadership in the U.S. House. I thank him for his service to the 6th District of Illinois, the country and the world, and wish him the very best in his retirement.

IN TRIBUTE TO THE LEGAL AID  
SOCIETY OF MILWAUKEE

**HON. GWEN MOORE**

OF WISCONSIN

IN THE HOUSE OF REPRESENTATIVES  
*Wednesday, December 27, 2006*

Ms. MOORE of Wisconsin. Mr. Speaker, I am honored to rise today in celebration of the 90th anniversary of the Legal Aid Society of Milwaukee.

Since 1916, this non-profit organization in my district has provided invaluable legal services to low-income people and other vulnerable members of society. Now serving over 8,000 people a year, the Legal Aid Society specializes in advocating for children, people living with HIV/AIDS, the elderly, immigrants, those with mental illnesses, prisoners, and victims of domestic abuse. As a result of their work, thousands of people in my district have been protected from exploitation and discrimination, and many others have received redress when their basic human rights were violated.

The Legal Aid Society has been a pioneer not only in representing vulnerable people, but also in developing mechanisms to ensure consumer relief, protection against discrimination, and equal access to legal representation. The Legal Aid Society took the lead in establishing the first small claims court in Milwaukee and together with the Milwaukee Bar Association, set up the state's first lawyer referral service. In 1957, the Legal Aid Society initiated the state's first public defender system.

Widely recognized throughout the State for these innovations, the Legal Aid Society is one of the foremost organizations in Wisconsin working to make sure that the law serves everyone. Several current and former Wisconsin State Supreme Court Justices worked at the Legal Aid Society before ascending to the high court, a testament both to the quality of legal representation this organization provides and to the role it plays in ensuring that attention to consumer law and the issues that affect low-income people are considered throughout the legal system.

I am very grateful to the Legal Aid Society, and its current and former employees, for their commitment to ensuring that everyone has a voice in the system. It is a privilege to thank them for their dedicated service and salute this impressive progressive record.

PERSONAL EXPLANATION

**HON. JO ANN DAVIS**

OF VIRGINIA

IN THE HOUSE OF REPRESENTATIVES  
*Wednesday, December 27, 2006*

Mrs. JO ANN DAVIS of California. Mr. Speaker, due to a medical treatment, I was

not able to attend votes on December 8th and 9th, 2006. Had I been present and had there been a rollcall vote, I would have voted "yea" on H.R. 6407, legislation to reform the postal laws of the United States.

PERSONAL EXPLANATION

**HON. BRIAN HIGGINS**

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES  
*Wednesday, December 27, 2006*

Mr. HIGGINS. Mr. Speaker, I missed two Rollcall votes late in the night on Friday, December 8, 2006. I would like to enter into the record how I intended to vote on the missed Rollcall votes:

On Roll #542, On a Motion to Suspend the Rules and Pass S. 3718, the Pool and Spa Safety Act, I would have voted YES.

On Roll #543, On a Motion to Suspend the Rules and Pass S. 3546, the Dietary Supplement and Nonprescription Drug Consumer Protection Act, I would have voted YES.

IN RECOGNITION AND REMEM-  
BRANCE OF THE LIFE OF U.S.  
ARMY SERGEANT BRYAN T.  
MCDONOUGH

**HON. BETTY MCCOLLUM**

OF MINNESOTA

IN THE HOUSE OF REPRESENTATIVES  
*Wednesday, December 27, 2006*

Ms. MCCOLLUM of Minnesota. Mr. Speaker, I rise to honor the life and courage of U.S. Army Sergeant Bryan T. McDonough.

Sergeant McDonough was on patrol near Fallujah, Iraq when a bomb exploded near his vehicle, killing him and fellow Minnesotan Spec. Corey Rystad, and injuring two others, on December 2nd, 2006.

A graduate of Roseville Area High School, SGT McDonough, 22, was enrolled in classes at St. Cloud Technical College before he was deployed to Iraq in March 2006.

Sergeant McDonough's father, Tom, shared how after learning more about the families left behind by the many men and women who were injured or killed in Iraq and Afghanistan, McDonough decided to enlist in the Minnesota Army National Guard in September 2003. He was assigned to B Company 2nd Combined Arms Battalion, 136th Infantry, based out of Crookston, Minnesota. As testimony to his leadership and dedication while in the Minnesota Army National Guard, he was posthumously promoted from the rank of Specialist to Sergeant.

The McDonough family lovingly describes Bryan as an avid sportsman who enjoyed spending time bass fishing and hunting with his family at their cabin in Wisconsin. They cherish their memories of a considerate, generous young man who always tried to make sure that those he was with were happy. Perhaps the most poignant example of SGT McDonough's concern for others was his stated desire that his family and friends not worry about his safety during his deployment.

Mr. Speaker, please join me in honoring the life of Sergeant McDonough for his brave and honorable service to the United States and his commitment to protecting our freedom. He

possessed great courage, love of our country and a strong sense of duty toward his fellow Americans. Sergeant McDonough's parents, Tom and Renee, his brother and sisters, Shannon, Katie, and Kevin, and his many friends have my deepest sympathies for their profound loss.

U.S. SAFE WEB ACT OF 2005

SPEECH OF

**HON. JOE BARTON**

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES  
*Friday, December 8, 2006*

Mr. BARTON of Texas. Mr. Speaker, I rise in support of S. 1608, the "Undertaking Spam, Spyware, And Fraud Enforcement With Enforcers Beyond Borders Act", also known as the SAFE WEB Act. Mr. Speaker, my Committee dealt with this issue in the 108th Congress because it is a growing problem. The issue is important because fraud perpetrated against our citizens increasingly originates or is committed outside the United States: the Federal Trade Commission reports 20 percent of the complaints it received are "cross-border" fraud complaints. Under current law, there is little the FTC can do to stop or prosecute a perpetrator outside the United States.

The Safe Web Act will make two significant changes to help stop the fraud and protect consumers. First, it amends the FTC Act definition of "unfair or deceptive acts or practices" to include acts or practices involving foreign commerce. Second, it allows the FTC to share information and cooperate with foreign governments to investigate and take action on fraud complaints consistent with existing law enforcement practices.

I am pleased to see that S. 1608 reflects and codifies the interagency agreement reached in 2004. We have an amendment that will make a few minor changes to S. 1608. The Amendment strikes the findings, eliminates the gift provision to the FTC, and sunsets the legislation after 7 years.

This is good consumer protection legislation and will help law enforcement agencies find and prosecute criminals outside our borders committing fraud against our citizens.

I would like to thank FTC Chairwoman Majoras as well as Jeanne Bumpus at the FTC for their efforts to help make this legislation a law.

I urge my colleagues to pass the bill so we can continue to protect consumers and prosecute criminals.

SERGEANT FIRST CLASS ROBERT  
LEE "BOBBY" HOLLAR, JR. POST  
OFFICE BUILDING

SPEECH OF

**HON. LYNN A. WESTMORELAND**

OF GEORGIA

IN THE HOUSE OF REPRESENTATIVES  
*Friday, December 8, 2006*

Mr. WESTMORELAND. Mr. Speaker, I would like to respectfully recognize and thank Senator CHAMBLISS for his efforts with Senator ISAKSON to have S. 4050 passed in the Senate. Both Senators played an important role in seeing that S. 4050 was promptly passed in

the Senate so the bill could be addressed in the House before the adjournment of the 109th Congress.

PREMATURITY RESEARCH EXPANSION AND EDUCATION FOR MOTHERS WHO DELIVER INFANTS EARLY

SPEECH OF

**HON. ANNA G. ESHOO**

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

*Friday, December 8, 2006*

Ms. ESHOO. Mr. Speaker, as the Democratic sponsor of this bill, I am proud to rise today in strong support of this legislation.

Since 1981, the CDC estimates that the number of infants born too soon has increased by over 30 percent. More than 500,000 infants are born prematurely each year. Tragically, premature infants are 14 times more likely to die in their first year of life and premature babies who survive may suffer lifelong consequences including cerebral palsy, mental retardation, chronic lung disease, and vision and hearing loss. Preterm delivery can happen to any pregnant woman and in nearly half of the cases, no one knows why.

This legislation will help identify the causes of prematurity and reduce the episodes of preterm labor and delivery. It also aims to reduce the risk of pregnancy-related deaths and complications due to pregnancy, and reduce infant mortality caused by prematurity. But the overarching goal of this legislation is to bring hope to the 1,305 babies born too soon each day, and extend hope to their families. This legislation gives us a chance to make a difference.

The PREEMIE Act requires HHS and the CDC to expand and coordinate their research activities on preterm labor and delivery and infant mortality, and to conduct research on the relationship between prematurity, birth defects, and developmental disabilities. In order to increase awareness of preterm birth as a serious, common and costly public health problem, the bill also requires the Surgeon General to conduct an expert conference on prematurity and report to Congress its recommendations for how the public and private sectors can identify the causes of and risk factors for preterm labor and delivery, and improve treatments.

This bill has the strong endorsement of the March of Dimes, which has worked closely with us to craft this legislation. I salute and thank them for their advocacy.

This legislation has broad bipartisan support in the House of Representatives and the Senate. I thank the bill's many cosponsors for their support and I especially want to pay tribute to the sponsor of this legislation, Congressman FRED UPTON, for his leadership on this issue. We introduced this bill together in previous Congresses and I'm proud to have worked with him to make this bill a reality.

I also want to thank the bill's champions in the Senate, Senators LAMAR ALEXANDER and CHRIS DODD. It has been a rewarding experience for me to work in a bipartisan, bicameral fashion to enact this legislation, and I think our collective efforts have made this bill stronger because of it.

I want to thank Chairman BARTON for acknowledging the importance of acting on this

legislation before the end of the year and bringing it to the floor today. I also want to thank the staff members who have put so much time and energy into this legislation: Page Kranbuhl with Senator ALEXANDER, Tamar Magarik with Senator DODD, Jane Williams with Representative UPTON, Randy Pate with Chairman BARTON, and Jennifer Nieto of my staff.

Mr. Speaker, this is an important bill which will help make a difference in the lives of families across America and around the world and I urge my colleagues to support it.

PANDEMIC AND ALL-HAZARDS PREPAREDNESS ACT

SPEECH OF

**HON. MIKE ROGERS**

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

*Friday, December 8, 2006*

Mr. ROGERS of Michigan. Mr. Speaker, I rise today in strong support of the Pandemic and All-Hazards Preparedness Act and specifically the Biodefense and Pandemic Vaccine and Drug Development Act.

I would like to thank Chairman BARTON, and the Energy and Commerce Committee staff for their support. I would also like to extend a special thanks to my colleague Congresswoman ANNA ESHOO for her work on the issue.

Biological weapons have been proven to work, are capable of causing massive disaster, are relatively cheap, and are increasingly easy to design, build and disseminate.

The materials and technical know-how needed to make a bio-weapon that could infect hundreds of thousands of people are already widely distributed around the planet, and the number of people who possess the expertise needed to create bioweapons is rapidly growing as biotechnology and pharmaceutical research and production expand into developing countries.

Preventing either a natural epidemic or a bioterrorist attack is, unfortunately, unlikely. Therefore, the Nation's ability to rapidly and effectively respond in the face of a bio-security crisis must be a central pillar in our bio-security strategy.

Medicines and vaccines that can counter illnesses caused by exposure to bioterror agents are obviously an essential component of biodefense and would be critical to controlling the spread of contagious disease.

This legislation will enable the government to better develop, procure, and make available countermeasures to chemical, biological, radiological and nuclear agents for use in a public health emergency.

Bioterror countermeasures for agents of terrorism have no market other than the government. This legislation will provide assurance to companies that the government is fully engaged and a willing and able business partner.

This legislation will speed up the development and procurement process by reorganizing and enhancing these responsibilities into the Biomedical Advanced Research and Development Agency, BARDA.

1. BARDA would create a single point of authority within government.

2. BARDA would streamline the approval and acquisition process to help bridge the

"valley of death" for bio-pharmaceutical research.

3. BARDA is an aggressive partnering with universities, research institutions and industry on the advanced development of promising drugs and vaccines and would of these countermeasures.

As the Chairman and my colleagues on both sides of our aisle know, the House passed version of this legislation also included specific authority under BioShield for HHS to enter into procurement contracts with multiple companies for multiple products and technologies.

We all know from lessons learned that this is a complicated and uncertain process. These vaccines and other medical countermeasures are only in the early stage of development and history suggests that most will not be successfully developed or only a few will receive FDA approval.

That is why the House-passed bill included a provision intended to direct a risk mitigation strategy that the Department not put all their eggs in one basket.

Is it the understanding that while the bill passed by the Senate had no similar provision, that currently the BioShield statute provides authority for the Department to enter into multiple procurement contracts for products and technologies for the development and acquisition of countermeasures and that this is an important risk mitigation strategy for the government.

I have been in communication with Senator BURR and he agrees with this policy.

I urge your support of this important piece of legislation.

CONFERENCE REPORT ON H.R. 5682, HENRY J. HYDE UNITED STATES-INDIA PEACEFUL ATOMIC ENERGY COOPERATION ACT OF 2006

SPEECH OF

**HON. JAMES T. WALSH**

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

*Friday, December 8, 2006*

Mr. WALSH. Mr. Speaker, I rise today to affirm the significance of our Nation's friendship with India through implementation of the U.S.-India Nuclear Cooperation Promotion Act of 2006.

Our friendship with India is among the most important bilateral relationships for our Nation's security and prosperity. As a fellow partner in democracy, India has stood firm with the United States in many different arenas—from fighting the war on terrorism, to advancing both the U.S. and Indian economies, to assisting in the formulation of a productive dialogue with China. Time and again, India has shown herself to be a proven ally and this legislation represents yet another historic milestone in the association between our two great nations.

This agreement marks a 180-degree policy shift pertaining to nuclear relations between India and the United States. This agreement permits the U.S. to sell technology to India for nuclear power development and in return, India will open up for inspection its civilian nuclear program, agree not to test nuclear weapons, and abide by nuclear export controls. In essence, this legislation brings India to the

world stage as a verifiable and accountable nuclear power while reaffirming the U.S. and India as economic partners in peace.

Mr. Speaker, this is a good and appropriate piece of legislation. This bill has undergone months of deliberation, been subject to modification and amendment and finally, brought forth for a vote. I would like to commend Chairman HYDE and Ranking Member LANTOS for all their hard work on this bill and reemphasize the significance it carries in furthering economic and technological cooperatives amongst democratic partners.

INTRODUCTION OF THE PRESERVING CRIME VICTIMS' RESTITUTION ACT

**HON. ADAM B. SCHIFF**

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

*Wednesday, December 27, 2006*

Mr. SCHIFF. Mr. Speaker, I introduced the Preserving Crime Victims' Restitution Act of 2006. This legislation would clarify the procedures that should be applied when a criminal defendant dies after he or she has been duly convicted but before the appeals are final.

The need for this legislation has been made evident in recent months. Earlier this year, Enron founder Kenneth Lay was found guilty in both jury and bench trials of 10 criminal charges, including securities fraud, wire fraud involving false and misleading statements, bank fraud and conspiracy. Prosecutors sought \$43.5 million in restitution for the victims of Mr. Lay's crimes.

However, prior to the scheduled sentencing, Mr. Lay died from a heart attack. As a result, on October 17, 2006, U.S. District Judge Sim Lake wiped clean Mr. Lay's criminal record. The convictions were dismissed under a common law rule known as "abatement," which nullifies a conviction when a defendant dies before the conviction is affirmed on appeal, regardless of the merits of the claim. Judge Lake made clear that his ruling simply followed the binding precedent issued in 2004 by the full U.S. Court of Appeals for the fifth circuit, in a case called *United States v. Estate of Parsons*. Last month, the Department of Justice withdrew its notice of appeal on Judge Lake's ruling.

Congress holds a serious responsibility to address this situation in a timely manner. Unless we act quickly, thousands of Enron shareholders and employees, many of whom lost their entire life savings when Enron's \$60 billion in market share and \$2 billion in pension funds suddenly disappeared, will further lose out on what little restitution they might otherwise receive on the loss of their hard-earned assets and pension funds.

The Preserving Crime Victims' Restitution Act of 2006 is the House companion to S. 4055 in the Senate, introduced by Senators FEINSTEIN and SESSIONS. The Department of Justice strongly supports the principles contained in this legislation and the effort to fix this problem to ensure that despite a defendant's death, convictions are preserved and restitution remains available for victims of crime.

