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Senate

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

PRAYER

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

Allow the Psalmist to tune your heart to make this a day of praise.

Bless the Lord, O my soul; and all that is within me, bless his holy name.

Bless the Lord, O my soul, and forget not all his benefits.—Psalm 103:1–2.

Let us pray:

Almighty God, Sovereign of this Nation, we praise You for Your amazing grace. Your unlimited love casts out fear, Your unqualified forgiveness heals our memories, Your undeserved faithfulness gives us courage, Your unfailing guidance gives us clear direction, Your presence banishes our anxieties. You know our needs before we ask You, and Your spirit gives us the boldness to ask for what You are ready to give. You give us discernment of the needs of others so that we can be servant leaders. Your love for us frees us to love, forgive, uplift, and encourage people around us. We commit this day to be one in which we are initiative communicators of Your grace. We open ourselves to Your holy spirit. Gracious God, we are ready for a great day filled with Your grace. In the name of the Mighty Mediator. Amen.

RECOGNITION OF THE ACTING MAJORITY LEADER

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

SCHEDULE

Mr. KYL. Mr. President, on behalf of the leader, leader time is reserved. There will be a period for morning business until 12 noon today. At noon, it is the leader's intention to turn to the House message to accompany the budget reconciliation bill to appoint conferees on the part of the Senate. Several motions may be made with respect to appointing conferees, and therefore rollcall votes can be expected on those motions.

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

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

The assistant legislative clerk proceeded to call the roll.

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 President, I ask unanimous consent that the order for the quorum call be rescinded.

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

Mr. DASCHLE. I wish the Presiding Officer a good morning.

INCREASING THE DEBT LIMIT

Mr. DASCHLE. Mr. President, yesterday, Treasury Secretary Robert Rubin sent a letter to the congressional leadership warning that a refusal to pass an increase in the debt limit by November 6 would force the Treasury Department to take extraordinary actions in the coming days, actions for which the American taxpayers would foot the bill.

The Secretary indicated that these moves might include not fully investing the Federal Employees Retirement System, the Government Securities Investment Fund, the G fund, calling back Treasury cash balances held in our depository banks, and suspending the issuance of savings bonds.

These defensive actions, regrettably, may become necessary under the circumstances.

Some weeks ago, the Speaker of the House suggested that congressional Republicans might find it acceptable for the U.S. Government to default on its obligations if it proves to be useful leverage in the coming budget battles. Unfortunately, these comments, once dismissed as political posturing, now could be prophetic.

Mr. President, Secretary Rubin's warnings ought to be heeded. Political considerations should not dictate congressional action on the debt ceiling.

The debt limit is serious economic business. It should not be a part of the budget debate. The reputation of this Nation throughout the world would be irrevocably damaged if the full faith and credit of the U.S. Government becomes shaky and suspect.

Because this is such a serious matter, I was disappointed to read in yesterday's papers the characterization by the majority leader that Secretary Rubin's credibility and integrity are somehow in question in this debate.

Nothing could be further from the truth.

Secretary Rubin is engaged in a critical effort to discharge his responsibilities to the taxpayers by preventing the U.S. Government from defaulting on its debt obligations for the first time in more than 200 years.

Moreover, Secretary Rubin has made repeated efforts to meet with the Republican leadership and to make other senior Treasury officials available to answer questions and clarify disputed numbers.

No one has credibly disputed what the Treasury has said. It seems to me clear that these attacks on Secretary Rubin represent a classic case of shooting the messenger.

Meanwhile, there seems to be an ongoing effort on the other side of the aisle to distract the public from the real issue in the debt limit debate—namely, that a default will cause taxpayers to pay for generations to come in higher interest rates on the trillions of dollars in public debt which this Nation must finance in national and international capital markets.

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

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It is my understanding that a meeting between President Clinton and Republican leaders has been scheduled today to discuss this very matter. I certainly hope that this can be the first step in an effort to resolve the dispute over the debt limit outside the political context in which we will debate our very real differences over the budget.

I ask unanimous consent that a copy of Secretary Rubin's letter to the Speaker be printed in the RECORD.

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

DEPARTMENT OF THE TREASURY,
Washington, DC, October 31, 1995.

Hon. NEWT GINGRICH,
Speaker of the House, House of Representatives, Washington, DC.

DEAR MR. SPEAKER: In anticipation of our meeting tomorrow I want to provide information that you should have as background for your consideration of our request for a prompt increase in the debt limit.

First, I have set forth in an appendix both our current projections and a history of our projections over the past several months.

Second, I want to make clear that if Congress fails to act by Wednesday, November 1, it will disrupt our normal auction process and could force Treasury to take additional actions that involve the interests of federal retirees, commercial banks, and purchasers of savings bonds.

As you know from my letter of October 24, and as we discussed in detail with your staff yesterday, the Treasury Department's normal quarterly refunding auctions are scheduled to be announced tomorrow, November 1. The auctions themselves are scheduled to be held during the week of November 6, and settlement is scheduled for November 15 and 16.

There may well be significant costs of disrupting our usual Treasury auction schedule. If there has been no increase in the debt limit by tomorrow morning, our announcement must put prospective bidders on notice that the auctions might have to be delayed or even cancelled. After such a contingent announcement, ''when issued'' trading in the securities to be auctioned cannot occur. Dealers may be less able to pre-market securities, and their risk of participation in the auction may thus be increased, raising the costs of the borrowing.

Should Congress fail to take action to raise the debt ceiling by November 6, we will be required once again to depart from our best financial management practices by canceling the scheduled auctions, and may be forced to take further steps to ensure that outstanding debt remains within the limit and that we have cash available to pay the Government's obligations.

As I have indicated in my previous letters, there are a limited number of actions we may be forced to take many of which have legal and practical implications. One such example would include Treasury's action to stop reinvesting the so-called G-Fund (the Federal Employees Retirement System's Government Securities Investment Fund). Securities held in the G-Fund mature and are reinvested on a daily basis, and the governing law provides for an automatic restoration of any lost interest when reinvestment resumes. Because of the inherent volatility of financing flows, such action may be required even prior to the week of November 6th. Furthermore, it will be necessary to call back Treasury cash balances held in our depositary banks. This action will inconvenience those commercial banks with whom the Federal Government does business.

Also, should Congress fail to act, Treasury may be forced to suspend the issuance of Savings Bonds—an action that would not only require us to send notices to the 80,000 issuing agents, but also would disrupt millions of Americans' use of a safe and convenient investment for their savings.

While these actions can provide some very limited relief, at the cost of creating significant dislocations and anxieties, it should be clearly understood that they will not be sufficient to substitute fully for the funding that we would ordinarily raise through the regular mid-November refinancings and that should be announced tomorrow. Stated another way, these temporary actions will not satisfy the continuing need for cash to fund the obligations and operations of the Government after November 14. Absent extraordinary steps, Congress must increase the debt limit obligations maturing November 15 and 16.

Finally, you should know that there are various other measures Treasury has been reviewing to avoid default should Congress not increase the debt limit by November 15, including actions involving the Civil Service Retirement Fund, but all such measures present uncertainties involving serious legal and practical issues and have significant costs and other adverse consequences.

Furthermore, the U.S. government's need for financing will not end on November 15 and 16. The financing calendar we distributed last week, and discussed in detail with your staff yesterday, showed four auctions in the last two weeks of November, and additional cash management bills may be needed. Successful completion of those auctions is critical to raising cash to make vital benefit payments on December 1 and during the week of December 4. As we have mentioned before, the months of October, November and the first half of December traditionally have very large seasonal cash deficits due to the absence of any large tax payment dates.

You and other members of the leadership have raised the prospect that Congress might enact a temporary debt limit increase, and we have expressed our total availability to work toward that end. Last Friday, at the President's direction, I proposed that the debt limit be increased by $85 billion, to $4.985 trillion. I would hope to discuss this proposal, and any other approaches you might have, at our meeting tomorrow.