The legislation that I am introducing today will do the following:

Establish that if a defendant dies after being convicted of a Federal offense, his conviction

will not be vacated. Instead, the court will be directed to issue a statement stating that the defendant was convicted—either by a guilty plea or a verdict finding him guilty—but then died before his case or appeal was final;

Codify the current rule that no further punishments can be imposed on a person who is convicted if they die before a sentence is imposed or they have an opportunity to appeal their conviction;

Clarify that unlike punishment, all other relief, such as restitution to the victims, that could have been sought against a convicted defendant can continue to be pursued and collected after the defendant's death;

Establish a process to ensure that after a person dies, a representative of the estate can stand in the shoes of the defendant and challenge or appeal his or her conviction, and can also secure a lawyer or have one appointed; and

Grant the Government an additional 2 years after the defendant's death to file a parallel civil forfeiture lawsuit to recover assets linked to the defendant's crimes when the Government had already filed a criminal forfeiture action to recover the same assets.

Enron's collapse in 2001 eliminated thousands of jobs, tens of billions of dollars in market value, and \$2 billion in pension plans. Countless former Enron employees and shareholders lost their entire life savings after investing in Enron's retirement plan. These victims have been closely following the years of preparation by the Enron Task Force, and the 4-month jury trial and separate 1-week bench trial, hoping to finally recover some restitution in this criminal case. Despite prosecutors finally securing a conviction, following the death of Mr. Lay, these efforts to achieve justice for the victims to make up for the harm they have suffered were eliminated. Instead, these individuals have been forced to start anew in their efforts to rebuild their lives.

Now is the time for Congress to take action to remedy this situation. This legislation offers a fair solution and an orderly process in the event that a criminal defendant dies prior to his final appeal. I am hopeful that Congress will act quickly enough to assist these Enron victims and ensure that such an injustice never occurs again. I urge my colleagues to support this legislation.

SUSPENSION OF LIMITATION ON PERIOD FOR WHICH BORROWERS ARE ELIGIBLE FOR GUARANTEED ASSISTANCE

SPEECH OF

**HON. CHARLES W. BOUSTANY, JR.**

OF LOUISIANA

IN THE HOUSE OF REPRESENTATIVES

*Friday, December 8, 2006*

Mr. BOUSTANY. Mr. Speaker, I rise in support of the bill, S. 4093. This bill will modify the expiration date of a provision of a farm bill dealing with farm credit so that it expires concurrent with the rest of the farm bill. Currently a provision of the farm bill dealing with guaranteed loans for farmers and ranchers expires on December 31 of this calendar year.

The rest of the farm bill, however, does not begin to expire until December 30 of 2007. By passing this bill, we are ensuring that this credit program has the opportunity to be fully

debated during the development of the next farm bill. Furthermore, should this provision expire in the next few days, it would create a hardship on the part of those farmers, ranchers, and lenders to whom it would apply.

I ask my colleagues to support this bill so that this credit program, which is so important for America's young and beginning farmers, has the opportunity to be debated and re-evaluated during the development of the next farm bill without causing undue hardship with limited notice to the farmers and ranchers that use this important program.

I would also like to thank Michael Hare of my staff for his diligent work in the last week to bring this bill to the floor.

TAX RELIEF AND HEALTH CARE ACT OF 2006

SPEECH OF

**HON. DAVE CAMP**

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

*Friday, December 8, 2006*

Mr. CAMP of Michigan. Mr. Speaker, I am pleased that the House of Representatives has overwhelmingly approved legislation that extends meaningful tax relief to American manufacturers, families, students, and teachers. As the 109th Congress closes, and an era of Republican control ends, it is fitting that one of the last bills considered provides Americans with the opportunity to keep more of their hard-earned money.

H.R. 6111 does much more than lower taxes—it will help America keep its competitive edge. For example, H.R. 6111 includes incentives for companies to engage in research and development work, allows students to deduct their college tuition costs, and encourages the use of solar, wind, landfill gas, and other clean energy technologies. Importantly too, this legislation extends tax benefits for individuals and families to use for their health care needs through the use of health savings accounts.

In my view, one of the highlights of the Tax Relief and Health Care Act is the 2-year extension and enhancement of the research and development tax credit. As one of the leading advocates in the House of Representatives for the R&D tax credit, I am particularly pleased that companies will be able to use a new, Alternative Simplified Credit. The ASC will enable more companies to utilize the credit. As foreign-based R&D spending has grown faster than U.S.-based R&D spending, it is imperative that the U.S. offer American companies tax incentives for high-risk, long-term research projects. Extension and enhancement of the R&D credit is vitally important for companies doing business in my home state of Michigan. Michigan ranks as one of the top 10 states in reported R&D activity with more than 1,300 companies performing research and development in the state.

Another tax item of significance in H.R. 6111 provides teachers with a \$250 tax deduction for the purchase of classroom supplies, equipment, and other related school materials. I have long sponsored legislation that provides tax relief to teachers. America's K-12 teachers spend literally thousands of their own dollars on classroom supplies. The average educator spends \$1,180 on non-reimbursed

expenses such as books, lesson materials, math flash cards, crayons, and countless other items that help children learn. H.R. 6111 provides teachers with tax relief that will help defray the significant out-of-pocket cost of educational items for their students and classrooms.

Regarding clean energy, this legislation will extend tax credits for renewable electricity production from sources such as wind, biomass, and landfill gas. It will also extend incentives for commercial and residential use of solar power. Greater tax credits and deductions will help lessen the higher costs typically associated with these types of clean energy. These incentives will also help expand consumer acceptance of renewable energy. And, without consumer demand, businesses are reluctant to develop the technologies to harness these energy sources. H.R. 6111 will extend current tax policies that will foster the development and use of clean energy.

I appreciate Chairman THOMAS' hard work in bringing this legislation to the floor. His skill and dedication to putting together good tax policy will be missed. It has been an honor serving with him on the House Ways and Means Committee.

Mr. Speaker, I am proud to vote in favor of H.R. 6111 and am confident that these incentives will help more Americans keep more of what they earn while further stimulating our already robust national economy.

MAGNUSON-STEVENS FISHERY  
CONSERVATION AND MANAGE-  
MENT REAUTHORIZATION ACT  
OF 2006

SPEECH OF

**HON. JAY INSLEE**

OF WASHINGTON

IN THE HOUSE OF REPRESENTATIVES

*Friday, December 8, 2006*

Mr. INSLEE. Mr. Speaker, I rise today in support of H.R. 5946, a bill to reauthorize the Magnuson-Stevens Fishery Conservation and Management Act. This bill is critically important as it will improve the management of our Nation's fisheries, providing a better future for tomorrow. Among other things, the bill ensures that the role of science in the fishery management decision-making process requires annual harvest limits at sustainable levels for virtually all U.S. fisheries and sets out a clear process for ending overfishing where it is occurring. These strict conservation measures are already in effect in the fisheries of the northwest—I am pleased that our management successes will now be replicated in all other regions.

Another key advancement for our Nation's fisheries in this bill is Congress' clarification that certain processes going through the Council process currently will not be negatively affected by the positive changes in current law. Specifically, the cap and trade systems will improve the economics of fishing and enhance the safety of our fishing fleets. Our existing cap and trade programs for sulfur dioxide—which have cut down on acid rain—are being replicated within our fisheries management systems. These programs have helped in curbing some of the effects of global warming, they will now improve fisheries conservation.

I am also pleased that the new legislation will not disrupt the ongoing efforts by the Pacific Fishery Management Council to enhance the management of its ground fish fisheries. The Pacific Council is working diligently to develop a cap and trade or "rationalization" program for its ground fish fisheries. This process has been underway for more than 3 years, and is nearing completion. While the bill requires the Pacific Council to implement an appropriate ground fish management program within 24 months from the date of enactment, and to meet other requirements in law, it does not require the Pacific Council to begin anew in developing that program.

Yet another important provision included in this legislation will create a study on the effects of ocean acidification within the National Research Council. Research into the impacts of high concentrations of carbon dioxide (CO<sub>2</sub>) in the oceans is in its infancy and needs to be developed rapidly. This study is a first step in understanding the problems our oceans will face.

The provisions included in this bill requiring the scientific and statistical committees to provide Councils with recommendations for allowable biological catch, preventing overfishing and achieving rebuilding targets are perhaps the most important. I will be closely following the performances of the regional fisheries councils, their decisions regarding harvest, and their operation and utilization of their respective scientific and statistical committees, as well as the council's use of their scientific and statistical committees' recommendations.

The oceans are absorbing CO<sub>2</sub> from the atmosphere and this is causing chemical changes by making the oceans more acidic (that is, decreasing the pH of the oceans). In the past 200 years the oceans have absorbed approximately half of the CO<sub>2</sub> produced by fossil fuel burning and cement production. Future generations will benefit greatly from the governments research into this subject.

Reauthorization of the Magnuson-Stevens Fishery Conservation and Management Act is a positive step on the road to the healthy management of our ocean systems. I look forward to working with the Resources Committee in the 110th Congress on other positive steps to ensure that our oceans are safe and healthy for future generations.

MAGNUSON-STEVENS FISHERY  
CONSERVATION AND MANAGE-  
MENT REAUTHORIZATION ACT  
OF 2006

SPEECH OF

**HON. NICK J. RAHALL II**

OF WEST VIRGINIA

IN THE HOUSE OF REPRESENTATIVES

*Friday, December 8, 2006*

Mr. RAHALL. Mr. Speaker, I ask unanimous consent to revise and extend my remarks. I yield myself such time as I may consume.

The pending measure, as passed by the Senate, may be one of the last items on our schedule this Congress, but it is certainly not the least important. The bill would reauthorize the Magnuson-Stevens Fishery Conservation and Management Act in order to guide the management of our marine fisheries through 2013.

We would not be here today if Senators TED STEVENS and DANIEL INOUE had not extended

an olive branch. I am extremely appreciative of the hard work that they and their staffs put into this legislation. I also commend our colleague TOM ALLEN who worked tirelessly on behalf of the fishermen in his district to improve this legislation.

While the pending measure does not do everything I would have liked, it does not roll back the conservation principles in this important fisheries management law. The legislation actually strengthens the Magnuson-Stevens Act.

For the first time, regional fishery management councils will be required to establish catch limits that may not exceed the recommendations of the councils' scientific and statistical committees. We expect the scientific committees are to take into account a wide range of scientific opinions when making their recommendations.

Members of the scientific committees will be required to file financial disclosure forms with the Secretary. This requirement will enable the general public to use the Freedom of Information Act to ascertain whether the scientists are truly independent.

For the most depleted fisheries in our country, the legislation will require the Secretary of Commerce to prepare and implement a rebuilding plan that puts an end to overfishing immediately. This is a significant improvement in the law. Studies have shown that the clearest cause of the lack of progress in rebuilding is the failure of many plans to reduce overfishing on those critically depleted stocks. H.R. 5946 addresses this concern.

Notwithstanding efforts by this Congress to undermine the National Environmental Policy Act, H.R. 5946, as amended, requires full compliance with the law. The Secretary of Commerce is directed to update the procedures for complying with NEPA, but these new procedures will not supercede existing NEPA regulations and guidance issued by the Council on Environmental Quality.

Additionally, H.R. 5946 places a 10-year limit on permits, known as limited access privileges, which are issued to fishermen to harvest a quantity of fish. On this issue, I commend our colleague TOM ALLEN, who worked to ensure that the limited access privilege program conserves fisheries, is accountable, and protects small fishermen from those who would like to consolidate fisheries. The privileges are to be held by fishermen who are actively engaged and substantially participate in the fishery. The regional fishery associations are to maintain free and open markets for fishermen to sell their catch, and are not to force fishermen into unwilling or involuntary arrangements.

H.R. 5946 also encourages the conservation of coral reefs. The bill directs the Secretary to map the locations of deep sea corals for the councils, monitor activity occurring where deep sea corals exist, and develop technologies to assist fishermen in reducing the interactions that fishing gear has with corals.

Finally, the bill authorizes the Secretary of Commerce to undertake activities to reduce illegal, unreported and unregulated fishing in international waters. This will assist domestic fishermen who bear the costs when fish harvested illegally result in degraded fish stocks and depressed prices worldwide.

In summary, H.R. 5946 will promote the conservation of our fisheries. The bill does not include everything on my wish list, but it improves upon existing law.

By reauthorizing the Magnuson-Stevens Act in the 109th Congress, we will have more time in the 110th Congress to devote to other ocean issues, including considering the recommendations of the Joint Oceans Commission Initiative.

It is a rare day that I agree with our President, but several months ago he said, "Overfishing is harmful. It's harmful to our country and it's harmful to the world." I agree wholeheartedly and understand that this legislation takes corrective action to curtail overfishing, especially in our most depleted fisheries.

I support the bill, encourage my colleagues to do so as well.

POSTAL ACCOUNTABILITY AND  
ENHANCEMENT ACT

SPEECH OF

**HON. JOHN M. MCHUGH**

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

*Friday, December 8, 2006*

Mr. MCHUGH. Mr. Speaker, as I noted during the December 8, 2006, debate on H.R. 6407, the Postal Accountability and Enhancement Act, this legislation reflects the final version of H.R. 22, the Postal Accountability and Enhancement Act as passed by the House and Senate.

H.R. 22 passed the House on July 26, 2005 by a vote of 410–20, and the Senate then passed H.R. 22 with an amendment by Unanimous Consent on February 9, 2006. Given that H.R. 6407 is the blended result of the two Chamber's versions of H.R. 22, I believe it is important to make note of the Committee on Government Reform's report on H.R. 22, 109–66, part I, as reported on April 28, 2005.

This committee report is relevant to understanding the provisions of H.R. 6407, particularly because many of the provisions of H.R. 6407 are unchanged from H.R. 22 as reported by the Government Reform Committee. For those looking for additional legislative history on H.R. 6407, the Government Reform Committee report accompanying H.R. 22, 109–66, part I, will provide useful explanations and information.

HONORING MS. GERMAINE  
BROUSSARD

**HON. FRANK R. WOLF**

OF VIRGINIA

IN THE HOUSE OF REPRESENTATIVES

*Wednesday, December 27, 2006*

Mr. WOLF. Mr. Speaker, it is an honor on behalf of Rep. TOM DAVIS and myself to recognize Ms. Germaine Broussard of McLean, Virginia, for her dedication to sending many cookies and other packages to U.S. troops overseas.

Ms. Broussard is known as the Cookie Lady to those who have benefitted from her kindness. She has already baked and shipped over 51,000 cookies to servicemembers. She has dedicated many hours of her free time and her own resources toward baking cookies to thank U.S. troops.

I am proud to call attention to the dedication of Ms. Broussard. I would also like to share a recent article from *The Stars and Stripes* which describes Ms. Broussard's hard work.

[From the Stars and Stripes, Nov. 21, 2006]

VA. WOMAN COOKING UP EATS GALORE FOR TROOPS

(By Kirsten Brown)

Washington.—When Lt. j.g. Gregory Trach, 34, received an e-mail from Germaine Broussard two years ago asking permission to send cookies to his ship, he thought little of it.

"Thank you for your support of the U.S. military," he responded, then dismissed the request as a thoughtful but meaningless gesture.

A few weeks later, the USS Shreveport received 12 boxes packed with more than 1,800 chocolate chip, peanut butter, oatmeal and sugar cookies. Shocked, Trach sent Broussard a second e-mail: "We thought you were kidding!"

That was Trach's first brush with "the Cookie Lady."

So far, Broussard, 39, has baked and shipped more than 51,000 cookies to servicemembers. The McLean, Va., resident calls her mostly one-woman program "Troop Treats."

It felt like Christmas to Lt. Col. Skip Goodwillie, 45, each time he and his unit opened a box from Broussard. Goodwillie, who is in the Army Reserves, was stationed northeast of Baghdad at Kir Kush military base when he started getting cookies.

"It was just wonderful to have mail call and hear, 'Hey Skip, the Cookie Lady sent us another box,'" Goodwillie said. "It was wonderful for our morale."

The Cookie Lady does get donations, but she pays for most of it out of her own pocket. After her job as a Smith Barney business development associate, Broussard comes home to start mixing batter about 7 p.m. She pulls the last cookies from the oven between 1 and 3 a.m.

"Some people can be a little hesitant about why am I doing this," Broussard said. "I had wanted to do something, but with the Red Cross, you donate money, and they send the box. But our family has always used home-baked cookies, bread, whatever, to be able to say thank you."

Broussard also sends necessities such as travel-sized shampoo, soap, toothpaste, mouthwash and other treats, including DVDs, Cocoa Rice Krispies and cheesecake mix. "It's a small piece of home," she said.

Embedded teddy bears are also part of her effort. Broussard's six "Battle Buddies" bears are dressed in camouflage and she could fill an album with pictures of beaming soldiers posing with their brown battle buddy.