Sincerely,

ROBERT E. RUBIN,
Secretary of the Treasury.

MORNING BUSINESS

The PRESIDING OFFICER. The Chair announces that under the previous order the time from 9:30 until 10:30 shall be under the control of the Democratic leader or his designee, and under the previous order the time from 10:30 until 12 noon shall be under the control of the majority leader or his designee.

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

Mrs. FEINSTEIN. Mr. President, I ask that I be recognized to speak in morning business.

The PRESIDING OFFICER. That is the Senator's right.

Mrs. FEINSTEIN. I thank the Chair very much.

OBSTRUCTION OF FOREIGN RELATIONS COMMITTEE BUSINESS

Mrs. FEINSTEIN. Mr. President, I wish to elaborate on some remarks I made yesterday about the objection pending against the short-term extension of the Middle East Peace Facilitation Act.

Yesterday, the distinguished majority leader came to the Senate floor and said that although he would like to pass the extension, it is being blocked by the chairman of the Foreign Relations Committee. The majority leader went on to say that the Senator from North Carolina is within his rights to block this legislation, and indeed he is because every Senator has that right.

I want this morning to ask the distinguished chairman of the Foreign Relations Committee to consider changing his mind about holding up the Middle East Peace Facilitation Act.

I spoke yesterday and indicated that in July a group of Members of this body joined together, Republican and Democrat, in cosponsoring a bill which would extend the Middle East Peace Facilitation Act for 18 months, and virtually every Member joined in expressing support for that course.

Here we are in November, and the act has been suspended as of last night, which means that economic aid to the Palestinians committed to by this Nation has stopped. The PLO office in Washington will be forced to close its doors. And as my colleagues know, this is because of an unrelated issue that is going on. That unrelated issue is the dispute over the State Department authorization bill.

Negotiations have been ongoing on that bill between Senator KERRY and Senator HELMS. It is my understanding that at present they are stalemated, but because of failure to reach an agreement, the Foreign Relations Committee has been virtually shut down. I think this is wrong in the interest of U.S. foreign policy and of the Senate weighing in on these issues.

We have been unable to take up any ambassadorial nominations in business meetings for a period of weeks, to report them out to the full Senate for confirmation. At the present time, there are at least 18 ambassadorial nominees waiting to have their nominations considered by the committee. They include nominees to serve in some of the most important countries in the world.

The nominee for China has had a hearing, but is pending action in the committee; the same is true for the nominees for Pakistan and Indonesia. These include Jim Sasser, Tom Simons and Stapleton Roy. Nominees for other countries are waiting. South Africa: James Joseph is waiting. Sri Lanka: Peter Burleigh is waiting. Thailand:

William Itoh is waiting. Cambodia: Kenneth Quinn is waiting. Malaysia: John Malott is waiting. Oman: Frances Cook is waiting. Lebanon: Richard Jones is waiting. The Cameroons: Carl Twining is waiting. The Marshall Islands: Joan Plaisted is waiting. Fiji: Don Gevirtz is waiting.

Also on hold are nominations for special adviser on the New Independent States, James Collins, and United States coordinator for Asia Pacific Economic Cooperation, Sandra Kristoff.

In addition, 273 Foreign Service officers who have been nominated for standard promotions are on hold. So we have 273 Foreign Service officers on hold. We have 18 ambassadorial appointments on hold, at least 5 of them considered to be critical, like those for Pakistan or China.

Now, when we do not have an Ambassador in the country, U.S. interests do not receive the attention that they deserve. In some countries, this is more critical than others. Probably the most critical at this time is China. And Senator Sasser, who could have been in New York this past week to participate in the summit between President Clinton and President Jiang Zemin of China—could have been—was not.

I think the American people deserve to have their interests represented abroad. So by failing to confirm Ambassadors, the Senate is not doing its job to help protect U.S. interests abroad. Not only do our interests suffer, but I think the lives of a number of hard-working and dedicated Americans are put on hold. These are people who, often at considerable personal risk, serve the American people with pride and distinction overseas.

Last night I had a phone call from one of them. He said, ''Can you just tell me when I might be confirmed?'' And I had to say, ''No, I'm sorry. I can't tell you.''

Earlier, I had another call from a nominee who had his house on the market and had received an offer on the home. Does he sell it or does he not sell it? ''Sorry. I can't help there.''

Mr. President, this is no way to run a railroad, let alone the Government of the most powerful country in the world.

There are also two extremely important arms control treaties that are awaiting Foreign Relations Committee action: The START II Treaty and the Chemical Weapons Convention.

Let me mention what Start II does. The START II Treaty, signed by the Bush administration and not yet ratified by this Congress, is the farthest reaching arms reduction treaty ever signed in the history of this Nation. It will require the United States and Russia to eliminate literally thousands of intercontinental ballistic missiles, including those which carry multiple warheads. The treaty would also eliminate missile silos and testing and training launchers.

The Foreign Relations Committee held extensive hearings on the START II Treaty both in this Congress and during the 103d Congress. We have heard from the administration, from military officers and from outside experts, virtually all urging that we ratify this treaty.

I know of no significant opposition to the ratification of the START II Treaty. Nevertheless, the committee is unable to begin consideration of it. This is wrong.

The same is true of the Chemical Weapons Convention. Let me tell you what the Chemical Weapons Convention does. The convention, also signed by the Bush administration, will ban an entire class of weapons of mass destruction. It will make it harder and more costly for proliferators and terrorists to acquire chemical weapons. It will create an intrusive monitoring regime that will make it very difficult for signatories to conceal violations of the convention.

The Chemical Weapons Convention has been signed by 159 countries and ratified by 38 to date, yet the U.S. Senate has still not had the opportunity to consider the treaty. The Foreign Relations Committee has had hearings on the convention, and it can be considered at any time. But, once again, the committee has been prevented from carrying out its duty.

Should this happen? As I said earlier, it is any Member's right to stop a piece of legislation, but when you have hundreds of Foreign Service officers, 18 Ambassadors, and two treaties held hostage to a piece of legislation that is not related, one has to begin to consider what effects this has.

Mr. President, one of the things that I learned in my brief stay here is that what goes around, comes around, and that it does not make good, logical, long-term sense to engage in holds when this can easily be replicated at another time but in the same place by the opposition party.

This committee, the Foreign Relations Committee, has been through some of the most painful and hotly contested foreign policy issues of our time: the Vietnam war, aid to Central American rebels and sanctions against South Africa. But never during all that time, to the best of my knowledge, has the committee been shut down and ceased to function. Now, on the basis of a dispute about the bureaucratic reorganization of our foreign policy institutions, the conduct of the U.S. foreign policy is being put on hold.

I believe this is wrong. I believe it is irresponsible. I believe it is a dereliction of our duties as U.S. Senators. There simply is no justification for curtailing the entire role of the Senate Foreign Relations Committee in the conduct of U.S. foreign policy over one single reorganizational issue.

Pursuant to the unanimous consent agreement of September 29, Senator HELMS and Senator KERRY have been engaging in serious negotiations to try to reach an agreement. Their staffs have met repeatedly over the last month. I am hopeful that progress can be made.

So at this time I would like, respectfully, and with a great deal of friendship, to call upon the chairman of the committee to withdraw his objection to consideration of a short-term extension of the Middle East Peace Facilitation Act, to allow the committee to take action on START II and the Chemical Weapons Convention, to report out the 18 ambassadorial nominations and 273 Foreign Service promotions, and to continue negotiating toward an agreement on the State Department authorization bill.

I thank the Chair. I yield the floor.

Mr. DORGAN addressed the Chair.

The PRESIDING OFFICER. The Senator from North Dakota.

BUDGET RECONCILIATION

Mr. DORGAN. Mr. President, I yield myself such time as I may consume on the hour that has been allocated to the minority leader.