Broussard will soon launch her second holiday project, "Operation Santa's Little Helpers," which enlists children to write cheery cards to the troops. These notes are tucked in red or blue stockings along with presents such as Slinky toys, Silly Putty, playing cards and, of course, candy.

In junior high school, Broussard earned only a "B" in her home economics class. "I don't use a standard one-cup measuring method," she said. "It's just a little of this, little of that. The home ec teacher went crazy. I'd love to go back to that teacher and say, hmm! Wonder who's right now?"

POSTAL ACCOUNTABILITY AND  
ENHANCEMENT ACT

SPEECH OF

**HON. DANNY K. DAVIS**

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

*Friday, December 8, 2006*

Mr. DAVIS of Illinois. Mr. Speaker, as was noted during the December 8, 2006, debate

on H.R. 6407, the Postal Accountability and Enhancement Act, this landmark postal reform legislation reflects the final version of H.R. 22, the Postal Accountability and Enhancement Act as passed by the House and Senate.

H.R. 22 passed the House on July 26, 2005 by a vote of 410–20, and the Senate then passed H.R. 22 with an amendment by unanimous consent on February 9, 2006. H.R. 6407 represents the combination of the Senate and House versions of H.R. 22. As such, the Committee on Government Reform's Report on H.R. 22, 109–66, Part I, as reported on April 28, 2005 is relevant and necessary to understanding the provisions of H.R. 6407, particularly because many of the provisions of H.R. 6407 are unchanged from H.R. 22 as reported by the Government Reform Committee. For those looking for additional legislative history on H.R. 6407, the Government Reform Committee Report accompanying H.R. 22, 109–66, Part I, will provide useful explanations and information.

TAX RELIEF AND HEALTH CARE  
ACT OF 2006

SPEECH OF

**HON. WILLIAM M. THOMAS**

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

*Friday, December 8, 2006*

Mr. THOMAS. Mr. Speaker, allow me to recite from explanatory material prepared for H.R. 6111, the Tax Relief and Health Care Act of 2006.

DIVISION B—MEDICARE AND OTHER  
HEALTH PROVISIONS

Section 1. Short title of division

*Current law*

No provision.

*Explanation of provision*

This division may be cited as the "Medicare Improvements and Expansion Act of 2006".

TITLE I—MEDICARE IMPROVED QUALITY AND  
PROVIDER PAYMENTS

Section 101. Physician payment and quality improvement

*Current law*

Medicare payments for services of physicians and certain nonphysician practitioners are made on the basis of a fee schedule. The fee schedule assigns relative values to services that reflect physician work (i.e., the time, skill, and intensity it takes to provide the service), practice expenses, and malpractice costs. The relative values are adjusted for geographic variations in costs. The adjusted relative values are then converted into a dollar payment amount by a conversion factor. The conversion factor for 2006 is \$37.8975.

The conversion factor is the same for all services. It is updated each year according to a formula specified in law. The intent of the formula is to place a restraint on overall spending for physicians' services. Several factors enter into the calculation of the formula. These include: (1) the sustainable growth rate (SGR) which is essentially a cumulative target for Medicare spending growth over time (with 1996 serving as the base period); (2) the Medicare economic index (MEI) which measures inflation in the inputs needed to produce physicians services; and (3) the update adjustment factor which modifies the update, which would otherwise be allowed by the MEI, to bring spending in line

with the SGR target. In no case can the adjustment factor be less than minus seven percent or more than plus three percent.

The law specifies a formula for calculating the SGR. It is based on changes in four factors: (1) estimated changes in fees; (2) estimated change in the average number of Part B enrollees (excluding Medicare Advantage beneficiaries); (3) estimated projected growth in real gross domestic product (GDP) growth per capita; and (4) estimated change in expenditures due to changes in law or regulations. In order to even out large fluctuations, MMA changed the GDP calculation from an annual change to an annual average change over the preceding 10 years (a "10-year rolling average").

The SGR target is not a limit on expenditures. Rather, the fee schedule update reflects the success or failure in meeting the target. If expenditures exceed the target, the update for a future year is reduced. This is what occurred for 2002. It was also slated to in subsequent years; however, legislation kept this from occurring. Most recently, the Deficit Reduction Act froze the 2006 conversion factor at the 2005 level. A negative 5 percent update is slated to occur in 2007.

#### *Explanation of provision*

The conversion factor for 2007 would be the conversion factor otherwise applicable for 2007 divided by the product of: (i) 1 plus the Secretary's estimate of the percentage increase in the MEI for 2007 (divided by 100), and (ii) 1 plus the Secretary's estimate of the update adjustment factor for 2007. These changes would not be considered in the computation of the conversion factor for 2008.

The provision would also implement a voluntary quality reporting system for Medicare payments for covered professional services tied to the reporting of claims data. Physicians and other eligible professionals (including physician assistants, nurse practitioners, clinical nurse specialists, certified registered nurse anesthetists, certified nurse-midwives, clinical social workers, clinical psychologists, registered dietitians or nutritional professionals as defined under current law, physical therapists, occupational therapists, and qualified speech-language pathologists) who report the quality information would be eligible for a bonus incentive payment (BIP) for services between July 1, 2007 to December 31, 2007. The Secretary would also address a mechanism whereby an eligible professional could provide data on quality measures through an appropriate medical registry (such as the Society of Thoracic Surgeons National Database) as identified by the Secretary.

For covered professional services furnished beginning July 1, 2007 and ending December 31, 2007, the quality reporting measures are those identified as physician quality measures under the CMS Physician Voluntary Reporting Program (PVRP) as published on the CMS public website as of the date of enactment of this provision. The Secretary may modify these quality measures if changes are based on the results of a consensus-based process meeting in January of 2007 and if such changes are published on the CMS website by April 1, 2007. The Secretary may subsequently refine the quality measures (without notice or opportunity for public comment) up until July 1, 2007 by publishing modifications or refinements to previously published quality measures but may not change the quality measures.

Eligible professionals who (1) furnish services for which there are established quality measures as determined by this provision and (2) satisfactorily submit quality measures would be paid a single additional bonus payment amount equal to 1.5% of the allowed charges for covered professional serv-

ices furnished during the reporting period. The bonus incentive payments would be paid from the Supplemental Medical Insurance Trust Fund (Part B). These bonus incentive payments would not be taken into account in the calculations and determination of payments for providers in health professional shortage areas or Physician Scarcity Areas, nor would these bonus payments be taken into account in computing allowable charges under this subsection.

The Secretary would presume that if an eligible professional submits data for a measure, then the measure is applicable to the professional. However, the Secretary may validate (by sampling or other means as the Secretary determines to be appropriate) to determine if an eligible professional reports measures applicable to such professional services. If the Secretary determines that an eligible professional has not reported applicable measures, the Secretary would not pay the bonus.

Satisfactory reporting of data determines whether the provider is eligible for the bonus payment. If there are no more than 3 quality measures that are applicable to the professional services furnished, the provider must report each measure for at least 80 percent of the cases to meet the criteria. If there are 4 or more quality measures that are applicable, the provider must report at least 3 of the quality measures for at least 80 percent of the cases.

In specifying the form and manner for the submission of data on quality measures under the physician quality reporting system to be implemented under section 1848(k) of the Social Security Act (as added by section 101(b) of the legislation), the House intends that the Secretary of Health and Human Services should recognize reporting of quality measures under demonstrations including the Physician Group Practice demonstration project (under section 1866A of the Social Security Act) and the Medicare Care Management Performance demonstration project (under section 649 of the Medicare Prescription Drug, Improvement, and Modernization Act) as permissible forms and manners of reporting under the system.

The provision also places a limit on bonus payments. No provider would receive payments in excess of the product of the total number of quality measures for which data are submitted and three times the average per measure payment amount. The average per measure payment amount would be estimated by the Secretary and would equal (the total amount of allowed charges under Medicare part B for all covered professional services furnished during the reporting period on claims for which quality measures are reported) divided by (the total number of quality measure for which data are reported during the reporting period under the physician reporting system).

The Secretary would provide for education and outreach to eligible professionals regarding these changes. The Secretary would implement these provisions acting through the Administrator of the Centers for Medicare and Medicaid Services (CMS).

This provision would allow no administrative or judicial review, under the existing Medicare appeals process or through a Provider Reimbursement Review Board as currently codified in statute, of the determination of measures, satisfactory reporting, payment limitation, or bonus incentive payment. A determination under the provisions of this section would not be treated as a determination under current appeals processes for Medicare.

For 2008, the quality measures would change to a set of measures adopted or endorsed by a consensus organization (such as the National Quality Forum or the AQA,

originally known as the Ambulatory Care Quality Alliance) that may include measures that have been submitted by a physician specialty developed through a consensus-based process (such as through the American Medical Association (AMA) convened Physician Consortium for Performance Improvement) as identified by the Secretary. Such measures shall include structural measures, such as the use of electronic health records and electronic prescribing.

The CMS administrator would publish a proposed set of quality measures for 2008 in the Federal Register no later than August 15, 2007 with a public comment period. The final set of measures appropriate for eligible professionals to use to submit quality data in 2008 would be published no later than November 15, 2007.

The Secretary would be required to establish a Physician Assistance and Quality Initiative (PAQI) Fund which would be available to the Secretary for physician payment and quality improvement initiatives. Such initiatives may include application of an adjustment to the update to the conversion factor. The amount available to the Fund would be \$1.35 billion for 2008. The Secretary would be required to provide for expenditures from the Fund for the obligation of the entire amount (to the maximum extent feasible) for payment for physicians services furnished in 2008. The specified amount available to the Fund would be made to the Fund from the Part B trust fund as expenditures are made from the Fund. The amounts in the Fund are to be available in advance of appropriations, but only if the total amount obligated to the Fund does not exceed the amount available to it. The Secretary may obligate funds from the Fund only if the Secretary determines (and the CMS Chief actuary and the appropriate budget officer certifies) that there are sufficient amounts available in the Fund. If the expenditures from the fund affect the conversion factor for a year, this would not affect the computation of the conversion factor for a subsequent year. Congress intends that CMS would continue to develop quality measures for reporting for 2008. The amounts in the fund are available at the Secretary's discretion to make payments for physician services provided in calendar year 2008 in a manner the Secretary sees fit, including for quality purposes.

The Secretary would be required to transfer \$60 million from the Part B trust fund to the CMS Program Management Account for the period of FY 2007, FY 2008, and FY 2009 for the purposes of implementing this section.

#### *Reason for change*

Physicians are scheduled to receive a negative 5 percent update in 2007. The physician update should be addressed to prevent access issues to physician services. In addition, the update should include additional payment for quality reporting in 2007. The House encourages all physicians to participate in quality reporting and encourages CMS to continue to develop measures in consultation with the physician community and the existing structures available through the National Quality Foundation and the AQA.

Section 102. Extension of floor on Medicare work geographic adjustment

#### *Current law*

Medicare's physician fee schedule assigns relative values to services that reflect physician work (i.e., the time, skill, and intensity it takes to provide the service), practice expenses, and malpractice costs. The relative values are adjusted for geographic variations in costs. The adjusted relative values are then converted into a dollar payment amount by a conversion factor.

The geographic adjustment factors are indices that reflect the relative cost difference in a given area in comparison to a national average. An area with costs above the national average would have an index greater than 1.00 while an area with costs below the average would have an index below 1.00. The physician work geographic adjustment factor is based on a sample of median hourly earnings in six professional specialty occupational categories. Unlike the other geographic adjustments, the work adjustment factor reflects only one-quarter of the cost differences in an area. The practice expense adjustment factor is based on employee wages, office rents, medical equipment and supplies. The malpractice adjustment factor reflects differences in malpractice insurance costs. The Secretary is required to periodically review and adjust the geographic indices.

MMA required the Secretary to increase the value of any work geographic index that was below 1.00 to 1.00 for services furnished on or after January 1, 2004 and before January 1, 2007.

#### *Explanation of provision*

The requirement is extended for an additional year, for services provided before January 1, 2008.

#### *Reason for change*

To provide a one-year extension to increase the value of any work geographic index that was below 1.00 to 1.00 to allow for higher adjustments under the work component in certain areas.

Section 103. Update of the composite rate component of the basic case-mix adjusted prospective payment system for dialysis services

#### *Current law*

The Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA) required the Secretary to establish a basic case-mix adjusted prospective payment system for dialysis services furnished either at a facility or in a patient's home, for services furnished beginning on January 1, 2005. The basic case-mix adjusted system has two components: (1) the composite rate, which covers services, including dialysis; and (2) a drug add-on adjustment for the difference between the payment amounts for separately billable drugs and biologicals and their acquisition costs, as determined by the Office of the Inspector General of the Department of Health and Human Services.

The Secretary is required to update the basic case-mix adjusted payment amounts annually beginning with 2006, but only for that portion of the case-mix adjusted system that is represented by the add-on adjustment and not for the portion represented by the composite rate. The DRA increased the composite rate component of the basic case-mix adjusted system for services beginning January 1, 2006 by 1.6 percent, over the amount paid in 2005. For 2006, the base composite rate is \$130.40 for independent ESRD facilities and \$134.53 for hospital-based ESRD facilities. The total drug add-on adjustment, with inflation, is 14.5%.

#### *Explanation of provision*

The composite rate component of the basic case-mix adjusted system shall be increased by 1.6 percent above the 2005 rate, for services furnished on or after January 1, 2006 and before April 1, 2007. For services furnished on or after April 1, 2007, the composite rate component of the basic case-mix adjusted system shall be increased by 1.6 percent, above the amount of such rate for services furnished on March 31, 2007.

Not later than January 1, 2009, GAO shall submit a report to The House on the costs for home hemodialysis treatment and pa-

tient training for both home hemodialysis and peritoneal dialysis. The report shall include recommendations for a payment methodology that measures, and is based on, the cost of providing such services and takes into account the case mix of patients.

#### *Reason for change*

Unlike other facilities, dialysis facilities do not have an inflation update for labor and capital costs. This provision addresses that inequity. The National Institutes of Health (NIH) is conducting a clinical trial on dialysis, partially in the home settings. This report would develop recommendations on how payments could incentivize the use of home dialysis.

Section 104. Extension of Treatment of certain physician pathology services under Medicare

#### *Current law*

In general, independent laboratories cannot directly bill for the technical component of pathology services provided to Medicare beneficiaries that are inpatients or outpatients of acute care hospitals. The Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000 (BIPA) permitted independent laboratories with existing arrangements with acute care hospitals to bill Medicare separately for the technical component of pathology services provided to inpatients and outpatients. The arrangement between the hospital and the independent laboratory had to be in effect as of July 22, 1999. The direct payments for these services applied to services furnished during 2001 and 2002. Despite expiration of the BIPA moratorium after 2002, CMS directed the carriers to continue the moratorium until they received further instructions from CMS. MMA continued this policy for 2005 and 2006.

#### *Explanation of provision*

The provision is extended through 2007.

#### *Reason for change*

The provision expires on December 31, 2006 and independent laboratories will no longer be able to directly bill Medicare for the technical component for physician pathology services.

Section 105. Extension of Medicare reasonable costs payments for certain clinical diagnostic laboratory tests furnished to hospital patients in certain rural areas

#### *Current law*

Generally, hospitals that provide clinical diagnostic laboratory tests under Part B are reimbursed under a fee schedule. MMA specified that hospitals with under 50 beds in qualified rural areas (low density population rural areas) would receive 100 percent reasonable cost reimbursement for clinical diagnostic tests covered under Part B that are provided as outpatient services. The provision applied to services furnished during a cost-reporting period beginning during the 2-year period starting July 1, 2004.

#### *Explanation of provision*

The provision is modified to apply to services furnished during a cost-reporting period beginning during the 3-year period starting July 1, 2004. The provision is effective as if included in the enactment of MMA.

#### *Reason for change*

The MMA provision expired and this extends it for one more cost reporting year.

Section 106. Hospital Medicare reports and clarifications

#### *(a) Correction of Mid-Year Reclassification Expiration*

#### *Current law*

Generally speaking, the Medicare Geographic Classification Review Board's (MGCRB) classification decisions are re-

quired to extend geographic reclassification for 3 years in the inpatient prospective payment system (IPPS) and end on September 30th each year.

#### *Explanation of provision*

This provision corrects the mid year expiration of certain hospital geographic reclassifications.

#### *Reason for change*

The provision creates consistency in the end dates for reclassification decisions for hospitals to be consistent with the Federal Fiscal Year. It is the intent of the House authors that group reclassifications made by the MGCRB that begin April 1, 2007 would be unaffected by this provision, with the exception of the continuing reclassifications of hospitals whole individual reclassifications would have lapsed prior to April 1 2007.

#### *(b) Revision of the Medicare Wage Index Classification System*

#### *Current law*

As directed by Medicare statute, the amount of a hospital's operating and capital payments will vary according to the relative level of hospital wages in its geographic area compared to the national average. The geographic areas or hospital labor markets that have been used by Medicare are urban areas as established by the Office of Management and Budget (OMB). Essentially, a hospital's payment will depend upon whether it is in an urban area (and if so, which one) and the wage data reported by the hospitals in that area. Counties that are not in an urban area are grouped into one statewide rural labor market. Also, with modifications, the hospital wage data are used to adjust for geographic cost differences in Medicare's payment systems for other services, such as inpatient rehabilitation facility (IRF), long-term care hospital (LTCH), home health agency (HHA), skilled nursing facility (SNF), and hospice care. Unlike these other providers, IPPS hospitals have an administrative process, through appeals to the MGCRB (The Medicare Geographic Classification Review Board), to reclassify to different geographic areas. Other statutory provisions affecting a hospital's geographic designation also have been established.

#### *Explanation of provision*

The Medicare Payment Advisory Commission (MedPAC) would be required to submit a report to The House no later than June 30, 2007 on the wage index classification system used in Medicare's prospective payment systems, including IPPS. This report would include recommendations for alternatives to the current methods used to compute the wage index. \$2 million in funds from the Treasury would be appropriated to MedPAC for FY2007 for these activities. The Secretary would be required to include in the proposed rule making process for FY2009 one or more proposals to revise the IPPS wage adjustment, after taking into account MedPAC's recommendations. The proposals would consider problems associated with labor market definitions; modification or elimination of geographic reclassifications and other adjustments; the use of Bureau of Labor Statistics data to calculate relative wages; minimizing variations in wage index adjustments between and within metropolitan statistical areas and rural areas; the feasibility of applying all components of the proposal to other settings, including HHAs and SNFs; methods to minimize the volatility of wage index adjustments while maintaining the budget neutrality; the effect on health care providers and on each region of the country; implementation of proposal, including the transition methods; and occupational mix issues such as staffing practices, effect on

quality of care and alternative recommendations.

*(c) Elimination of unnecessary report*

Historically, under IPPS, hospitals in different geographic areas have had their Medicare payments calculated using different per discharge amounts. For example, at one point, hospitals in large urban areas had been paid on the basis of a larger per discharge amount than hospitals in smaller urban areas or those in rural areas. This classification system had changed over time. By FY1995, discharge amounts were calculated for large urban hospitals and all other hospitals. The implementation of the MMA permanently equalized the per discharge payment rates for all hospitals except for those in Puerto Rico.

Starting in 1987, the Secretary has been required to submit a report to The House that includes an initial estimate of the percentage update (change factor) in the per discharge payment amounts. The Secretary's estimate is required to take into consideration the recommendations of Medicare's payment commission and may vary for hospitals in different geographic areas

*Explanation of provision*

This provision would eliminate the requirement that the Secretary include recommendations with respect to the update factors no later than March 1 before the beginning of the fiscal year.

Section 107. Extension of payment rule for brachytherapy

*Current law*

The Medicare Prescription Drug, Improvement and Modernization Act of 2003 (MMA) established that brachytherapy devices consisting of radioactive sources (or seeds) would be paid on the basis of a hospital's cost for such device (computed by reducing a hospital's charges to costs) for services furnished starting January 1, 2004 until January 1, 2007. The Secretary was directed to create additional groups of covered Outpatient Department Services (OPD) that classify such devices separately from other services (or group of services) in a manner that reflects the number, isotope, and radioactive intensity, including separate groups for palladium-103 and iodine-125 devices. Starting January 1, 2007, CMS will continue to pay separately for brachytherapy sources, but will base payment on the source-specific median costs. CMS has not created new brachytherapy source codes to differentiate stranded from nonstranded brachytherapy sources. The historical data used to establish the source-specific median costs should reflect utilization of stranded brachytherapy sources.

*Explanation of provision*

This provision would extend payment for brachytherapy sources on the basis of a hospital's costs (adjusted from its charges) established under MMA until January 1, 2008. The provision would direct the Secretary to create additional groups of covered OPD services in a manner that reflects the number, isotope, and radioactive intensity, including separate groups for palladium-103 and iodine-125 devices and for stranded and nonstranded devices furnished on or after July 1, 2007. These provisions may be implemented by program instruction or otherwise.

*Reason for change*

This provision allows brachytherapy devices to continue to be paid based on a hospital's cost, to allow CMS further time to collect data in order to base payments on the source-specific median costs after one year, and requires CMS to establish additional groups of services for stranded and nonstranded devices.

Section 108. Payment process under the competitive acquisition program (CAP)

*Current law*

MMA revised the way Medicare pays for Part B drugs. Beginning in 2005, payments for these drugs are based on an average sales price (ASP) payment methodology, which sets payments at the weighted average ASP plus 6%; the Secretary has the authority to reduce the ASP payment amount if the widely available market price is significantly below the ASP. Alternatively, beginning in 2006, drugs can be provided through a newly established competitive acquisition program (CAP). The intent of the program is to enable physicians to acquire certain drugs from an approved CAP vendor thereby enabling them to reduce the time they spend buying and billing for drugs and finance risk.

*Explanation of provision*

The provision deletes the requirement that payments to CAP contractors are conditioned upon the administration of the drugs and biologicals. It specifies that payment may only be made to the contractor upon receipt of a claim for a drug or biological supplied by the contractor for administration to a beneficiary. Further, the Secretary is required to establish a post-payment review process to assure that payment is made for a drug or biological only if it has been administered. The process may be established by program instruction or otherwise and may include the use of statistical sampling. The Secretary is required to recoup, offset or collect any overpayments determined by the Secretary.

The section further clarifies that nothing in this provision is to be construed as requiring any additional competition by entities under the CAP program. Further the provision is not to be construed as requiring any additional process for elections by physicians under the program or additional selection by a selecting physician of a CAP contractor. The House, however, intends that the normal competitive bidding process and physician election as authorized by the MMA should continue as authorized by that law. The provision applies to payments for drugs and biologicals supplied on or after April 1, 2007. Additionally, it applies, for claims that are unpaid as of April 1, 2007, to drugs and biologicals supplied on or after July 1, 2006 and before April 1, 2007.

In addition, the House would like to clarify an additional issue regarding Medicare Part B drugs. The Social Security Act (SSA) currently provides the Secretary of Health and Human Services with the authority to revise the list of compendia that are used to determine Medicare Part B coverage of oncology drugs for off-label uses. Of the three compendia currently listed in statute, one no longer is published and another will soon be published under a different name. To address this situation, requests for official recognition of additional compendia have been made by the public. The Medicare Coverage and Advisory Committee (MCAC) has reviewed and voted on the desirable characteristics of new compendia; however, the Centers for Medicare and Medicaid Services (CMS) has not yet acted on the MCAC's review.

A current list of compendia which contain the most current clinical information about which drugs show the greatest promise of treating various diseases is critical to ensure that beneficiaries have access to the most appropriate therapies. Correcting and expanding the list of compendia organizations recognized by CMS for Medicare Part B coverage purposes is a major step forward in accomplishing that objective. While preserving the list of functioning compendia currently covered by the SSA, the House directs the Secretary to act as soon as possible to up-

date the list of three compendia, and report back to the House no later than January 30, 2007.

The House is also concerned by reports that some Medicare beneficiaries have trouble accessing IVIG therapies from providers. It is our hope that the Office of the Inspector General (OIG) and the Office of the Assistant Secretary for Planning and Evaluation (ASPE) studies focused on IVIG are promptly completed. The House hopes the Secretary would promptly review such studies, and report to the House regarding the adequacy of supply and Medicare reimbursement related to the cost of acquiring IVIG and the complexity of IVIG infusions. The House strongly urges the Secretary to continue the IVIG pre-administration fee until the Secretary either assures the House that Medicare reimbursement is adequate or a new payment methodology is implemented to address concerns regarding access to IVIG.

*Reason for change*

To provide clarification in order to allow for a post-payment review process to ensure that payment is made for a drug or biological only if the drug or biological is delivered for administration to a beneficiary. The House intends for CMS to implement this provision by not matching a claim for drugs to a claim with drug administration prior to being paid. The post payment review is intended to sufficiently protect against inappropriate claims.

Section 109. Quality reporting for hospital outpatient services and ambulatory surgical center services

*(a) Outpatient Hospital Services*

*Current law*

Each year the hospital outpatient department (OPD) fee schedule is increased by a factor that is generally based on the hospital market basket (MB) percentage increase. In certain years, the MB has been reduced by percentage points as specified by statute.

*Explanation of provision*

Starting in 2009 and for each subsequent year, a hospital paid under the inpatient prospective payment system (IPPS) that does not submit required measures will receive an OPD fee schedule increase of the MB minus 2.0 percentage points. A reduction under this provision would only apply to payments for the year involved and would not be taken into account when computing the OPD fee schedule increase in a subsequent year.

Each IPPS hospital is required to submit data on measures under this section in the form, manner, and timing specified by the Secretary. The Secretary would be required to develop appropriate measures for the measurement of the quality of care (including medication errors) furnished by hospitals in outpatient settings and that reflect consensus among affected parties. To the extent feasible and practicable, the measures shall include those set forth by one or more national consensus building entities. Nothing would prevent the Secretary from selecting all hospital quality measures or a subset of such measures. The Secretary would be able to replace any measures as appropriate, such as where all hospitals are effectively in compliance or the measures have subsequently been shown not to represent the best clinical practice.

The Secretary would be required to establish procedures for making the submitted data available to the public. These procedures would ensure that a hospital has the opportunity to review data prior to being made available to the public. The Secretary would be required to report quality measures of process, structure, outcome, patients' perspective on care, efficiency, and costs of care on the Internet website of the Centers for

Medicare and Medicaid Services. Other conforming amendments would also be established.

*Reason for change*

The Provision promotes the development of quality measures for outpatient medical services and services provided in ASC's. The House intends the measures to be developed in consultation with affected entities and quality organizations.

*(b) Application to Ambulatory Surgical Centers*

*Current law*

Presently, Medicare pays for surgery-related facility services in an ambulatory surgical center (ASC) based on a fee schedule. The Medicare Prescription Drug, Improvement, and Modernization Act of 2006 (MMA) required the Secretary to implement a revised payment system for ASCs no later than January 1, 2008, taking into account recommendations issued by a required report from the Government Accountability Office (GAO). The GAO report, which has just been issued, was required to examine the relative costs of ASC services to those in hospital outpatient departments. GAO was also required to recommend whether CMS should use the outpatient prospective payment system as the basis for the revised ASC system. Total payments under the new system should be equal to total projected payments under the old system.

*Explanation of provision*

In the revised payment system, the Secretary would be able to provide for a reduction in any annual update of 2.0 percentage points for failure to report required quality measures. A reduction under this provision would only apply to payments for the year involved and would not be taken into account when computing any annual increase factor in subsequent years. Except as otherwise provided by the Secretary, the provisions of subparagraphs (B), (C), (D), and (E) of the newly established Section 1833(t)(17) concerning the form and submission of data, the development of outpatient measures, the replacement of measures, and the availability of quality measures in a hospital outpatient setting would apply to ASC services.

*Reason for change*

The Provision promotes the development of quality measures for outpatient medical services and services provided in ASC's. The House intends the measures to be developed in consultation with affected entities and quality organizations.

*(c) Effective date*

*Current law*

No provision.

*Explanation of provision*

The amendments made by the section would apply to payment for services furnished starting January 1, 2009.

Section 110. Reporting of anemia quality indicators for Medicare part B cancer anti-anemia drugs

*Current law*

Medicare Part B covers certain drugs used as anticancer chemotherapeutic agents and certain oral anti-emetic drugs used as part of an anticancer chemotherapeutic regimen. It also covers epoetin alpha for patients with kidney disease; the drug may also be used to counter anemia for cancer patients.

*Explanation of provision*

The provision requires that all claims submitted for drugs for treatment of anemia in connection with cancer must include information on the hemoglobin or hematocrit levels for the individual. The information is to be submitted in the form and manner speci-

fied by the Secretary. The provision applies to drugs furnished on or after January 1, 2008. The Secretary is required to address the implementation of the provision in the physician fee schedule regulations for 2008.

*Reason for change*

Since 1989, ESRD facilities have provided lab values on red blood cell counts to CMS to ensure that anemia is addressed. This requires physician offices and hospital outpatient departments to provide the same information.

Section 111. Clarification of hospice satellite designation

*Current law*

Section 1814(i)(2)(A) of the Social Security Act limits total Medicare payment amounts to individual hospice providers by an absolute dollar amount, or "cap amount." This amount is based on the number of Medicare patients the agency serves and is calculated by dividing total payments to a hospice per year by the total number of beneficiaries served to get the per beneficiary payment amount. If the per beneficiary payment amount does not exceed the cap amount, the hospice may retain all payments. If the result exceeds the cap amount, the hospice must repay excess funds to the Medicare program. For purposes of calculating whether or not a hospice exceeds the cap amount, increasing the number of beneficiaries a hospice serves reduces the per beneficiary payment amount. A lower per beneficiary payment amount reduces the likelihood that a hospice will exceed the annual hospice cap and be required to repay excess funds to the Medicare program.

*Explanation of provision*

For purposes of calculating the hospice cap for 2004, 2005 and 2006 and for hospice care provided after November 1, 2003 and before December 27, 2005, this provision would designate hospice with provider number 290-1511 as a multiple location of hospice with provider number 29-1500.

*Reason for change*

To prevent application of the Hospice cap in this circumstance.

TITLE II—MEDICARE BENEFICIARY PROTECTIONS

Section 201. Extension of exceptions process for Medicare therapy caps

*Current law*

The Balanced Budget Act of 1997 established annual per beneficiary payment limits for all outpatient therapy services provided by non-hospital providers. The limits applied to services provided by independent therapists as well as to those provided by comprehensive outpatient rehabilitation facilities (CORFs) and other rehabilitation agencies. The limits did not apply to outpatient services provided by hospitals.

Beginning in 1999, there were two beneficiary limits. The first was a \$1,500 per beneficiary annual cap for all outpatient physical therapy services and speech language pathology services. The second was a \$1,500 per beneficiary annual cap for all outpatient occupational therapy services. Beginning in 2002, the amount would increase by the Medicare economic index (MEI) rounded to the nearest multiple of \$10.

The Balanced Budget Refinement Act of 1999 (BBRA) suspended application of the limits for 2000 and 2001. The Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000 (BIPA) extended the suspension through 2002. Implementation of the provision was delayed until September 2003. The caps were implemented from September 1, 2003 through December 7, 2003. MMA reinstated the moratorium from December 8, 2003 through December 31, 2005.

The caps went into effect again beginning January 1, 2006. The 2006 caps are each \$1,740. However, DRA required the Secretary to implement an exceptions process for expenses incurred in 2006. Under the process, a Part B enrollee, or a person acting on behalf of the enrollee, can request an exception from the physical therapy and occupational therapy caps. The individual may obtain such exception if the provision of services is determined medically necessary. The exceptions process only applies for 2006.

*Explanation of provision*

The provision extends the exceptions process through 2007.

In addition, during consideration of the bill, the issue of whether speech language pathologists should have a separate provider number was raised in order to better report more accurately on the bill's quality reporting program. The House urges CMS to investigate this issue.

*Reason for change*

Provides a one-year extension of the exceptions process established under the Deficit Reduction Act (DRA) to allow patients to apply for additional therapy services if their treatment is expected to exceed the annual cap. During consideration of the bill, the issue of whether speech language pathologists should have a separate provider number was raised in order to better report more accurately on the bill's quality reporting program. The House urges CMS to investigate this issue in order to promote quality initiatives.

Section 202. Payment for administration of part D vaccines

*Current law*

Medicare Part B covers pneumococcal vaccine and its administration, influenza vaccine and its administration, and hepatitis B vaccine and its administration when furnished to a high or intermediate risk individual. Medicare Part D covers other vaccines licensed under the Public Health Service Act.

*Explanation of provision*

The provision specifies that during 2007, the costs of administering Part D vaccines will be paid under Part B, as if it were the administration of a hepatitis B vaccine. Beginning in 2008, Part D coverage will include the administration costs.

*Reason for change*

CMS has chosen not to reimburse providers for administering vaccines that are covered under the new Medicare prescription drug benefit (Part D). If doctors and their staff are not being paid to provide these vaccines, it will undoubtedly create access problems to these important preventive medicines. This provision ensures that providers will be paid for their services through Part B funds in 2007 and through Part D thereafter.