Mr. President, today the Senate will select conferees to go to conference on the reconciliation bill. Conferees from the Senate and conferees from the House will meet and debate and try to reach an agreement on what kind of a reconciliation bill will be passed from the Congress to the President.

This all does not mean very much to the American people, the words ''reconciliation,'' ''conferences.'' What means something to the American people will be what effect will it have on their lives, what effect will it have on their health care system, on Medicare, Medicaid, the ability to send their child to college, on young 3-, 4-, 5-year-old kids who are in Head Start—what effect will this have on all of those people. That is what means something to the American people.

The debate that people have heard coming from this Chamber is a debate not about one side of the aisle that wants to be obstructionist and the other side that wants to do something wrong, it is about people who have different views of what the priorities ought to be.

One thing that is certain about this Senate meeting this year is that 100 years from now, all the Members of this Senate will be dead and the only record we will have left that historians can evaluate from our service is to evaluate what we spent the public's money on and, therefore, what we felt was valuable and important and would advance the interests of this country. People can tell something about our value system by looking at the Federal budget. On what did we elect to spend the public's money? How did we invest it? How did we spend it? That is what historians will be able to use to view what we felt was important.

The priority in this reconciliation bill by the Republican Party is to say, ''Let's have a tax cut.'' I thought the priority when we started this year was one that said, ''Let's balance the budget.'' In fact, we had people on the floor

of the Senate saying we must change the U.S. Constitution to require us to balance the budget. Of course, the budget can be balanced without changing the Constitution.

We have people in this Chamber who call themselves conservatives who view the Constitution as merely a rough draft, something they can improve upon every single day. Although I do not see many Madisons, Masons, Jeffersons, Franklins, or Washingtons around to contribute to change this Constitution, we have had well over 100 proposals since the first of January in this year to change the U.S. Constitution.

The priority at the start of the year was we must eliminate the Federal budget deficit. In fact, we must ensure that happens by changing the U.S. Constitution. And then the act by which that happens, the budget and the reconciliation bill, comes to the floor of the Senate, and we discover that the priority is different than that. The priority is a tax cut, a substantial part of which will go to the wealthiest Americans.

The priority is to add money to the defense bill that the President and the Secretary of Defense and the chiefs of the branches of the services said they did not want. Those are the priorities, and that is what this debate is about.

Let me just put up a couple of charts to describe some of the elements of this debate.

The Head Start Program. We know the Head Start Program works. Anybody that has ever toured a Head Start center, and I have toured plenty, and sat on the little chairs and had lunch with 3-, 4-, 5-year-olds and watched them do their art projects, watched them learn about health, watched them begin to get a head start, because they come from homes of disadvantage and often poverty, watch them feel that this contributes to their lives and having us know it does, we understand this program works.

The priority now is to say, ''We're sorry, we can't afford the Head Start Program the way it is,'' so roughly 55,000 kids will be dropped from the program, and every single one of those kids has a name and has a hope and gets some advantage from this program. But we are told we cannot afford that. Instead, we are told, Let's pump nearly half a billion dollars into lead production for 20 more B–2 bombers that will cost us $31 billion, B–2 bombers, incidentally, that the Secretary of Defense has not asked for; B–2 bombers that the Department of Defense has not requested.

So we say Head Start does not quite matter as much; B–2 bombers, let us build them, even though those who would fly them and use them have not asked for them.

Job training for displaced workers. These are people who have lost jobs but want to find jobs and get new skills to do it, half a billion dollars cut from that, which means you will have more unemployment, not less. You will have less opportunity, not more, for people whom we want to put back on the payrolls. And at the same time we say we just cannot afford the kind of money that is necessary to get people ready to go back into a job, we say, By the way, let's gear up for a star wars program. It will cost about $48 billion. That has not been asked for by the Defense Department either. There is no demonstration that we need this program, but we are told, ''Let's stick $375 million in it this year and demand it be deployed in 1999,'' including a space-based component of a star wars program because we can afford that. Again, the Secretary of Defense and the armed services have not asked for it, but we can afford that, we are told.

Mr. President, $1.4 billion invested in kids and that goes to helping kids get to college, financial aid to help middle-income families send their kids to college, so we say we are going to make it more expensive for middle-income families to send their kids to school.

But we say when confronted with the question, shall we build an amphibious assault ship this year, the answer in this Congress was—some said no, we should not build one. Others said we should build two of them. Do you know what the answer was in this Congress? ''Let's build both. Let's build one for $900 million and one for $1.3 billion, because we're loaded, we've got all the money in the world when it comes to this. There is no sense being frugal here. Let's spend money like it is Saturday night and the town's opened up for us and we have the parent's checkbook here.'' We can buy all this, despite the fact no one asked for it, no one requested it.

And there is more. Mr. President, $989 million from veterans' health care, 1 million fewer outpatient visits, 46,000 fewer hospitalizations because we have to cut there, we are told. This is the second amphibious assault ship. We can order that. In fact, we can buy both of them, a billion dollars, an amphibious assault ship that was not ordered and a cutback on a promise made to veterans before they went to fight for this country's freedom.

Low-income home energy assistance. That does not sound like much, but that is what keeps people warm in the winter. Poor people who have no money, often poor elderly people with no money who live in the frigid climates of this country rely on this to keep their homes heated. We cannot afford that, but let us buy six more F–15's, despite the fact the Secretaries of Defense and Air Force have not asked for them. We now have 1,103. Let us stick that in. That is $311 million. It is more important to buy jet fighters nobody asked for than it is to help old people and poor people keep warm in the winter.

There is a $137 million cut for critical accounts dealing with Indian problems on reservations; $140 million spent for 14 Warrior helicopters. We now have 360. The Defense Department did not ask for these, but they were put back in the budget and they said we should buy 14 of these helicopters, $140 million. And then we are told we have to cut $137 million for these crucial services on Indian reservations and that deal with kids, mostly Indian children—education, health, and a whole range of other services for young children who want a chance and want a start.

Somebody is going to look at all this and say, That is a bunch of pointy-headed liberalism. It is not about liberalism, it is about making choices. We are told what we are going to spend in this Chamber. The question is what do we spend it on? Do you buy an amphibious assault ship that was not asked for? Or do you cut back, as a result of that, on veterans' health benefits? Do you decide to kick kids off Head Start and build B–2 bombers that nobody asked for? That is the priority in this reconciliation bill. That is what is wrong with it.

I want to read a list, just so that people can be disabused of who the big spenders are. We are told the big spenders are the Democrats, the folks who always want to spend money. This is a list of what is added to the defense bill, mostly by folks on that side of the aisle—things that were not asked for, requested, needed, or ordered by the Defense Department. I will read the list: 60 Blackhawk helicopters; Longbow helicopters; Kiowa Warrior helicopters; M109A6 howitzer modifications; Ml tank upgrades; heavy tactical vehicles, trucks that were not requested; AV–8B fighter aircraft; B–2 bombers; F/A–18C/D fighter aircraft; C–135 cargo aircraft modifications; Comanche helicopters' R&D; ship self-defense R&D; national missile defense, or star wars; T–39N trainer aircraft; EA–6 strike aircraft modifications; LPD–17 amphibious ship; F–16's, F–15's; WC–130 cargo aircraft; LHD amphibious assault ship.

None of these things was asked for, and all of them were ordered by this Congress—$5.2 billion to spend money on things we do not need, money we do not have on things we do not need. This by conservatives, by people who call others big spenders?

Well, this is all about priorities. It is about health care. It is about education. It is about agriculture. It is about the Head Start Program. We are going to have some votes today in the Senate on instructing conferees because the conferees will be appointed now to discuss the differences between the House bill and the Senate bill. It is between the far right and the extreme right. That is where the modification will be made. This will be a compromise between the far right and extreme right, and it will be sent to the President, and this will be vetoed, and then we will get some serious negotiations, I expect.

One vote we will have today is priorities with respect to Medicare. The

Medicare Program, I think, is an important program. We, on the Democratic side of the aisle, understand full well that the budget must be balanced. We understand that the credibility of Government is in serious question. We understand that, and we need to do the things that solve problems for this country and for the American people.

But we also understand there are some things we have done in this country that have been good, which advanced this country's interest. Medicare is one of them.

It is interesting to me that 97 percent of the Republicans voted against Medicare when initially proposed in the U.S. Senate. Now they are saying they are going to save Medicare. Generally, that would not be very believable, and it is probably less believable now because Speaker GINGRICH last week said:

> Now, we don't get rid of it in round 1 because we don't think that that's politically smart and we don't think that is the right way to go through a transition. But we believe it is going to wither on the vine because we think people are voluntarily going to leave it.

That is what is at work here. Some people say what they mean in an off-guarded moment, and that is what happened here. In a speech to a Blue Cross/Blue Shield audience, the Speaker told us what his impression of Medicare was.

We are going to offer an amendment on the instructions to conferees that says, look, why do we not decide on this reconciliation issue. If you are going to have a tax cut, some of us think we ought to balance the budget first and talk about tax cuts later. If you are going to insist on a tax cut, why do you not at least limit the tax cut?

We have offered proposals before. We can limit it to people whose incomes are under a quarter of a million dollars a year. At least limit it to that. And you can use the savings from that, about $50 billion over 7 years, to reduce the cut in the Medicare Program, much of which will hurt some of the lowest-income senior citizens in this country, who, as a result of this reconciliation bill, will pay more for Medicare and get less health care.

We will offer that motion today to at least limit the tax cut, at least limit it to working families. At least limit it so we are not giving very big tax cuts to people making $1 million or $5 million or $10 million a year, and use the savings from that to try to reduce the hit on the Medicare Program.

Someone will say, ''Well, why are you discriminating against somebody who makes $5 million a year?'' I am not. God bless them. I think it is wonderful. They have done very well in recent years. Their increases in income have been astronomical.

The upper 1 percent of the American income earners have had an enormously beneficial period. Most Americans have not. Sixty percent of the American families are now earning less money than they were 20 years ago. Not the top 1 percent, or 5 percent; they have had an astronomical increase in income. They have benefited substantially from this income system of ours.

While I think working families deserve a tax cut, I think we ought not to provide a tax cut at the moment. I think we ought to balance the budget first. Then I think working families deserve a tax cut. I see no compelling national need to cut benefits for the oldest and poorest citizens so we can provide a tax cut for some of the richest citizens in America.

We are going to provide another opportunity this afternoon to vote, and we will likely have a motion on instructing conferees on something that happened on the floor Friday that was just mindboggling. The last amendment passed by the Senate on reconciliation was an amendment that deals with the Social Security issue. It takes an amount of money on the Social Security issue—about $12 billion—that will be presumably saved by having a lower COLA, and uses that to fund a series of changes that was offered as a result of the Roth amendment.

Well, the $12 billion, it is clear, comes out of the savings in Social Security. By law, that cannot be used for other purposes in the unified budget. That is what the law requires.

We raised a point of order, and Senator GRAHAM inquired of the Chair whether the Social Security outlay reductions were used as offsets. The Chair responded that it was ''not in a position to answer that question.'' Everybody else in the Chamber was in a position to answer that question. Anybody who could read could answer that. But, from a parliamentary standpoint, the Chair said he was ''not in the position to answer that question.''

The Budget Committee chairman stated, ''I am satisfied with the ruling of the Chair.'' In other words, he was satisfied that the Chair is not in a position to answer that question. The result was that the Roth amendment took $12 billion from the Social Security accounts and brings it over so it funds the Roth amendment. That is what happened with that. We will likely have a motion to instruct this afternoon that will try to right that wrong.

I want, just for a couple of moments, to discuss in a broader context the issues that I think most concerns the American people. A lot of folks, as I said, do not spend day-to-day to understand reconciliation bills and budget bills and conference committees. What people in this country understand is whether the system in America works in their interest. Is this a tide that lifts all boats, an economic system that helps everybody? Or is this an economic system where the rich get richer and the poor get poorer and there is a distribution of income that is not fair?

The challenge and opportunity for all of us, I think, that lies ahead, is to try to find a mechanism by which this economic system works for everybody once again.

We have seen statistics about America's economic health. Every month, we are told the statistics on consumption describe that our economy is moving right along. Boy, if you take a look at consumption, consumption is up; therefore, America is doing better. It seems to me that a measure of economic health in our country is not whether or not we are consuming more or less, it is whether we are producing. Consumption, not production, is a barometer of economic health. Production relates to wages. If you have good jobs in the productive sector, productive jobs, especially manufacturing jobs that pay good wages, that means you advance the economic interests of everybody in this country.

Take a look at what is happening to wages in this country. We talk about GDP, which means nothing. Every quarter they trot out GDP figures, every month consumption figures, and it seems to me they are using barometers that mean very little to the economic circumstances of working families.

The GDP increases. The stock market goes up. Productivity is on the increase. Corporate profits are up. Guess what? American wages are down and have been down.

Some information from MBG Information Services, October 31: Compensation to all U.S. workers grew at its slowest pace on record in July to September. If you take a look at the bottom quadrant of workers, what you find is a circumstance where they are earning less money now than they were some 20 years ago.

There was a piece in the New Yorker done by John Cassidy recently that was very interesting and I think describes some of the problems in this country and some of the concerns that people have. He talks about the average American. He said if you were to line all Americans up in a row, put all Americans in one row, from the wealthiest over here to the poorest over here, and then pick right in the middle and say, ''You are Mr. and Mrs. Average, the middle person in America, you are right in the middle, you are middle-income, middle America,'' that person in September 1979 was earning $498 a week; in September 1995, when you adjust for inflation, that same person was earning $475 a week. In 16 years, that person has lost about $100 a month in real wages.

Now, that is the middle of the line. We know that 60 percent of the American families who sit down for supper tonight and start talking about their circumstance will understand they are working harder for less money than they did 20 years ago.

I talked about the middle of the line. After 16 years they have lost $100 a month in real wages. Now we will talk about the upper side of the line, the top

1 percent on that end of the people you have lined up—the top 1 percent.

Between 1977 and 1989, the years we have numbers for, their average incomes rose from $323,000 to $576,000 per person. That is the top 1 percent. They went, in about a 12-year period, from $323,000 to $576,000, or a 78-percent increase. It is the average working person who finds himself $100 a month worse off after 15 and 20 years, but the top people at the top 1 percent find themselves far better off with spectacular increases in income.

This is at a time when corporate profits are up, productivity is on the rise, the stock market reaches new gains, new highs, and wages keep falling.

Is it any wonder that the average American family is a little disaffected? The fact is, they find themselves working harder and getting less. One of the things I think is most interesting is we are talking a lot about the fiscal policy budget deficit, and we should. It ought to be balanced. We ought to deal with that. We ought to solve that problem.

Do many Americans know that the merchandise trade deficit in this history is higher this year than the fiscal policy deficit? You cannot find more than four people in the Senate that will come and talk about it.

Let me say that again: Our merchandise trade deficit is higher than our fiscal policy deficit in this coming year.

What does that mean when you have a trade deficit? It means you are shipping jobs overseas. We will hit nearly $190 to $200 billion merchandise trade deficit this year. What that means is American jobs are leaving. That means we are buying from foreign countries.

We have decided an economic strategy is fine as long as profits are on the way up. As long as productivity goes up and the stock market goes up, wages can go down and jobs can go overseas because we measure economic health by what we consume, not what we produce. We measure economic progress by what happened to the GDP, not what has happened to the American family.