Section 203. OIG study of never events

*Current law*

No provision.

*Explanation of provision*

The Office of the Inspector General (OIG) in the Department of Health and Human Services would be required to conduct a study on the incidence of never events for Medicare beneficiaries, including types of such events and payments by any party, including beneficiaries, of such events. This study would also include the extent to which Medicare paid, denied or recouped payment for such services as well as the administrative process of the Centers for Medicare and Medicaid Services (CMS) to identify such events and to deny or recoup associated payments. The OIG would be required to audit a representative sample of claims and medical

records of the events; would be able to request access to claims and records from any Medicare contractor; and would not be able to release individually identifiable or facility specific information. The OIG would be required to submit a report to The House no later than two years from enactment. This report would include recommendations for legislative or administrative action on the processes to identify, deny or recoup payments for never events, the potential process for public disclosure of never events which ensure patient privacy and permit the use of disclosed information for root cause analysis. \$3 million of funds in the Treasury will be appropriated which will be available until January 1, 2010. Never event are those that are listed and endorsed as "serious reportable events" by the National Quality Forum as of November 16, 2006.

#### *Reason for change*

This would provide useful information on serious adverse medical events where a patient was harmed but the Medicare program nevertheless reimbursed the facility where the serious injury occurred.

Section 204. Medicare medical home demonstration project

#### *Current law*

No provision.

#### *Explanation of provision*

The Secretary is required to establish a medical home demonstration project in Medicare law for the purpose of redesigning the healthcare delivery system to provide targeted, accessible, continuous and coordinated, family-centered care to high-need populations (i.e., those with multiple chronic illnesses that require regular monitoring, advising, or treatment).

Under the project, case management fees would be paid to personal physicians, and incentive payments would be paid to physicians participating in practices that provide "medical home" services. Medical homes are physician practices in charge of targeting beneficiaries for project participation. They are responsible for: (1) providing safe and secure technology to promote patient access to personal health information; (2) developing a health assessment tool for the targeted individuals; and (3) providing training for personnel involved in the coordination of care.

The project is to operate for three years in urban, rural, and underserved areas in up to 8 states and would include physician practices with fewer than three full-time equivalent physicians, as well as larger practices, particularly in rural and underserved areas.

In addition to meeting Medicare requirements for physicians, personal physicians who provide first contact and continuous care for their patients must be board certified. Personal physicians must also have staff and resources to manage the comprehensive and coordinated health care of each of their patients. Participating physicians may be specialists or subspecialists for patients requiring ongoing care for specific conditions, multiple chronic conditions, (e.g., severe asthma, complex diabetes, cardiovascular disease, and rheumatologic disorder) or for those with a prolonged illness.

Personal physicians must perform (or provide for the performance of): (1) advocates for and provides ongoing support, oversight, and guidance to implement a plan of care; that provides an integrated, coherent, cross discipline plan for ongoing medical care developed in partnership with patients and including all other physicians furnishing care to the patient involved and other appropriate medical personnel or agencies (such as home health agencies); (2) uses evidence-based medicine and clinical decision support tools to guide decision-making at the point-

of-care (based on patient-specific factors); (3) uses health information technology that may include remote monitoring and patient registries; and (4) encourages patients to engage in management of their own health through education and support systems.

Payments for care management to personal physicians are to be provided under a care management fee under Section 1848 of the Social Security Act. The Secretary would be required to develop a care management fee code and a value for these payments using the relative value scale update committee (RUC) process.

Payments for a medical home shall be based on the payment methodology applied to physician group practices under section 1866A of the Social Security Act. Under this methodology, 80 percent of Medicare reductions (determined by using assumptions with respect to the reductions in the occurrence of health complications, hospitalization rates, medical errors, and adverse drug reactions) resulting from the medical home participation (as reduced by the total project-related care management fees), would be paid to the medical home. Project payments are to be paid from Part B.

The Secretary would be required to provide a yearly project evaluation and submit it to The House on a date specified by the Secretary. In addition, the Secretary would be required to submit to The House a project evaluation no later than one year after project completion.

#### *Reason for change*

The proposal tests the effectiveness of the medical home model to provide targeted and coordinated care to patients suffering from one or more chronic conditions. A personal physician and physician practice work together to manage these patients.

Section 205. Medicare DRA technical corrections

#### *(a) PACE clarification*

##### *Current law*

The House appropriated \$10 million for FY2006 for the outlier funds for rural Program of All-Inclusive Care for the Elderly (PACE) providers. Outlier costs are those inpatient and other costs in excess of \$50,000 incurred within a given 12-month period by a PACE provider for an eligible participant who resides in a rural area. These appropriated funds would remain available for expenditure through FY2010.

##### *Explanation of provision*

The provision clarifies that the appropriated \$10 million would be applied to fiscal years 2006 through 2010, rather than only for FY2006. It also specifies that the funds would remain available for obligation, rather than for expenditure, through FY2010.

##### *Reason for change*

CMS has issued the start-up grants but cannot obligate the outlier payments yet because CMS does not know to whom the outlier payments will be distributed.

#### *(b) Miscellaneous technical corrections*

##### *(1) Correction of Margin (Section 5001)*

##### *Current law*

No provision.

##### *Explanation of provision*

Section 1886(b)(3)(B) of the Social Security Act (42 U.S.C. 1395ww(b)(3)(B)), as amended by section 5001(a) of the Deficit Reduction Act of 2005 (Public Law 109-171), is amended by moving clause (viii) (including subclauses (I) through (VII) of such clause) 6 ems to the left.

##### *(2) Reference Correction (Section 5114)*

##### *Current law*

P.L. 109-171 provision modified the first sentence of Section 1842(b)(6)(F) of the So-

cial Security Act to add a new paragraph H to 1842(b)(6) so that a federally qualified health center (FQHC) would be paid directly for FQHC services provided by a health care professional under contract with that FQHC.

#### *Explanation of provision*

Instead of modifying Section 1842(b)(6)(F) to add paragraph H, the amendment would modify Section 1842(b)(6) of the Social Security Act.

#### *(c) Effective date*

These amendments would become effective as if they had been included in DRA 2005, enacted on February 8, 2006.

Section 206. Limited continuous open enrollment of original Medicare fee-for-service enrollees into Medicare Advantage non-prescription drug plans

#### *Current law*

Since the inception of Medicare Part C, beneficiaries had been allowed to enroll into and/or disenroll from Medicare Advantage (MA) plans on a monthly basis throughout the year. Beneficiaries were able to change plans as often as they wanted because The House had delayed (on three occasions) a provision, that locked Medicare beneficiaries into their plan choice after their enrollment period ended. However, since The House has not further delayed its implementation, the lock-in began to take effect on July 1, 2006.

#### *Explanation of provision*

This provision allows Medicare beneficiaries who are enrolled in traditional fee-for-service but not enrolled in a prescription drug plan to enroll in a Medicare Advantage plan that does not offer drug coverage after their enrollment period ended. These beneficiaries would be allowed to make this change once during the year, after their enrollment period had ended. This provision would sunset in two years.

#### *Reason for change*

This provision, allows qualified beneficiaries to enroll in certain MA plans throughout the year.

#### TITLE III—MEDICARE PROGRAM INTEGRITY EFFORTS

Section 301. Offsetting adjustment in Medicare Advantage Stabilization Fund

#### *Current law*

The Medicare Prescription Drug, Improvement, and Modernization Act (MMA) of 2003 established a stabilization fund to provide incentives for plans to enter into and to remain in the Medicare Advantage (MA) regional program. Money in the fund is available to the Secretary for expenditures from January 1, 2007 to December 31, 2013.

Initially \$10 billion is to be provided to the stabilization fund and additional amounts are to be added to the fund from a portion of any average per capita monthly savings amounts. The Secretary is responsible for determining the amounts that may be given to MA plans from this fund, based on statutory requirements. For example, the national bonus payment will be available to an MA organization that offers an MA regional plan in every MA region in the year, but only if there was no national plan in the previous year.

#### *Explanation of provision*

This provision would delay the initial availability of the stabilization fund until January 1, 2012, and reduce the amount of the fund to \$3.5 billion.

#### *Reason for change*

The payment changes made by the MMA have strengthened the MA program, thereby increasing enrollment in, and availability of, MA plans. In 2003, just 54 percent of seniors had access to an MA plan. Today, nearly 100

percent of beneficiaries have access to at least two MA plans and the average county provides seniors with a choice of 12 MA plans. Attracting plans to the MA program today is not an issue. The stabilization fund has been rendered unnecessary under the current payment system.

Section 302. Extension and expansion of recovery audit contractor program under the Medicare Integrity Program

(a) *Use of recovery audit contractors*

*Current law*

The Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (P.L. 108-73) authorized a 3-year demonstration project using recovery audit contractors to identify both under and overpayments made to Part A & B Medicare providers and recoup overpayments in the Medicare program. The demonstration is being conducted as part of the Medicare Integrity Program, created by Section 1893 of the Social Security Act, which enables the Secretary to enter into contracts with entities to carry out a range of activities designed to prevent health care fraud and abuse in Parts A & B of the Medicare program. The Medicare Integrity Program was established by the Health Insurance Portability and Accountability Act of 1996 along with the Health Care Fraud and Abuse Control Program. The program is financed via the Federal Hospital Insurance Trust Fund.

*Explanation of provision*

Section 302 would allow the Centers for Medicare and Medicaid Services (CMS) to continue using recovery audit contractors to identify both under and overpayments made under Medicare Parts A & B and recoup any overpayments made to providers. To pay the contractors, the Secretary would be required to use only those funds recovered by the contractors. From these recoveries, the bill would require the Secretary to pay the contractors in two ways: (1) on a contingent basis for collecting overpayments; and (2) in amounts that the Secretary may specify for identifying underpayments. A portion of the recovered funds to the CMS program management account would be available for activities conducted under the recovery audit contractor program. Any remaining recovered amounts—those recoveries that are not paid to the contractors or applied to the CMS program management account—would be used to reduce expenditures under Medicare Parts A & B. Each contract would be required to provide that audit and recovery activities be conducted during the fiscal year and retrospectively for not more than 4 fiscal years. The Secretary would be allowed to waive Medicare statutory provisions to pay for the services of the recovery audit contractors.

By January 1, 2010, the Secretary would be required to contract with enough recovery audit contractors to cover Medicare activities in all states. When awarding contracts, the Secretary would be required to contract only with recovery audit contractors that have the staff with the appropriate clinical knowledge of and experience with Medicare payment rules and regulations, or recovery audit contractors that will contract with another entity that has the staff with the appropriate knowledge of and experience with Medicare payment rules and regulations. The Secretary shall give preference to entities with more than three years direct management experience and a demonstrated proficiency in audits with private insurers, health care providers, health plans, or state Medicaid programs. Recovery audit contractors cannot be fiscal intermediaries, carriers, or Medicare Administrative Contractors, and the recovery of overpayments by

these contractors would not prohibit the Secretary or the Attorney General from prosecuting allegations of fraud and abuse arising from these overpayments.

Finally, the Secretary would be required to submit a report to The House annually on the use of these recovery audit contractors. Specifically the report would include information on the performance of these contractors as it relates to identifying over and underpayments and in collecting overpayments. The report would also be required to include an evaluation of the comparative performance of these contractors and any Medicare savings that have accrued as a result of their activities.

(b) *Access to Coordination of Benefits Contractor Database*

*Current law*

The Coordination of Benefits (COB) Contractor consolidates the activities that support the collection, management, and reporting of other insurance coverage for Medicare beneficiaries. The purposes of the COB program are to identify the health benefits available to a Medicare beneficiary and to coordinate the payment process to prevent mistaken payment of Medicare benefits.

*Explanation of provision*

For the purpose of carrying out their audit and recovery activities, the Secretary of HHS would provide recovery audit contractors with access to the database of the Coordination of Benefits Contractors of the Centers for Medicare and Medicaid Services during the current fiscal year and for a period of up to 4 fiscal years prior to the current fiscal year.

(c) *Conforming Amendments to Current Demonstration Project*

*Current law*

Section 306 of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 requires that the Secretary's demonstration project using recovery audit contractors last for no longer than three years. After the completion of the program, the Secretary shall submit to The House a report on the project and its impact on savings to the Medicare program.

*Explanation of provision*

The provision would continue the use of recovery audit contractors until all contracts could be entered into. The provision would also eliminate the requirement that the Secretary submit to The House a report not later than 6 months after the project's completion on the impact of recovery audit contractors' activities on Medicare savings.

*Reason for change*

Recovery audit contractors provide a valuable service in identifying and recovering improper payments in the Medicare program. The services provided by these auditors are highly skilled and specialized, and were never utilized by the Medicare program prior to the current demonstration. The results of the demonstration document that significant amounts of funds have been returned to Medicare, and are expected to be returned to the program in the future. In fact, the Congressional Budget Office expects that this program would reduce net Medicare spending—that is, recoveries of overpayments would exceed the payments to contractors, program management costs, and outlays to correct underpayments. Based on the results of the demonstration, extension and national expansion of the recovery audit program will result in the return of substantial funds to Medicare in an efficient and cost effective manner.

Section 303. Funding for the Health Care Fraud and Abuse Control Account

(a) *Departments of Health and Human Services and Justice*

*Current law*

The Health Insurance Portability and Accountability Act of 1996 (HIPAA, P.L. 104-91) established section 1128C of the Social Security Act, which authorized the creation of a national health care fraud and abuse control program headed by the Secretary of HHS and the Attorney General. In Section 1817(k) of the Social Security Act, HIPAA created an expenditure account within the Medicare Federal Hospital Insurance Trust Fund called the Health Care Fraud and Abuse Control (HCFAC) Account. Within the HCFAC account, the legislation appropriated funds to HHS and DOJ at an amount of \$104 million in FY97 and for FY98 through FY03 at annual increases of 15 percent above the preceding year. For each fiscal year after 2003, the annual appropriation available to HHS and DOJ was to be capped at the FY 2003 level of \$240.6 million. The legislation also established a separate funding stream within the HCFAC account to support activities undertaken by the FBI. Funding for the FBI was increased from \$47 million in FY97 to \$114 million in FY03. The legislation capped FBI funding at the FY03 level for FY03 and beyond.

*Explanation of provision*

Section 303 would extend appropriations for the Health Care Fraud and Abuse Control Program through FY06 and beyond. For FY98 through FY03, the annual appropriation to HHS and DOJ is the limit for the preceding fiscal year increased by 15 percent. This bill would extend the annual appropriation for FY04 through FY06 to the FY03 level. For fiscal years 2007 through 2010, the annual appropriation would be the limit for the preceding year plus the percentage increase in the consumer price index for all urban consumers. For each fiscal year beyond 2010, the legislation would cap the appropriation at the FY10 level.

For the Office of the Inspector General of HHS, Section 303 would extend the annual appropriation of \$160 million through FY06. For FY07, the bill would increase the FY06 appropriation to OIG by the percentage increase in the consumer price index. For fiscal years 2008, 2009, and 2010, the annual appropriation would increase by the limit for the preceding year plus the percentage increase in the consumer price index for all urban consumers. For each fiscal year after FY10, the legislation would cap the appropriation at the FY10 level.

*Reason for change*

Funding levels are capped under law, and increased funding will be provided to continue activities covered by the HCFAC Account to help combat waste, fraud and abuse.

(b) *Federal Bureau of Investigations*

*Current law*

The Health Insurance Portability and Accountability Act of 1996 (HIPAA, P.L. 104-91) established section 1128C of the Social Security Act, which authorized the creation of a national health care fraud and abuse control program headed by the Secretary of HHS and the Attorney General. In Section 1817(k) of the Social Security Act, HIPAA created an expenditure account within the Medicare Federal Hospital Insurance Trust Fund called the Health Care Fraud and Abuse Control (HCFAC) Account. Within the HCFAC account, the legislation appropriated funds to HHS and DOJ at an amount of \$104 million in FY97 and for FY98 through FY03 at annual increases of 15 percent above the preceding year. For each fiscal year after 2003, the annual appropriation available to HHS and

DOJ was to be capped at the FY 2003 level of \$240.6 million. The legislation also established a separate funding stream within the HCFAC account to support activities undertaken by the FBI. Funding for the FBI was increased from \$47 million in FY97 to \$114 million in FY03. The legislation capped FBI funding at the FY03 level for FY03 and beyond.