I do not know how anyone in this country can view an economic system through the prism that says that when the American family is doing worse and losing money and working harder, but if the consumption figures are up and if the GDP figures are up, America is in better shape. That is simply not the case.

We need one of these days soon to bring legislation to the floor of the Senate and have an honest-to-goodness debate about the center pole of this tentative economic policy—that is trade and related issues—to try to determine what really advances American economic interests.

I will bring some legislation on the subject of NAFTA to the floor of the Senate at some point in the future. NAFTA is part of this trade deficit problem. Two years ago we had all of these economists flailing their arms around Washington, DC, saying if we would only pass a free-trade agreement with Mexico, we would have 270,000 new American jobs.

Well, we passed a free trade agreement with Mexico—not with my vote, but it was passed. We had a $2 billion trade surplus with Mexico at the time. Two years later, our trade deficit this year with Mexico will be around $17 billion. We went from a $2 billion surplus to a $17 billion deficit.

What does that mean? It means jobs are leaving this country. What are we importing from Mexico that causes that deficit? The very thing that represents the foundation for good jobs in this country—automobiles, automobile parts, electronics. The very thing that represents good jobs and good wages in our country are being exported out, transported out on a wholesale basis.

We have to construct a different economic system. It is not, in my judgment, in this country's interest to allow multinational corporations to describe their economic interests as consistent with the economic interests of the American family. It is their economic interest to produce in Sri Lanka, Bangladesh, Indonesia, and Malaysia and ship the product they produce to Pittsburgh, Fargo, Denver, and Los Angeles. That increases profits for them. It is not in our economic interest. It might be in the short-term interest of the consumer who can presumably—not necessarily factually, but presumably—buy some of those products for less. It is not in the interests of consumers who will lose their jobs because their jobs left this country as a result of a trade strategy that is bankrupting America.

We will have a lot of votes and a lot of debate about priorities on the floor of the Senate today and in the coming weeks with respect to the reconciliation bill—what do we spend money on, what do we not spend money on. That is fine. That is the way it should be. Those are legitimate areas of discussion between Republicans and Democrats.

My hope is at the end of the day, perhaps, we will have reached a compromise that we all think is good for the country, a fiscal policy that will lead to a balanced budget. But even if we do that, and even if we reach a compromise, and even if the President signs that compromise, we will not have achieved the job of setting things right in the economic order of this country.

We will do that only when we address the larger questions that cause this family, this family that is in the middle of the line of American earners, from the richest to the poorest, this family right in the middle that finds themselves working harder but after 15 years earning less, finds themselves after those years between 1979 and 1995, finds themselves after those years $100 a month behind where they started.

Balancing the budget will help, but it will not solve that problem. That problem relates to, I think, more endemic economic problems in this country. We have to, it seems to me, decide one of these days as Democrats and Republicans, to address these questions.

I have said previously there are two major challenges that I think most Americans now confront in this country. One is the economic challenge. That is the challenge to get America to grow again in which it provides opportunities to all Americans—not just the wealthiest, but to all Americans—so we are talking about an economic system that rewards all who seek those rewards and are willing to expend effort for those rewards.

Second is the issue of the diminution of values in this country. That relates to the coarseness we see on television that has been described by others recently, the violence on television that I have described recently, and a whole range of things.

Some of these problems, economic and values issues, can and should and must be addressed here in the Congress. It must be a product of debate in our country generally. Some of them cannot be addressed by Congress, cannot be addressed by public-sector debate in the House or the Senate, and must be addressed in the family, in the home, in the community, in the neighborhood. All of us, it seems to me, need to take responsibility to do that.

While we attempt to address the thorny issues of deficit reduction, a fiscal policy program that will work for the benefit of this country in the future, and while I hope we will attempt, following that, to address the issue of trade, fair trade, and the issue of trying to advance the economic interests of workers with good jobs and good wages in the future, while we do all that, it seems to me it would be helpful if all of us could call on the American people to join in our common interest.

As I said previously, we are going to have an Olympics next year in Atlanta. I bet we all are going to sit on the edge of our chairs cheering for the people wearing the red, white, and blue. We want American athletes to win. That is a wonderful thing: team spirit and nationalism and pride.

The fact is, the economic competition in the world is not unlike the Olympics in a lot of ways, except it is much more serious. There are winners and losers in economic competition. The losers are consigned to the British disease of long economic decline. The winners are given the opportunity of economic expansion and hope and better jobs and better wages.

I think soon, sooner rather than later, this country needs to decide to come together and develop an economic strategy that advances the economic interests of all Americans in a real way. We can no longer measure consumption as a barometer of economic health. It is what we produce in America that counts, because that is what creates the good jobs. We can no longer measure GDP on a quarterly

basis to determine whether America is moving ahead, because it alone does not determine that. We must, and I think can, do much better.

Mr. President, I notice the Senator from Wyoming is waiting for the floor.

I will yield the floor.

The PRESIDING OFFICER (Mr. INHOFE). The Senator from Wyoming.

Mr. SIMPSON. Mr. President, I yield to myself such time as required, under the previous order of morning business.

The PRESIDING OFFICER. The Senator from Wyoming is recognized.

AARP AND SOCIAL SECURITY

Mr. SIMPSON. Mr. President, I came to the floor this morning to speak lightly about the AARP, which I will do in a moment. But, as my colleague from North Dakota is here, and I have listened to his comments today, or a portion of them, and also over the past weeks listened to a series of these presentations about the rich versus the poor, and various allusions about what sounds to me almost like class distinction, class warfare, and also discussions of things like Social Security.

My friend, the senior Senator from North Dakota asks: Why does someone not come to the floor and speak on the issue of trade? He relates that not four people will come to the floor to do that. I can tell you, not four people will come to the floor and tell the people honestly what is happening to Social Security either. It is going broke. And people here on this floor who speak a great deal will let it go broke. There is not any question about what will happen to it.

And there is not a single argument rendered in this debate on reconciliation, where we are talking about Republicans taking from Social Security, where the Democrats did not do exactly the same all these decades. There has not been a single budget in my presence here that did not do what was just done here with Social Security. It was done under Carter, it was done under Reagan, it was done under Bush, and it is being done under Clinton. The Senator from North Dakota knows that. I am on the Finance Committee. There is not a single one of us who does not know that the same ''masking process,'' the same chicanery, the same smoke and mirrors has been pulled off by the Democrats and the Republicans in my entire 17 years here. There is not any question about that.

The Senator's colleague from North Dakota is on the Finance Committee, and he would also share that information with the senior Senator from North Dakota. Without any question, if anyone believes that the Republicans are doing something different with Social Security than what the Democrats have done, the same way, the same years—or the Republicans—please be disabused.

I think we should at least remember one—everyone is entitled to their own opinion, but no one is entitled to their own facts. If Social Security is going to be used in this way, as some horrifying example of being ripped to shreds, then go read the Trustees' Report of Social Security, which was not prepared by the hobgoblins of the right or Ronald Reagan or George Bush. It was prepared by three of the President's Cabinet: Robert Rubin, Robert Reich, Donna Shalala, with the Commissioner Shirley Chater adding her dimension, and one Republican and one Democrat appointed from the general public.

What do they tell us? They tell us that the solvency of Social Security is ''unsustainable.'' We can get another word, we can use ''broke.'' It is unsustainable in 75 years, unsustainable in every way. We know it, the Senator from North Dakota knows it, but more importantly the trustees know it. If anyone wishes to have a copy of that document, I will be very pleased to share it, because it shows that in the year 2013 we will have to be trading in the old IOU's and getting the bonds cashed, which is then a double hit on Social Security.

Meanwhile—and I will get to my full theme a bit later—the AARP, this remarkable group of people, the American Association of Retired People, this extraordinary group of 33 million people bound together by a common love of airline discounts and automobile discounts and pharmacy discounts and every other discount known to man or woman, is a group of organized people who have already settled with the IRS on a claim of back taxes for $135 million.

They asked their executive director, ''How did you pay that?'' and he said, ''We just wrote a check.'' They have $314 million in the bank, in T-bills. They lease a little hut down here in downtown for $17 million a year; a 20-year lease at $17 million a year. That is your AARP, speaking for ''the little guy.''

Where we are is—if anyone cannot understand it yet, is who we are going to hear continually about the little guy, the poor, the downtrodden, the oppressed, the abused in society—and does anyone in America know how Social Security will be restored to solvency? There are only two ways. You reduce the benefits or you increase the payroll tax. And what do you think the senior groups are continually requesting? I can tell you, it is not reducing the benefits; it is increasing the payroll tax.

And who pays the payroll tax? You got it, the little guy pays the payroll tax. The little guy in America is the ''stick-ee'' of this remarkable process regarding Social Security.

If you will remember, our fine colleague from New York, Senator PAT MOYNIHAN, and a ''Blue Ribbon Commission,'' in the early 1980's, got together and honestly put this program ''on the table'' and got off the table all the tired babble about Social Security, about the poor and the wretched, the disabled and the infirm and so on—got that off the table and said, ''This program is going broke, absolutely broke.'' Senator MOYNIHAN and a remarkable group of Democrats and Republicans then came together. That is impossible in this atmosphere. The water in the well is so poisoned now on this issue, we could never address it again. You are not supposed to even touch it. My mail will fill the room and the phone system will bust down later in the day as I choose to address this remarkable issue of Social Security.

So you have the situation where it was going broke and the Commission made some sensible recommendations. The recommendations were made in a very conscientious, bipartisan manner, to reflect that, if these things were carried out—and remember what one of them was; it was increasing of the payroll tax; but we were ready for that then—that the Social Security system would be saved until the year 2069. I hope you will hear that, 2069.

That gave everyone a remarkable sense of a job well done. Except, since the early 1980's, through, now, the projections of the Social Security Administration and the trustees themselves keep moving up the doomsday date.

And guess what the date of insolvency is now for Social Security? It is not the year 2069 or 2063 or 2050 or 2040. It is 2029. So since the early 1980's, Social Security is still long-term unsustainable, and the doomsday date—in just 13 years—has been moved from 2069 to 2029—moved up 40 years. Next year it is very likely the trustees may present to us their report saying that it will not be sustained past the year 2025. What a tragedy. And here we sit—all of us just sitting. We know it. We all know it.

I am going to accept the word of those three fine Democratic Cabinet members, who I respect and know—each of them individually. They are able Americans. I like them personally. We have our differences politically. But these fine people are telling us that in the year 2012—stretch it to 2013, if you want to—that the IOU's will be cashed in. Bonds will be then sold, and the American people will take a hit that will take the Social Security system from the year 2013 completely to bankruptcy in the year 2029. Everybody knows it. There is not a soul that can come into this debate and tell me that is not true. They will not come to this Chamber and tell me that is not true. We all know it.

So we continue our process of these short-term fixes. Senator BOB KERREY and I, in a bipartisan effort, have presented seven bills to restore solvency to the Social Security system. If you really want to get aboard, we are looking for cosponsors. But it is a little difficult to pick up cosponsors when you mention the secret sinister dual phrase ''Social Security'' and necessity to restore its ''solvency'' because people do not believe it. But BOB KERREY and I believe it.

So, if we are going to be doing some positive things, why, take a look at the good thoughtful bipartisan approach of Senator BOB KERREY and myself and what we are doing to save the Social Security system—without any gimmickry whatsoever. We are going to phase up the retirement age. We are going to let people put in 2 percent of their payroll tax into a personal investment plan where they can call the shots on that themselves, 4½ percent would then still go to the Social Security system, which will reduce the size of the benefit and will also help to salvage the system.

If the American people understand nothing else—and the fortunate part of all this is that we have a year to tell them what really happened in reconciliation—if we had but just a few months or weeks, we would never be able to get it through the clatter, the flak, and the tinfoil that is being shot out over America to, I guess, divert truth. But we will have that opportunity for an entire year to tell the American people exactly what we are doing—such things as ''doing something'' with Medicare, which is going to go broke in the year 2002. You have heard that. You are thinking, there he goes again, and they are all nuts. They are just telling us that.

We all know what we did in the reconciliation by allowing Medicare to go up 6.4 percent per year, and so I want everyone to be absolutely cheered to know that Medicare will now not go broke in the year 2002. No, it will go broke in the year 2009. Everybody knows that. I know it. Those on the other side of the aisle know it. The President knows it.

Think of this. This is what is happening. These numbers are correct. No one can come and challenge these figures. Somebody will come in and say, ''He is terribly wrong. It will not go broke until the year 2012.'' That ought to cheer us all, too. It will not go broke in 2002. It will not go broke in 2009. It will go broke in 2012. That is pretty short rations in any form.

If we are continually trying to frighten ''the little guy,'' then there is a good way to really frighten the little guy. Tell him or that Medicare will not just be there going up 6.4 percent each and every year; it will be broke, flat busted, out of money. Tell them that. That will get a reaction out of them—probably a little more startling than being told it had been cut. ''Cut schmut!'' How can you say ''cut'' when you go up 6.4 percent? That is exactly what we are doing. So if you like to frighten the little guy, let us do it right.

Let us just get down to the political reality because we live in that arena. Let us say that we fail to tell our story in a year. There is not a question in my mind but that we will, and the American people know that finally a responsible political party decided to do something responsible.

Let us say we fail, and they take up a pitchfork on November 6, 1996, and just pitch us all out in the snow, which they have a way of doing in this country—recalling that ''Get out before they throw you out'' is a great phrase in our line of work.

Let us say they do that. And I guess the campaign then to that date to have done that would be a simple one. It will be that ''We saw what those rascals, the ragamuffin Republicans, did to you, and we are going to get it all back for you. We are not going to let Medicare go up only 6.4 percent, which is the horrible thing they did to you. No, we are going to let it go up 10 percent and 12 percent a year just like it did before. We are not going to let them get away with letting Medicaid go up only 4.8 percent. We are going to let it go up 9 just like it did before. We are not going to let them talk about phasing up the retirement age of Medicare so that it matches that same increment of Social Security, which we have already done.''

If that all happens then any figures that I have given you from the trustees or other sources—just accelerate them up 100 percent, and all of the systems will go broke even faster. Each and every one of them will go broke faster.

Ladies and gentlemen, if we can also get away from the travesty of pretending that there really is a Social Security trust fund and that somehow we politicians on both sides of the aisle dabble in it and mix around in it with our hands as if it were something from the cauldron in the first act of Macbeth, as we draw it out of there and wildly spend it. Remember there is no Social Security trust fund. And we have never ''dipped into it.'' I take it back. One time we did. But that lasted only about 2 days. We spanked our own hands so vigorously the redness is still there. We never did that again, and cannot, and will not by law.

So, these funds are all in IOU's because the law on Social Security says whenever there are surpluses in Social Security—and there are huge surpluses right now, and they will become ever more magnificent. They could reach $2 trillion before 2012 when the big decline, the final fall off, the ultimate drawdown, begins to take place.

So here we are knowing these things—all of us. All of us know it, and we all know, too, that the surplus cannot be used except to be placed in securities of the United States of America, secured by the full faith and credit of the United States. So every single penny of reserves of Social Security is, by law, used to purchase T-bills, savings bonds, whatever, backed by the full faith and credit of the United States and purchased by your bank, and purchased by individuals and other nations' too. The interest on those securities is not paid from any Social Security trust fund or funds. It is paid from the general Treasury of the United States of America. No one can come to the floor and say that is not the case.