#### *Explanation of provision*

Section 303 would extend the annual appropriation to the Federal Bureau of Investigations (FBI). For fiscal years 2003 through 2006, the annual appropriation to the FBI for fraud and abuse activities would be capped at the FY02 level of \$114 million. For fiscal years 2007 through 2010, the annual appropriation would be the limit for the preceding year plus the percentage increase in the consumer price index for all urban consumers. For each fiscal year after 2010, the legislation would cap the appropriation at the FY2010 level.

#### *Reason for change*

Funding levels are capped under law, and increased funding will be provided to continue activities covered by the HCFAC Account.

#### Section 304. Implementation funding

##### *Current law*

No current law.

#### *Explanation of provision*

For implementation of provisions and amendments made by this title and titles I and II of this division, other than the section requiring the Inspector General in the Department of Health and Human Services to conduct a study of never events, the provision would require the Secretary of Health and Human Services to transfer \$45,000,000 to the CMS Program Management Account for FY2007 and FY2008, from the Federal Hospital Insurance Trust Fund, and the Federal Supplementary Medical Insurance Trust, in appropriate proportions.

#### TITLE IV—MEDICAID AND OTHER HEALTH PROVISIONS

#### Section 401. Extension of Transitional Medical Assistance (TMA) and Abstinence Education Program

##### *Current law*

States are required to continue Medicaid benefits for certain low-income families who would otherwise lose coverage because of changes in their income. This continuation is known as transitional medical assistance (TMA). Federal law permanently requires four months of TMA for families who lose Medicaid eligibility due to increased child or spousal support collections, as well as those who lose eligibility due to an increase in earned income or hours of employment. The House expanded work-related TMA under Section 1925 of the Social Security Act in 1988, requiring states to provide TMA to families who lose Medicaid for work-related reasons for at least six, and up to 12, months. The sunset date for Section 1925 has been extended a number of times, most recently through December 31, 2006 by the Deficit Reduction Act of 2005.

Under Section 510 of the Social Security Act, federal law appropriated \$50 million annually for each of the fiscal years 1998–2003 for matching grants to states to provide abstinence education and, at state option, mentoring, counseling, and adult supervision to promote abstinence from sexual activity, with a focus on groups that are most likely to bear children out-of-wedlock. Funds must be requested by states when they apply for Maternal and Child Health Services (MCH) Block Grant funds and must be used exclu-

sively for the teaching of abstinence. States must match every \$4 in federal funds with \$3 in state funds.

A state's allotment of abstinence education block grant program funding is based on the proportion of low-income children in the state as compared to the national total. Funding for the abstinence education block grant has been extended a number of times, most recently through December 31, 2006 by the Deficit Reduction Act of 2005.

#### *Explanation of provision*

The provision would extend TMA under Section 1925 of the Social Security Act through June 30, 2007. It would also fund the abstinence education block grant program through June 30, 2007 at the level provided through the third quarter of FY2006.

#### Section 402. Grants for research on vaccine against Valley Fever

##### *Current law*

Under existing National Institutes of Health (NIH) authority, the National Institute on Allergy and Infectious Diseases has supported projects to study coccidioidomycosis, known as Valley Fever. Grants have included projects to study the organism that causes Valley Fever; to improve the ability to evaluate vaccine candidates; to support the clinical development of potential drug therapies; and to support acquisition of equipment and facilities for research on the disease, among others.

#### *Explanation of provision*

The Secretary is required to conduct research on the development of a vaccine against coccidioidomycosis, known as Valley Fever. Grants may not be made on or after October 1, 2012. This does not have any legal effect on payments for grants for which amounts appropriated under this section were obligated prior to October 1, 2012.

To carry out this section, \$40 million is authorized for fiscal years 2007–2012.

#### Section 403. Change in Threshold for Medicaid Indirect Hold Harmless Provision of Broad-Based Health Care Taxes

##### *Current law*

Under federal law and regulations, a state's ability to use provider-specific taxes to fund their state share of Medicaid expenditures is limited. If states establish provider-specific taxes, those taxes cannot generally exceed 25 percent of the state (or non-federal) share of Medicaid expenditures and the state cannot provide a guarantee to the providers that the taxes will be returned to them. However, there is what is referred to as a "safe harbor." If the taxes returned to a provider are less than 6 percent of the provider's revenues, the prohibition on guaranteeing the return of tax funds is not violated. Those taxes do not have to undergo the process, defined in section 433.68 of Title 42 of the Code of Federal Regulations, of determining if a guarantee exists. As a result, a state could impose a provider tax of 6 percent of revenues, return those revenues right back to those providers in the form of a Medicaid "payment" and receive a federal match for those amounts. In effect, the state has temporarily borrowed funds from the provider to receive additional federal funds. The President's FY2006 budget proposes to phase the 6 percent "safe harbor" for provider taxes down to 3 percent although no new regulation has been issued on this subject to date.

#### *Explanation of provision*

For the fiscal periods beginning on or after January 1, 2008 and ending before October 1, 2011, the "safe harbor" percentage would be reduced from 6 percent to 5.5 percent.

Section 404. DSH allotments for fiscal year 2007 for Tennessee and Hawaii

##### *(A) Tennessee*

##### *Current law*

Tennessee operates its Medicaid program under a comprehensive statewide waiver, the terms and conditions of which have been negotiated by the state and CMS. Medicaid demonstration waivers, authorized under Section 1115 of the Social Security Act, allow states a great deal of flexibility on how eligibility for Medicaid is determined, how Medicaid services are provided, and what those services are comprised of. States operating under a waiver are subject to a budget neutrality requirement intended to hold program spending under the waiver to estimates of amounts that would have been spent in the absence of the waiver. Because Tennessee receives its Medicaid funds under the provisions of the waiver, it does not receive federal matching for Medicaid payments to disproportionate share (DSH) hospitals nor do they receive an allotment for DSH payments (state by state allotments are calculated based on a formula in Medicaid law and represent a federal cap on the amount that the federal government will provide in DSH matching payments to any state.) DSH payments, however, continue to be counted as a component in Tennessee's budget neutrality calculation since, in the period prior to the waiver approval, the state was required to make DSH payments, and if the waiver had not been granted, the requirement to make those payments would continue to have applied.

#### *Explanation of provision*

The provision would establish a DSH allotment for the state of Tennessee for fiscal year 2007 equal to the greater of the amount that is reflected in the budget neutrality provision for the TennCare demonstration year ending in 2006 and \$280 million. Federal matching payments to the state for DSH hospitals for fiscal year 2007 would, however, be limited to one-third of the DSH allotment. Those amounts would be considered TennCare project expenditures and would be subtracted from TennCare demonstration payments for Essential Access Hospital supplemental pool payments. The sum of the DSH payments and the Essential Access Hospital supplemental pool payments would be prohibited from exceeding the allotment amount. The state would be permitted to submit a state plan amendment describing the methodology to be used to identify DSH hospitals and to make payments to such hospitals.

##### *(B) Hawaii*

##### *Current law*

Like Tennessee, Hawaii operates its Medicaid program under a statewide waiver, the terms and conditions of which have been negotiated by the state and CMS. The state does not make DSH payment under their waiver program and does not have a DSH allotment in Medicaid law.

#### *Explanation of provision*

The provision would set a DSH allotment for Hawaii for fiscal year 2007 at \$10 million. The Secretary shall permit Hawaii to submit an amendment to its State plan under this title that describes the methodology to be used by the State to identify and make payments to disproportionate share hospitals, including children's hospitals and institutions for mental diseases or other mental health facilities. The Secretary may not approve such plan amendment unless the methodology described in the amendment is consistent with the requirements under this section for making payment adjustments to disproportionate share hospitals.

Section 405. Certain Medicaid DRA technical corrections

(a) *Technical corrections relating to State option for alternative premiums and cost sharing (Sections 6041 through 6043)*

*Current law*

P.L. 109-171 allows states to impose premiums and cost-sharing for any group of individuals for any type of service (except prescribed drugs which are treated separately), through Medicaid state plan amendments (rather than waivers), subject to specific restrictions. Preferred drugs are defined as those that are the least (or less) costly effective prescription drugs within a class of drugs (as defined by the state). Premium and cost-sharing rules for workers with disabilities were not changed in P.L. 109-171.

*Individuals in families with income below 100% of the federal poverty line (FPL).* Premiums and service-related cost-sharing imposed under this option are allowed to vary among classes or groups of individuals, or types of service. Explicit rules are provided by income level for those with income between 100-150% FPL and for those with income over 150% FPL.

States are allowed to condition the provision of medical assistance on the payment of premiums, and to terminate Medicaid eligibility on the basis of failure to pay a premium if that failure continues for at least 60 days. States may apply this provision to some or all groups of beneficiaries, and may waive premium payments in cases where such payments would be an undue hardship. In addition, the provision allows states to permit providers participating in Medicaid to require a Medicaid beneficiary to pay authorized cost-sharing as a condition of receiving care or services. Providers may be allowed to reduce or waive cost-sharing amounts on a case-by-case basis.

For the purposes of cost-sharing, two income-related groups are identified: (1) individuals in families with income between 100 and 150% FPL, and (2) individuals in families with income over 150% FPL. For both groups, the total aggregate amount of all cost-sharing (including special cost-sharing rules for prescribed drugs and emergency room copayments for non-emergency care) cannot exceed 5% of family income as applied on a quarterly or monthly basis as specified by the state.

*Treatment of non-preferred drug cost-sharing.* Special cost-sharing for prescribed drugs is subject to the general 5% aggregate cap on cost-sharing for individuals with income between 100-150% FPL and for individuals with income over 150% FPL who are not otherwise exempt from service-related cost-sharing.

*Treatment of non-emergency cost-sharing.* Individuals exempt from premiums or service-related cost-sharing under other provisions of P.L. 109-171 may be subject to nominal copayments for non-emergency services in an ER, only when no cost-sharing is imposed for care in hospital outpatient departments or by other alternative providers in the area served by the hospital ER. For non-exempt populations with income between 100-150% FPL, cost-sharing for non-emergency services in an ER cannot exceed twice the nominal amounts. For non-exempt populations with income exceeding 150% FPL, no cost-sharing limit is specified for non-emergency care in an ER. Aggregate caps on cost-sharing (described above) still apply.

*Definition of non-emergency services.* The term "non-emergency services" means any care or services furnished in an emergency department of a hospital that the physician determines do not constitute an appropriate medical screening examination or stabilizing examination and treatment required to be provided by the hospital under Medicare law (Section 1867 of the Social Security Act).

*Exemption from cost-sharing for newly eligible children with disabilities.* Section 6062 of P.L. 109-171 created a new optional Medicaid eligibility group for children with disabilities under age 19 who meet the severity of disability required under the Supplemental Security Income program (SSI) without regard to any income or asset eligibility requirements applicable under SSI for children, and whose family income does not exceed 300% FPL. (States can exceed 300% FPL, without federal matching funds for such coverage.) Special premium and cost-sharing rules apply to this new group of eligibles.

*Explanation of provision*

The definition of preferred drugs would be amended to include those that are the most (or more) cost effective prescription drugs within a class of drugs (as defined by the state). In addition to separate cost-sharing provisions for prescribed drugs, the amendment would clarify that separate cost-sharing provisions also apply to nonemergency services provided in an emergency room.

*Individuals in families with income below 100% of the federal poverty line (FPL).* The amendment would exempt from the general cost-sharing rules in new Section 1916A (a) all individuals in families with income below 100% of the federal poverty line (FPL). However, Section 1916 of Title XIX (nominal cost-sharing provisions) would still apply to this income group, as would the comparability rule regarding amount, duration and scope of available benefits (Section 1902(a)(10)(B)). States would still have the option to impose the special cost-sharing rules for prescribed drugs and non-emergency care provided in an emergency room to individuals in families with income below 100% FPL.

The amendment would exempt individuals in families with income below 100% FPL from the provisions defining enforceability of premiums and other cost-sharing. Protections regarding payment of premiums and cost-sharing in Section 1916(c)(3) and Section 1916(e) would continue to apply to this income group.

The amendment would apply the total aggregate cap of 5% of family income to individuals in families with income below 100% FPL for applicable cost-sharing with respect to nominal amounts (as defined in Section 1916), and prescribed drugs and emergency room copayments for non-emergency care (as defined in new Sections 1916A(c) and 1916A(e)).

*Treatment of non-preferred drug cost-sharing.* The amendment would clarify that no cost-sharing for preferred drugs can be imposed on individuals exempt from service-related cost-sharing under the general cost-sharing provisions (identified in new Section 1916A(a)). It would also clarify that no more than nominal cost-sharing amounts may be imposed for non-preferred drugs on individuals exempt from services-related cost-sharing under the general cost-sharing provisions.

*Treatment of non-emergency cost-sharing.* The amendment would clarify that for non-exempt persons with income between 100-150 percent FPL, cost-sharing for nonemergency care in an ER may not exceed twice the applicable nominal amount (up to the 5 percent aggregate cap). For persons with income below 100 percent FPL or who are exempt from service-related cost-sharing, cost-sharing for non-emergency care in an ER may not exceed the applicable nominal amount when no cost-sharing is imposed by the outpatient department or alternative providers. The 5 percent aggregate cap on all service-related costsharing for all income groups remains in effect.

*Definition of non-emergency services.* The amendment would strike the phrase "the

physician determines" from the definition of non-emergency services as provided in P.L. 109-171.

*Exemption from cost-sharing for newly eligible children with disabilities.* The amendment would exempt this new optional eligibility group for children with disabilities established under P.L. 109-171 from the premium and service-related costsharing rules under new Section 1916A.

*Correction of IV-B References.* Among the groups explicitly exempted from the general cost-sharing provisions for premiums and cost-sharing, the amendment would change references to Title IV-B to mean child welfare services made available under Title IV-B on the basis of being a child in foster care.

*Effective Date.* The amendment specifies that all changes made by this amendment are effective as if included in the affected sections and subsections of P.L. 109-171.

(b) *Clarifying Treatment of Certain Annuities (Section 6012)*

*Current law*

Under Section 6012(b) of P.L. 109-171, the purchase of an annuity is treated as a disposal of an asset for less than fair market value unless certain criteria are met. One of these criteria is that the state be named as the remainder beneficiary in the first position for at least the total amount of Medicaid expenditures paid on behalf of the annuitant or be named in the second position after the community spouse or minor or disabled child and such spouse or a representative of such child does not dispose of any such remainder for less than fair market value.

*Explanation of provision*

The provision would strike the term "annuitant" and replace it with "institutionalized individual." This change would become effective as if it had been included in DRA 2005, enacted on February 8, 2006.

(c) *Additional Miscellaneous Technical Corrections*

(1) *Documentation (Section 6036)*

*Current law*

Under Section 6036 of P.L. 109-171, states are prohibited from receiving federal Medicaid reimbursement for an individual who has not provided satisfactory documentary evidence of citizenship or nationality. Documents that provide satisfactory evidence are described in the law, as are exceptions to the documentation requirement.

Section 6036(a)(2) of the law specifies that the documentation requirements do not apply to an alien who is eligible for Medicaid:

And is entitled to or enrolled for Medicare benefits;

On the basis of receiving Supplemental Security Income (SSI) benefits; or

On such other basis as the Secretary may specify that satisfactory documentary evidence had been previously presented.

The provision applies to initial determinations and to redeterminations of eligibility for Medicaid made on or after July 1, 2006.

*Explanation of provision*

The provision would specify that the documentation requirements do not apply to an individual declaring to be a citizen or national of the United States who is eligible for Medicaid:

And is entitled to or enrolled for Medicare benefits;

And is receiving (1) Social Security benefits on the basis of a disability or (2) SSI benefits;

And with respect to whom (1) child welfare services are made available under Title IV-B of the Social Security Act or (2) adoption or foster care assistance is made available under Title IV-E; or

On such basis as the Secretary may specify that satisfactory documentary evidence has been previously presented.

The provision would also make reference corrections. These changes would be effective as if included in the Deficit Reduction Act of 2005.

In addition, effective 6 months after enactment, the provision would (1) require states to have procedures in effect for verifying the citizenship or immigration status of children in foster care under the responsibility of the state under Title IV-E or IV-B of the Social Security Act and (2) specify that in reviews of state programs under IV-E and IV-B, the requirements subject to review shall include determining whether the state program is in conformity with the requirement to verify citizenship or immigration status.

(2) Miscellaneous Technical Corrections

*Current law*

*Section 5114(a)(2).* This P.L. 109-171 provision modified the first sentence of Section 1842(b)(6)(F) of the Social Security Act to add a new paragraph H to 1842(b)(6) so that a federally qualified health center (FQHC) would be paid directly for FQHC services provided by a health care professional under contract with that FQHC.

*Section 6003(b)(2).* This P.L. 109-171 provision modified Section 1927 of the Social Security Act by referencing subsection (k) relating to Section 505(c) drugs.

*Section 6031(b), 6032(b), and 6035(c).* These sections referenced Section 6035(e) of P.L. 109-171, which does not exist, to provide exceptions to effective dates.

*Section 6034(b).* Section 6034 of P.L. 109-171 establishes the Medicaid Integrity Program. It references modifications made to the Social Security Act by Section 6033(a).

*Section 6036(b).* Section 6036 of P.L. 109-171 deals with improved enforcement of documentation requirements. Section 6036(b) references Section 1903(z) of the Social Security Act. This section does not exist.

*Section 6015(a)(1).* Section 6015 of P.L. 109-171 pertains to continuing care retirement community admissions contracts. It makes reference to clause (v) of Section 1919(c)(5)(A)(i)(II) of the Social Security Act.

*Explanation of provision*

*Section 5114(a)(2).* Instead of modifying Section 1842(b)(6)(F) to add paragraph H, the amendment would modify Section 1842(b)(6) of the Social Security Act.

*Section 6003(b)(2).* Instead of referencing subsection (k) of Section 1927 of the Social Security Act, the amendment would reference subsection (k)(1).

*Section 6031(b), 6032(b), and 6035(c).* Instead of referencing Section 6035(e), the amendment would reference the effective date exception in Section 6034(e) of P.L. 109-171.

*Section 6034(b).* Instead of referencing modifications made by Section 6033(a) of P.L. 109-171, the amendment would reference Section 6032(a).

*Section 6036(b).* Instead of referencing Section 1903(z) of the Social Security Act, the amendment would reference Section 1903(x).

*Section 6015(a)(1).* Instead of referencing clause (v) of Section 1919(c)(5)(A)(i)(II) of the Social Security Act, the amendment would reference subparagraph (B)(v).

REMARKS ON H. RES. 1106

HON. CYNTHIA MCKINNEY

OF GEORGIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, December 27, 2006

Ms. MCKINNEY. Mr. Speaker, I wish to enter the following into the CONGRESSIONAL RECORD:

ADDENDA TO A RESOLUTION INTRODUCING ARTICLES OF IMPEACHMENT AGAINST GEORGE WALKER BUSH, PRESIDENT OF THE UNITED STATES OF AMERICA, AND OTHER OFFICIALS; FURTHER ACTIONS BY THE PRESIDENT THAT WARRANT FURTHER INVESTIGATION AS POSSIBLE GROUNDS FOR IMPEACHMENT AS IDENTIFIED BY MANY SCHOLARS, LAWYERS AND CONCERNED CITIZENS

I. FAILURE TO ENSURE THE LAWS ARE FAITHFULLY EXECUTED

- (1) Self-Exemption from Laws upon Signing.
- (2) Suspension of Basic Legal Proceedings.
- (3) Promoting Illegal War.
- (4) Promoting Torture.
- (5) Promoting Kidnappings and Renditions for Torture.
- (6) Use of Illegal Weapons.

II. ABUSE OF OFFICE AND OF EXECUTIVE PRIVILEGE

- (1) Obstructing Inquiry and Detection.
- (2) Replacing the Veto with Signing Statements.

III. FAILURE TO PRESERVE, PROTECT AND DEFEND THE CONSTITUTION

- (1) Suspension of Due Process.
- (2) Unreasonable Searches and Seizures.
- (3) Non-Cooperation with Congress.
- (4) Establishment of an Unconstitutional, Parallel Legal System.

I. FAILURE TO ENSURE THE LAWS ARE FAITHFULLY EXECUTED

Under Article II, Section 3 of the Constitution of the United States of America, the President has a duty to "take Care that the Laws be faithfully executed." George Walker Bush, during his tenure as President of the United States, has repeatedly violated the letter and spirit of laws and rules of criminal procedure used by civilian and military courts, and has violated or ignored regulatory codes and practices that carry out the law, has contravened the laws governing agencies of the executive and the purposes of these agencies, and in conducting the foreign affairs of the United States of America has proceeded in flagrant violation of the core body of international laws, to which the United States of America is bound by treaty.

With respect to domestic law, this conduct has included one or more of the following:

(1) Self-Exemption from Laws upon Signing. Since assuming the office of President of the United States, George Walker Bush has attached signing statements to more than one hundred bills before signing them, with in which he has made over eight hundred challenges to provisions of laws passed by Congress, a figure that exceeds the total number of such challenges by all previous presidents combined, and has used this practice to exempt himself, as President of the United States, from enforcing or from being held accountable to provisions of the said laws.

(2) Suspension of Basic Legal Proceedings. In dereliction of his duty to uphold the law, George Walker Bush has systematically violated basic legal and criminal procedures that require any search, seizure, arrest or detention to be non-discriminatory, based on probable cause and sufficient evidence to warrant a stated charge, that provide access to legal counsel, arraignment and the option of bail within a period of days, and that require reasonable and non-coercive interrogations, rights of silence, as well as privy communications with counsel and with others, pending an outcome of either release or a speedy and public trial, conducted in accord with federal and state statutes on criminal and court process, the provisions of the Uniform Code of Military Justice, applicable

international law, or appeals to higher courts that apply. By ordering mass arrests and indefinite detentions based on indiscriminate profiling of specific populations, George Walker Bush has also systematically violated laws prohibiting harmful extraditions, secret arrest and custody, and denial of defined and legal periods of detention or incarceration.

With respect to international law, this conduct has included one or more of the following:

(3) Promoting Illegal War. Abraham Lincoln wrote in 1848, "Allow the President to invade a neighboring nation whenever he shall deem it necessary to repel an invasion and you will allow him to do so whenever he may choose to say he deems it necessary for such purpose, and you will allow him to make war at pleasure. If today, he should choose to say he thinks it necessary to invade Canada, to prevent the British from invading us, how could you stop him? You may say to him, 'I see no probability of the British invading us,' but he will say to you, 'Be silent; I see it, if you don't.'" In direct violation of Articles 41 and 42 of the United Nations Charter, a treaty ratified by the United States Senate in 1945 and therefore the supreme law of the land as according to Article VI of the Constitution, George Walker Bush has advanced and executed a policy based on so-called pre-emptive or preventive war, whereby the United States of America claims the right to unilaterally assault, invade or occupy other nations without first engaging in collective measures with other member states of the United Nations or first gaining the prior assent of the United Nations Security Council, and whereas George Walker Bush did apply this doctrine by launching a war of aggression against the sovereign nation of Iraq, resulting in the deaths of tens of thousands of Iraqi civilians and thousands of United States military personnel, without United Nations Security Council authorization, whereby said George Walker Bush, as President of the United States, by advancing a doctrine of preventive war and initiating and continuing the invasion and occupation of Iraq by United States forces did commit and was guilty of precisely such abuses as Abraham Lincoln foresaw.

(4) Promoting Torture. In direct violation of, and as part of a pattern of consistent attempts through executive orders, legal memoranda and alterations to regulations such as the Army Field Manual, to undermine the Federal Torture Statute [18 USC Sec. 2340A]; the Third Geneva Convention banning torture and abuse of Prisoners of War, as well as non-combatants and unarmed ("enemy") combatants held in detention; and Articles 4 and 32 of the Fourth Geneva Convention, which expressly prohibit not merely torture but physical abuse of any kind being inflicted upon "persons protected by the Convention," defined as "those who, at a given moment and in any manner whatsoever, find themselves, in case of a conflict or occupation, in the hands of a Party to the conflict or Occupying Power of which they are not nationals," this language being written as a precaution against and in anticipation of alternate definitions of torture, these declarations and treaties being ratified by the United States Senate and therefore the supreme law of the land as according to Article VI of the Constitution, George Walker Bush, as President of the United States of America, has condoned and presided over a vast expansion of the use of torture against unarmed combatants and civilian non-combatants, both foreign and domestic, detained or kidnapped by forces or agents of the United States, leading to extreme pain, psychological trauma, disfigurement and in

some cases, death. By signing a legal memorandum on February 7, 2002 (declassified on June 17, 2004), in which he wrote that "The war on terror ushers in a new paradigm," one which requires "new thinking in the law of war," and decreeing that, contrary to all past military practices of an official nature, the United States would no longer be constrained by the laws of war presently in force in its treatment of those captured during its invasion and occupation of Afghanistan and subsequently detained, a legal opinion which the Supreme Court struck down on June 29, 2006 (*Hamdan v. Rumsfeld*) by its ruling that the Third Geneva Convention did apply to detainees in the custody of the United States, George Walker Bush, President of the United States, by his concerted efforts to undermine any legal limits on the use of torture by United States personnel, did commit and was guilty of high crimes against the United States of America.

(5) Promoting Kidnappings and Renditions for Illegal Torture. In direct violation of the United Nations Convention Against Torture, Article 3, which states that "No State party shall expel, return or extradite a person to another state where there are substantial grounds for believing that he would be in danger of being subjected to torture," and the Fourth Geneva Convention, Articles 31 and 45, the said conventions having been ratified by the United States Senate and therefore the supreme law of the land as according to Article VI of the Constitution, George Walker Bush, as President of the United States of America, did sign, on September 17, 2001, an executive order (still classified) granting unilateral authority to the Central Intelligence Agency to render detainees to countries where torture is routinely practiced for the express purpose of interrogation, thereby subverting an established program of rendering detainees to justice by bringing them to the United States or to a country in which they were wanted to face criminal charges in a court of law. And whereas the Central Intelligence Agency did thereafter carry out this order not only by rendering hundreds of detainees to countries where they were subsequently tortured, but also in many cases first illegally kidnapping the detainees, and did subsequently establish secret detention centers, operating outside any known laws, for the express purpose of circumventing all legal protections to which the said detainees were entitled under international law.

(6) Use of Illegal Weapons. In violation of multiple and diverse tenets of international law, George Walker Bush, as President of the United States, has authorized or sanctioned the use of illegal weapons, including but not limited to the following:

(a) land mines, deployed by United States forces in Afghanistan and Iraq, which indiscriminately injure and kill combatants and innocent civilians alike, and which are therefore illegal under Geneva Conventions Protocol I, Article 85, which states that it is a war crime to launch "an indiscriminate attack affecting the civilian population in the knowledge that such an attack will cause an excessive loss of life or injury to civilians," and which are banned under the Protocol II of the Convention on Certain Conventional Weapons, which forbids the deployment of any "mine, booby-trap or other device which is designed or of a nature to cause superfluous injury or unnecessary suffering;"

(b) cluster bombs, including those which upon explosion project lethal plastic fragments not detectable by X-ray, deployed by United States forces in Afghanistan and Iraq, which leave unexploded ordnance known to maim and kill innocent civilians and which are therefore also illegal under Geneva Conventions Protocol I, Article 85, as

well as under Protocol I of the Convention on Certain Conventional Weapons, which bans the use of "the use of any weapon the primary effect of which is to injure by fragments which in the human body escape detection by X-rays," and under Annexed Articles 22 and 23 of the Hague Convention IV, which states that "It is especially forbidden to kill treacherously individuals belonging to the hostile nation or army;"

(c) depleted uranium munitions, being radiological weapons used extensively by United States Forces in Iraq and Afghanistan, in violation of Geneva Conventions Protocol I, Articles 35.2, 35.3, 48 and 55.1, which prohibit the use of "projectiles and material and methods of warfare of a nature to cause superfluous injury or unnecessary suffering" or weapons "which are intended, or may be expected, to cause widespread, long-term and severe damage to the natural environment" or damage to "the health or survival of the population," and which have been classified as "weapons of mass destruction" by the United Nations Subcommittee on Prevention of Discrimination and Protection of Minorities;

(d) napalm, a weapon widely used in Vietnam, an upgraded kerosene-based version of which has more recently been used by United States forces in Iraq, being dubbed the "Mark 77 firebomb", in violation of the Chemical Weapons Convention, Article II.1.b, which expressly prohibits "Munitions and devices, specifically designed to cause death or other harm through the toxic properties" of the device when used as a weapon;

(e) white phosphorous, which Defense Department spokesman Lieutenant-Colonel Barry Venable confirmed on November 15, 2005 was deployed "as an incendiary weapon" in urban areas of Fallujah, Iraq, where there were high concentrations of civilians, during Operation Phantom Fury (November 2004–January 2005), making the said deployment of white phosphorous a violation of the Chemical Weapons Convention, Article II.1.b;

(f) BLU-82B/C-130 "daisy cutter" bombs, being massive incendiary bombs deployed by United States forces in Afghanistan, and which upon detonation create a firestorm the size of five football fields or greater, and a vacuum pressure capable of collapsing internal organs, in violation of Geneva Conventions Protocol I, Articles 35, 48, 51 and 55, which expressly forbid such indiscriminate destruction of civilian life and the environment;

the United States of America being a signatory to all the above cited international legislation, as ratified by the Senate and therefore being the supreme law of the land under Article VI of the Constitution, whereby said George Walker Bush, President of the United States, did commit war crimes.

In all of this, George Walker Bush's conduct has followed a pattern of not merely failing to uphold the laws he took an oath to defend as President of the United States, but of flouting such laws with the impunity of a dictator. Indeed, on numerous occasions, George Walker Bush has openly expressed his desire to become a dictator, as he did while President-Elect on December 18, 2000, when he stated: "If this were a dictatorship, it'd be a heck of a lot easier . . . just as long as I'm the dictator . . ."

This arrogant posture has also been typical in foreign affairs where he has made concerted efforts to undermine international law and international treaties, including his termination of the Anti-Ballistic Missile Treaty without the assent of the legislative branch, his decision to rescind the authorizing signature of the United States from the Rome Statute of the International Criminal Court, his willingness to offend the 152 nations who are signatories to the Ottawa

Treaty by refusing to sign and continuing the use of land mines by the world's most powerful military rather than asserting America's moral leadership, his willingness to offend the 93 nations who are parties to the Convention on Certain Conventional Weapons Protocol III by refusing to sign and continuing the use of incendiary weapons against civilian targets, his defiance of the United Nations Security Council by launching a unilateral war of aggression against the government and the people of Iraq, and in general showing little remorse over or regard for the tens of thousands of innocent civilians and American service personnel who have perished as a direct or indirect result of his foreign policy.

## II. ABUSE OF OFFICE AND OF EXECUTIVE PRIVILEGE

In taking his oath of office, the President swore to "faithfully execute the office of President of the United States." George Walker Bush, in his conduct while President of the United States, has consistently demonstrated disregard for that oath by obstructing and hindering the work of investigative bodies, by seeking to expand the scope of the powers of his office, by failing to ensure a swift response to a natural disaster where lives were in the balance, and by failing to appoint competent officials or to hold those whom he appoints or those to whom the government grants contracts accountable in cases of dereliction of duty, abuse and outright fraud.

(1) Obstructing Inquiry and Detection. At the Virginia Convention on ratification of the Constitution, George Mason argued that the President might usurp his powers to "pardon crimes which were advised by himself" or prior to indictment or conviction "to stop inquiry and prevent detection," to which James Madison responded that if he did so, "the House of Representatives would impeach him." In an effort to conceal the high crimes and misdemeanors here mentioned, George Walker Bush, in his conduct as President of the United States of America, has presided over the most secretive Presidency in this nation's history, and an administration which actively interferes with the free flow of information by manipulating the press and frustrating its ability to provide an oversight function by being actively hostile to questioning from the press, by placing imposters posing as agents of the press at press conferences, by threatening reporters with prosecution under espionage laws, and by purchasing television segments and placing newspaper stories falsely posing as unbiased reporting in an effort to promote Administration policies. The conduct of this Administration follows a pattern of seeking to hush "whistleblowers" who come forward to share potentially incriminating information with the public, rather than investigating the alleged crime. This Administration has also refused to provide key information to Congressional investigations, and to prosecutors investigating the outing of a Central Intelligence Agency Officer in an apparent act of retribution, or to actively pursue the identity of the guilty informant, despite the President's public pledge to fire the guilty party once discovered, and even after one Administration official was charged in the case with obstruction of justice. George Walker Bush has abused his office by consistently invoking executive privilege in order to shelter his office and his appointees from both Congressional oversight and judicial accountability.

(2) Replacing the Veto with Signing Statements. By declining to veto even one bill, and instead attaching signing statements challenging hundreds of laws passed by Congress, thereby seeking to exempt the executive branch from accountability to said laws,

George Walker Bush has subverted the very nature of his office by seeking to add to his office extraordinary and unconstitutional powers and privileges.