So, when the time comes—and it is coming soon—for when I was a freshman at the University of Wyoming, there were 16 people paying into the Social Security system and one person taking benefits out. Today, there are three people paying into the Social Security system and one person taking out, and in 20 years there will be two people paying into the Social Security system and one taking out. How long do you think that the younger generation then is going to sit and put up $10,500 each, two people, to sustain a person at $21,000 a year or $20,000 or similar amount on Social Security?

The saddest part of the debate in the last 3 years was that this President, President Clinton, put in his first budget—and I commend him sincerely and heartily for it—an entire section called ''intergenerational accounting.'' It was powerful stuff. It was real. It was true. It talked about what is going to happen—the program is unsustainable, what will occur to the young people, and how it has to be adjusted. Yet this time in his budget presentation there was not one single word about ''intergenerational accounting,'' not a word.

I find through my less-than-positive sources, since I labor in minority status there on Pennsylvania Avenue, that the good, thoughtful people on the President's cabinet and staff wanted to include that statement again, Secretary Reich, Dr. Alice Rivlin, several there—but that the ''political types'' in the White House said: Do not touch that one again. You touched it the first time and it was so true it even leaked down and people could understand what was going to happen to those systems. But do not touch it this time.

So we did not touch it. He did not touch it. And then he appointed this fine commission to look into these entitlements, with BOB KERREY and JACK DANFORTH as chair and co-chair. They did a beautiful job. Read their report. I commend that to anyone. Then soon after that appointment we did another little statute that said we owe it to ourselves to examine into these various programs, and somehow we left off the word and the entire program of ''Medicare.'' We will not address the word ''Medicare.'' The word ''Medicare'' is left out, and that is the one that is really eating our lunch. That is the one that is going to go broke, and that is the one we all know will go broke.

Now, if we can wade through this type of garbled activity in these next days and weeks, we may be able to get there. If we can wade through it in the next year, we may be able to get there.

And who did this? Who visited this sinful pile of debt upon us? Well, let me tell you. I hope the American people understand who did this. We did this. This was not done by Ronald Reagan or Jimmy Carter or George Bush or President Clinton. We in the Congress did this. The Presidents of the United

States get not a single vote on this. They can veto it, yes. But no votes . I have watched this game for 17 years. Wire up a budget, ship it to the President, see if it will blow up under their chair. It is a great trick. Democrats are highly skilled at it. Republicans, it will take us a little longer to learn. Put it together, roll it back and forth up and down Pennsylvania Avenue, and see if it will detonate under whose chair. And that will not solve much for the people of America.

But we did this. There is not a one of us in this Chamber, including your loyal scrivener and correspondent of the moment, who did not ''hire on'' in some way to bring home the bacon. Bring home the bacon: Go get the HUD program; go get this center; this building; go get the farm money; go get this; go get the dam; go get that; all accompanied with a press release.

Who do you think did it? Nobody but us. I do not have the courage I used to, to do the press release anymore saying, ''Senator SIMPSON announced today more bucks for his State.'' It is a good way to get reelected forever, I guess. People I know who have been here have done just that. Bring home the bacon.

I would love to share with you the outlay of Federal expenditures per capita to the various States of the Union, and then you might know who represents those people in this Chamber of the Senate. You would be very intrigued to see who brings home the most bacon, who burdens the taxpayers—burdens the taxpayers most.

Mr. President, $3.6 billion goes to one State with only 0.2 percent of the population of the United States. How about that, $3.6 billion in Federal outlays to a State with a population of 638,800. That is a per capita spending of almost $6,000 of taxpayers' money per person. It is No. 6 in the country per capita.

Those things need to be known, and they are not known. It is time they were known if we have to get into this kind of a continual ritual that somehow this is abject trickery or somehow it is ''the rich versus the poor.''

Ladies and gentlemen, I know this is shocking, but I have a theory about what we might do with the rich. Oh yes. Instead of taxing them more, we might well confiscate everything they have. Just take it all. Take every stock certificate, every yacht, every ranch, every villa or home, every trust, and just snatch it, take it. Go down through the Forbe's 400 and the Fortune 500—I am talking about individual wealth now—and just snake it off the table, every penny. And guess what? It will run the country for about 7 months. Got it. It is a figure of about $800 billion. Yes I am talking about the Wal-Mart money; I am talking about every family in America that we look upon as ''the rich.'' Take it all and it will run the country for 7 months because, ladies and gentlemen, the budget of the United States this year is $1.506 trillion. Got it? One year.

Does anyone believe that we are not ''doing something'' for Americans? Can anyone believe in their heart and mind and soul that we are doing nothing for our country and its men and women and children when we are spending $1.506 trillion this year—1 year—1 year to run the United States of America?

I know it is painful to go through these figures again, but it is very true that 1 percent of these ''rich'' pay 27.4 percent of all taxes in the United States of America. Oh I know I should not even have said it. And the top 5 percent pay 45.9 percent of all taxes in America, and the top 10 percent pay 57.5 percent of all taxes into the Federal Treasury of America. The bottom 50 percent pay only 1.5 percent, ladies and gentlemen. Those are figures from the Census Bureau, figures from the IRS, figures from the GAO report, and that is that.

So when you give tax relief, which the President desperately wants to do too—the President of the United States has decided that he wants to give people a tax cut. We in the Republican faith have decided that we want to give people a tax cut. The President of the United States has said that he would like to see Medicare go up only 7.1 percent. We are saying that we would like to see it go up only 6.4 percent. So we are not that far away.

Obviously, the President and this Republican majority are right on track with Medicare, but you would never know that. Oh, no, a serious ''cut'' is taking place. What is it then that the President is doing? Is that not a cut? You either cut or you cut or you slow an increase or you slow an increase. A rose is a rose is a rose. So if the 6.4 percent increase of the Republicans is a cut, then the 7.1 percent increase of the President is a cut, and we and the public should both use the same vocabulary on that. We will get there somehow. If we dull the rhetoric and the warfare, we will get there.

So I just think it is always appropriate to talk about Social Security. And when people come to the floor and say let us leave it off, we ought to leave off the table Social Security, well yes we all did that. It was a magnificent flight from reality. How do you leave out of the equation something that is worth $360 billion? Social Security, ladies and gentlemen, is $360 billion a year.

As we scratch around for money on this floor, where we are looking for something for my State or something for the State of the Senator from North Dakota, looking for only $100,000 or $2 million or $3 million, I can tell you where we could have found a ton of it. You just saw a cost-of-living allowance go out to Social Security recipients regardless of their net worth or their income. It was $8.7 billion.

Mr. President, $8.7 billion went out to all of the recipients of Social Security on a 2.6 percent COLA, judged by the CPI, Consumer Price Index, and all of it with no means testing, no affluence testing, nothing, some of it going to people who have gotten all of their Social Security taxes back in the first 5 years. You know that, I know that. To some people the difference is not the cost of living but the cost of living it up. And we make no means test. No affluence test of any kind.

You have the issue of part B premiums. If we are really talking about the little guy now, I want to hear much more about the little guy when we talk about part B premiums because, ladies and gentlemen, part B premiums are totally voluntary. Part B is totally voluntary. It was never part of any contract with anyone, certainly not with the seniors, because you step up, and they say, ''Do you want part B? If you do, you are going to pay $46.10 a month.'' And $46.10 a month is 30 percent of the premium.

So, ladies and gentlemen, if you really want to talk about the little guy, then remember that the wealthiest people in America who have voluntarily chosen part B coverage are paying 30 percent of the premium, and the people that maintain this building at night when we shut down the action in this ''cave of the winds,'' the people who are working hard here, are paying 70 percent of the premium for the wealthiest people in America. Got that? Not one person can refute that. I want to hear from anyone on that one, if we have any rebuttal at all on that one. There will be none. So, 70 percent of all the premiums on part B, which is voluntary and which is an income transfer program, are paid by the general taxpayers of the United States.