### III. FAILURE TO PRESERVE, PROTECT AND DEFEND THE CONSTITUTION

At the Constitutional Convention, James Madison argued that "high Crimes and Misdemeanors" intentionally included "[a]ttempts to subvert the Constitution." In taking his oath of office, the President swore to "preserve, protect, and defend the Constitution of the United States" to the best of his ability, which includes the duty not to abuse his powers or transgress their limits, the duty not to violate the rights of citizens, including those guaranteed by the Bill of Rights, and not to act in derogation of powers vested elsewhere by the Constitution. George Walker Bush, in his conduct while President of the United States has not only failed in this regard, but has demonstrated a pattern of disregard or contempt for the Constitution itself, as he clearly demonstrated in November 2005 when he shouted at a group of Republican lawmakers, "Stop throwing the Constitution in my face. It's just a [expletive] piece of paper!"

This conduct has included one or more of the following:

(1) Suspension of Due Process. In direct dereliction of his duty to defend the Constitution, George Walker Bush has systematically deprived citizens and residents of the United States of their constitutional rights to due process under the law, by sanctioning or ordering, at the discretion of the executive, their detention without charge and without trial, a fundamental right to which they are entitled under habeas corpus and the Fifth Amendment of the Bill of Rights; by denying the right to a fair and speedy trial and blocking access to counsel for the defense, both of which are rights guaranteed under the Sixth Amendment in the Bill of Rights; by denying those so illegally detained the opportunity to appear before a judicial officer that they might challenge the legal grounds of their detention; by sanctioning and ordering mass arrests and detentions which inevitably involve all of the above named abuses; and by refusing to disclose the identities and locations of those detained.

(2) Unreasonable Searches and Seizures. In violation of the Fourth Amendment to the Constitution, George Walker Bush did clandestinely direct the National Security Agency, the Federal Bureau of Investigation, the Pentagon and the Department of Homeland Security to conduct electronic surveillance, including a new form of spying using sophisticated software to track internet usage, of citizens of the United States on U.S. soil without seeking to obtain, before or after, a judicial warrant, including spying on groups and individuals who had committed no illegal acts, involving penetration, entrapment and provocation, thereby reviving practices previously discontinued after they were deemed prejudicial to justice by the United States Senate Select Committee to Study Governmental Operations with Respect to Intelligence Activities, chaired by Senator Frank Church.

(3) Non-Cooperation with Congress. In derogation of the legislative functions of the Congress, granted under Article I, Section 1 of the Constitution, and the implied power to see that the laws made by Congress are faithfully executed, George Walker Bush, in his conduct as President of the United States, has engaged in a consistent pattern of obstructing and frustrating Congressional investigations. George Walker Bush opposed and delayed the formation of a commission to investigate the attacks of September 11,

2001, and once it was formed, refused to turn over key documents and information in compliance with subpoenas, and also sought and gained exemption from testifying under oath for all but one top administration official. (Condoleezza Rice). He refused requests from the Select Bipartisan Committee to Investigate the Preparation for and Response to Hurricane Katrina and requests from the 9/11 Commission to turn over key documents and information. Under his administration the Justice Department made it official policy to refuse cooperation with Freedom of Information Act (FOIA) requests, to refuse the release of records or testimony, central to informing government decisions, to re-classify previously unclassified records and to withhold even non-secret documents. These actions severely restrict the ability of the people and their representatives in Congress seeking to hold government officials accountable for their decisions to have access to a record of how official decisions were reached, or even to know what the official policies are. Wherefore, George Walker Bush, by obstructing the work of the Congress, did commit and was guilty of high misdemeanors against the United States of America.

(4) Establishment of an Unconstitutional, Parallel Legal System. Edmund Randolph stated at the Constitutional Convention that: "The Executive will have great opportunities [sic] of abusing his power, particularly in time of war when the military force, and in some respects the public money will be in his hands."

In direct dereliction of his duty to defend the Constitution, George Walker Bush has, during his tenure as President of the United States of America, sanctioned the establishment of a parallel legal system operating outside the scope of the Constitution under which the participants would not be bound by due process or basic rights of the accused to speedy and fair trials, access to counsel, or even the right to know the charges and evidence against them, by replacing these measures with a new form of law involving: secret and indefinite detention without trial or hearing; renditions to other countries outside the reach of law and justice; the use of military tribunals to replace civilian courts; detentions outside normal writ of habeas rules and without access to effective counsel, unmonitored conversations or judicial attention and review; exclusion of the accused from portions of the trial and from access to evidence used against them; acceptance of hearsay, including testimony gained under torture or duress; and a lack of independent judiciary or appeal of conviction. An unknown number of individuals, many of whose names the Administration has refused to release, have already been held in undisclosed locations or secret prisons, and mass arrests have been accompanied by deportations. By failing to conduct timely status review hearings, as required under Article 5 of the Geneva Convention, the Bush Administration has made it effectively impossible to determine the status and the rights of those held in secret detention. Although the Supreme Court has ruled that the denial of rights under the Geneva Accords is illegal [Hamdan vs. Rumsfeld], new proposals from the Bush Administration expand the definition of those who can be detained as "enemy combatants" as no longer limited to aliens abroad, and assert that neither the Uniform Code of Military Justice alone, nor federal criminal procedures will guide the functions of these new courts. George Walker Bush, as President of the United States of America, in defiance of the Supreme Court, and in keeping with a pattern of conduct seeking to exempt himself from its rulings and from constitutional law, did commit violations of domestic law and was guilty of war crimes.

In all of this, George Walker Bush has sought to arrogate unprecedented power to his executive office and to undermine the system of check and balances established by the Founders, by using war and national emergency as the basis for his claims in support of a unitary presidency.

### STATEMENT VOICING CONCERN OVER THE DELAY OF THE INTERNATIONAL TRACING SERVICE (ITS) IN RELEASING THE BAD AROlsen HOLOCAUST ARCHIVES

**HON. ALCEE L. HASTINGS**

OF FLORIDA

IN THE HOUSE OF REPRESENTATIVES

*Wednesday, December 27, 2006*

Mr. HASTINGS of Florida. Mr. Speaker, I rise today deeply concerned about the consistent delay of the commission members of the International Tracing Service (ITS) to permit Holocaust survivors and their families access to the millions of Holocaust records located at Bad Arolsen, Germany.

Mr. Speaker, I strongly urge the nations who have yet to approve the recently agreed upon amendments to the Bonn Accords regarding these archives to give this issue the utmost elevated attention and to be made a top priority in their respective Parliaments.

The ITS Commission, comprised of the United States, Belgium, France, Germany, Greece, Israel, Italy, Luxembourg, the Netherlands, Poland, and the United Kingdom, currently possesses nearly 50 million records documenting Holocaust victims and survivors experiences pre-World War II and during the Holocaust. The records are used to substantiate benefit claims by Holocaust survivors and their heirs and operate under the 1955 agreements, the Bonn Accords.

For the past decade, Holocaust researchers and most survivors have sought and failed to access the Bad Arolsen archive, because the ITS Commission believed it would violate the privacy of the survivors and their families.

Following years of delay, in May 2006, the Commission adopted amendments to the Bonn Accords permitting each Commission member to make the archives public and to receive a digitized copy of the Bad Arolsen archive, which they would be able to make available to researchers under their own country's respective privacy laws.

Unfortunately, 9 out of the 11 ITS Commission member nations have yet to ratify the amendments. With the express acknowledgement of the variance in each country's internal procedures, and the utmost respect for the letter of international law, I strongly encourage parliamentarians from other members of the ITS Commission to ratify the ITS amendments promptly so that the Bad Arolsen archives can be opened at the earliest possible date.

This ongoing delay is a further example of how the Holocaust survivors, who have been part of such unimaginable, horrendous genocide, and the greatest crime against humanity, are perpetually forced to endure severe obstacles and difficulties. Now, the few Holocaust survivors who are here with us today remain tormented by the unknown.

In the Holocaust's aftermath, there have been far too many demonstrations of survivors and heirs of Holocaust victims who have been

refused their moral and legal right to information, restitution of assets, or compensation for slave labor from the entities that profited during the Holocaust.

As the few remaining survivors pass away, many still pass away deprived of information concerning their loved ones and the assets that were rightfully theirs. Let us not continue to waste the precious time left for the remaining survivors. After all of the horrific acts to which they have been subjected, they are completely justified in uncovering the truth about their families and their loved ones without hassle or delay.

This issue is of particular importance to me, given the fact that South Florida is home to the second largest concentration of Holocaust survivors in the United States, and the third largest in the world outside of Israel.

Furthermore, as the President Emeritus of the Organization for Security and Cooperation Parliamentary Assembly in Europe (OSCE), I am committed to the issue of fair and just treatment of Holocaust survivors, and remain dedicated to the prevention of all bigotry, especially anti-Semitism.

Let us not forget that anti-Semitism has not diminished; if anything we have seen a resurgence in recent years. The threat or occurrence of anti-Semitism is still very real to many Jews in the United States and across the world.

Only last week, Iranian President Mahmoud Ahmedinejad held the second Holocaust denial conference in one year in Tehran; the latest in a series of abominable threatening and anti-Semitic, Holocaust denial statements and actions he has taken since he rose to power.

While extremist radicals may continue to spew such hatred and intolerance, I find it embarrassing that others who know better can turn their backs on the remaining Holocaust survivors or on the memory of those who perished in such a tragedy.

I can think of no better way to commemorate the 6 million murdered in the Holocaust, than for each and every international community member to seriously commit to monitor and combat anti-Semitic acts and promote Holocaust remembrance and education.

While tolerance takes time to teach, it is not too late for international member nations of the ITS Commission to assist the remaining Holocaust survivors and grant them direct access to the Bad Arolsen archives as soon as possible.

Mr. Speaker, we should never forget the horrific crimes of murder and destruction committed by the Nazis; and we must commit ourselves to ensuring that future generations shall never be forced to endure the suffering, humiliation, and ultimate death experienced by the victims of the Holocaust.

HOLocaust SURVIVORS'  
FOUNDATION—USA,  
Miami, FL, December 18, 2006.

Congressman ALCEE HASTINGS,  
*House of Representatives,*  
Washington, DC.

DEAR CONGRESSMAN HASTINGS: We are Holocaust survivors, and elected leaders of grass roots survivor organizations with thousands of members in 15 states. As individual claimants and class members, we have witnessed the failed enterprise known as "Holocaust asset restitution" as it has proceeded over the last decade, in litigation over and negotiations over thefts and human exploitation by European manufacturers, banks, insurance companies, railroads, and governments.

Sunday's important story in the Associated Press about the monumental documentation of Nazi crimes at the Bad Arolsen archive highlights the absurdity of the process survivors have been forced to endure over this past decade.

One would have thought that Holocaust survivors, at the end of our lives, would have been treated with the utmost respect and dignity. In reality, however, much of what has passed for "restitution" has been the opposite of what we would have expected, with catastrophic results. Instead, the process has been driven by institutional and organizational imperatives, instead of by the rights, interests, and priorities of the survivors. Too often; these forays have yielded incomplete information disclosure and absurdly low financial compensation. Instead of being principals, we the survivors have been treated as pawns. Instead of receiving dignity and respect, we have received lip service and been patronized by organizations, judges, executive branch officials, and members of Congress.

Another hallmark of restitution, up until now, has been the imperative to give European business and governmental miscreants "legal peace" while calling for arbitrarily set financial settlements to be doled out by institutions that are self-interested or worse in their motives and practices. For example, when the institutions and lawyers we didn't selected "settled" with German industry, they agreed to limit insurance claims against German industry to a ridiculously low, arbitrary sum, without ever conducting an audit of the amount of insurance theft by German insurers and reinsurers. Now, it has been reported that class action lawyers want to forgive Italian insurance giant Generali without ever requiring full disclosure and disgorgement, despite recent evidence that the company stole billions and used the same punch card technology to manage its business used by the Nazis in the Final Solution.

The media and Congress have ignored the fact that in almost every instance, survivors have been denied access to the necessary information required to mount full and effective disgorgement of the ill-gotten gains of the European plunderers. They have ignored the rush to judgment by representatives we didn't select to close the books on restitution. Now, with 16 miles of previously suppressed documents from the Nazi period being made public, isn't it time to halt the rush to judgment, the rush for "closure," and require the full, transparent accounting that we survivors are morally and legally entitled to move forward without any further impediments? We call on all institutions of good faith, in government, in the media, and in the institutional world, to support us in our morally justified demand for transparency and justice.

Israel Arbeiter, Boston, MA.  
Nesse Godin, Washington, DC.  
David Mermelstein, Miami, FL.  
Alex Moskovik, Palm Beach, FL.  
Leo Rechter, Flushing, NY.  
David Schaefer, Miami, FL.  
Henry and Anita Schuster, Las Vegas, NV.  
Fred Taucher, Seattle, WA.  
Lea Weems, Houston, TX.  
Esther Widman, Brooklyn, NY.

GREATER MIAMI  
JEWISH FEDERATION,

Miami, FL, December 11, 2006.

Hon. ALCEE HASTINGS,  
*House of Representatives,*  
Washington, DC.

DEAR CONGRESSMAN HASTINGS: On November 25, Arthur Max, Chief of the Amsterdam Bureau of the Associated Press, published an astonishing report about the massive and previously closed collection of information from the Nazi death camps under the juris-

dition of the International Red Cross and now located at Bad Arolsen, Germany. The scope of the records reported by Mr. Max is breathtaking, as are the moral and policy implications of the revelation.

South Florida is the home to the second largest concentration of Holocaust survivors in the United States, and the third largest in the world outside of Israel. According to Mr. Max's report, survivors and their families have been unjustly denied access to many of the records at Bad Arolsen regarding their own experiences in the camps, or those of their family members. We are mandated by history and morality to remember that this greatest crime against humanity was in fact millions of crimes against millions of human beings, all of whom have the absolute right to receive all of the unvarnished truth about their fate and the fate of their loved ones they wish to learn about today.

We are also painfully aware that far too many examples exist of survivors and heirs of Holocaust victims who have attempted to obtain morally and legally justified restitution of assets, or compensation for horrific slave labor from the entities that profited from the Holocaust, only to be met with rejections, and then, as added insult, to be denied access to the available sources of information they are told justify these rejections.

In addition, there is now abundant evidence that tens of thousands of destitute survivors live in our midst, in the United States and Canada, in Israel, in the Former Soviet Union, in Europe and Australia, and in Latin America, and that government, and community—and restitution-based resources are inadequate to meet their basic human needs. In the United States alone, there are over 45,000 Holocaust survivors living near or below the federal poverty level, and who cannot afford adequate nutrition, housing, home care, medications, or simple and necessary devices such as dentures, eyeglasses, or hearing aids. This is unthinkable in the year 2006, but it is true. As the following chart attests, these numbers are staggering, and widespread around the world.

	Survivor population	Survivors living below or near poverty line
United States .....	175,000	87,500
Israel .....	393,000	137,300
Former Soviet Union .....	146,000	126,000

Sources: Sheskin, Estimates of the Number of Nazi Victims and Their Economic Status, January 2004; Brodsky and DellaPergola, Health Problems and Socioeconomic Neediness Among Jewish Shoah Survivors in Israel, April 2005; American Joint Distribution Committee, Presentation on the Condition and Needs of Jewish Nazi Victims in the Former Soviet Union, January 2004.

We would hope that a thorough accounting of the real thefts suffered by the families of the Holocaust would not only allow for proper and overdue restitution to individuals, but would be a step toward creating sufficient financial resources to provide a dignified level of human existence for every survivor in the world who needs or requests relief.

As leaders of our general and Jewish communities, locally and nationally and even internationally, the Federation Board believes that our generation owes the survivors the dignity of justice in their final years.

In light of these compelling facts, we call upon Congress to take all steps necessary to guarantee immediate access to the Bad Arolsen archive by a qualified group of researchers in order to create a comprehensive and accessible database of information for all affected families without any further delay. As a starting point, we urge you to bring together the responsible U.S. and Red Cross officials to determine the scope of the task and identify the personnel and resources to make this information accessible as soon as humanly possible, beginning immediately. If necessary, we are asking that

Congress enact legislation, with funding if necessary, for the immediate completion of these tasks.

In addition, we ask the United States Congress to explore and encourage any and all methods, including on an emergency basis, legislation, to provide all survivors and heirs a full opportunity to access the Bad Arolsen

materials and to utilize said materials in support of their claims without regard to any previous denials or deadlines.

We look forward to working with you to complete this historically and morally necessary task with the utmost speed. You will find enclosed two relevant articles pertaining to this letter. Please contact either

one of us if you have any questions or concerns or wish to discuss in more detail.

Sincerely,

SABY BEHAR,  
*President.*

JACOB SOLOMON,  
*Executive Vice President.*