Let me conclude. I have here in my hand the most fascinating and intriguing mailing sent out to me by ''the mother of all mailers'' in the United States. This is the AARP I speak of again. The mother of all nonprofit mailers. And 1.5 percent of all mail in the United States under their particular permit class is by the AARP, ladies and gentlemen. And a larger percent of the mail men and mail women all over America get hernias carrying their good works and telling of the unselfish efforts of the AARP—applications for credit cards, insurance, investment advice, and even tax counseling, which is a dazzling array of services. I think they do need tax counseling because, you see, they settled with the IRS for $136 million that they had not paid in taxes because of unrelated business income. But remember, they just wrote a check. That is your poor, beleaguered AARP.

But, anyway, they sent this. It came to the mother of one of our colleagues. Of course, the AARP is, as I say, the mother of all nonprofit mailers. You might remember them. We sent that group $86 million in Federal—that is, taxpayers'—money last year.

This is also the noble group that rakes in more than $110 million—million—annually in insurance premiums and does not pay any taxes on that.

Prudential, New York Life, RV Insurance, no; remember they get 3 percent of every premium paid—from Prudential Life Insurance Co. And this is also the group that has over $300 million in T-bills just ''sitting around,'' lying around.

But one clear use they have found for all their vast money is to use it in what I call ''astroturf'' lobbying, which is different from ''grassroots'' lobbying. Surely you know that. You know what astroturf is. It is fake grass, phony, a synthetic facsimile. And ''fakery'' is a pretty darn appropriate word to describe the tactics that they employ in this piece of correspondence.

I honestly, for the life of me, cannot figure out how an organization of this size, power and clout cannot afford to hire some poor soul to get their facts straight. Maybe they do not care to. Perhaps deception is the intention. For starters, they say that the Senate ''will vote on a proposal to cut Medicare spending by $276 billion over the next 7 years.''

There is that word ''cut'' again. We will want to see it again when they describe the President's proposal on Medicare, which is a 7.1 percent increase in Medicare. We will see if they use that word ''cut'' again. They used it again when they say ''this level of 'cuts' is unprecedented,'' even though they all know full well that under this plan Medicare will go up 6.4 percent per year, faster than any other major spending category in the budget. And, ladies and gentlemen, does anyone in this Chamber or in this country believe that if we are able to do this—and we will—that 7 years from now we will say a 6.4-percent increase was not enough, so we should raise it, or say 6.4 percent was too much, and we will now let it go up by only 2 percent a year?

By then nobody is going to let it go up only 2 percent a year. No, we will always, from now to eternity, let it go up 6.4 percent or more per year because that is the figure we picked. And then tack 20 or 30 years onto that percentage increase and you will really see an unsustainable program, totally, totally, hideously unsustainable.

Here is another one for you from this AARP mailing. It is a real chuckler. A headline that says, ''No Medicare Coverage Until 67.'' They usually have a block wreath around that or extra emphasis on the ink in the title. ''No Medicare Coverage Until Age 67.'' Is that not funny? Because I thought the current AARP members were sucked into this gargantuan operation when they were 50 years old—and they are. You can be a member of the AARP at the age of 50 by paying your $8 or picking up a copy of their magazine, usually a 4- or 5-year-old magazine, perhaps at the dentist's office. They include that as a membership. If there are magazines laying in these places, that is a ''member,'' I think, to them. So you can be 50 years old and be a member—whether retired or not.

The plan before the Senate last week would have gradually increased the eligibility age to 67 over a span of 24 years, and never faster than 2 months per year and, thus, not fully phased in until the year 2027. Guess why we did that? Yet it was taken out. I hope the people of America will realize what will happen by taking it out. We did it that way to match what we have already done with the Social Security Program, which is already on the track for this kind of a phaseup. Hear that.

So in this deception how old will the youngest current AARP member be then in the year 2027? Well, they would be 82 years old. They will have been collecting Medicare for more than a decade by the time this proposed eligibility age increase was fully ''phased in.''

In other words, not a single person who is an intended recipient of this mailing would be affected by the full impact of that, not a single person. In fact, no current AARP member would see their eligibility age postponed by more than 1 year—more than 1 year—no current member of the AARP.

Now, that is a real slick organization. They also say that ''only $110 billion'' in cuts are actually necessary to restore solvency to Medicare. And for how long, I might ask? And they then say to the next decade. ''Through the next decade,'' they retort. Great. So up through the year 2005 then, only 3 years later than the current crash date. What chicanery. What bald-faced balderdash.

Actuarial solvency is measured by the trustees over a 75-year period, and it is unsustainable. They know it and you know it and I know it. But the good old AARP is content to let the system go belly up in 10 years. It strikes me as quaintly odd that the AARP can get so agitated over eligibility ages that will not even be fully effective for three decades and do not care a wit about Medicare solvency beyond the year 2005. What a group.

Here is another intriguing one for you. They express outrage that under our plan ''beneficiaries with incomes above $50,000 would pay a much higher monthly premium. How long,'' they ask, ''will it be before Congress lowers this to $40,000 or even $30,000,'' implying, of course, that any attempt—any attempt at all—at means testing or affluence testing of anything is dangerous and dastardly oppressing.

Oh, I wish I could tell you how many times AARP representatives have come through my door, along with ''Edna the Enforcer.'' You have seen that wonderful cartoon by Jim Borgman of the Cincinnati Enquirer; ''Edna the Enforcer'' making her rounds for the AARP in the dark of night. She is a husky one. She comes in, and they have a caricature of me in the most emaciated form, actually—most shocking! I am saying, ''Don't pull the phone tree, Edna, not the phone tree!'' and then she gives you ''the word.'' Well, those are clever, and Jim Borgmann is one of the best. I met him many years ago. Go look at it. Its a kick. See it.

So they have come to my door, the AARP, and visited with me and my staff, and they say this. Here is what they say: ''Oh, Senator, you are not correct, but we do support some kind of means testing or affluence testing. We would like to call it 'income relating' but not affluence testing. But we agree, it's the way to go. Of course, we can't come out too far in front of it, but we understand you're on the right track.''

That is the word you get in your office. That's what they tell me. What their members are hearing is something quite, quite different.

Then ''income relating'' is the word they have now used, as they call it, and it is portrayed as a sinister precedent—a harbinger of evil things yet to come. What a courageous outfit.

Then, of course, another letter has gone out from them about the CPI. They are saying, ''Oh, for Heaven's sake, don't mess with the CPI.'' I am on the Finance Committee. Not a single person from Alan Greenspan to all the experts we saw said anything but that the CPI, the Consumer Price Index, was ''overstated.''

And get the rest of this latest letter to all of us. This is supposed to make you cringe and certainly your staff is supposed to cringe when you get this in your mailbox from the AARP dated October 23:

> If Congress adjusts the CPI in the absence of the Bureau of Labor Statistics findings, AARP would regard such action as ''a thinly disguised effort to cut COLA's and raise taxes.''

I also know what that is. That is a thinly disguised threat.

Then they go on to say, which they all do, and you know what they say, that the people who will be hurt the most will be ''the near poor, mostly single women permanently pushed into poverty,'' in addition, and so on and so on, not thinking that if they go broke, the poor in poverty will really be pushed into something grotesque.

So this is the kind of rubbish that I see spewed out from the AARP through Horace Deets, John Rother—and they are genial people—except when they are not, and also their full chorus and company of apologists, paid actuaries accountants, lawyers, trustees, and trustors. Their budget for staff is $60 million a year. Try digging down through various entities and the foundations of the AARP. It is like digging through the Pyramids of Egypt. They have the Andrus Foundation, this foundation, that foundation, and nobody knows the bucks that they have in each of the stack.

They have never come up with anything new, and everything they do can be refuted. Just as when they said to the IRS, ''We do not owe you any taxes, don't you understand,'' and then they paid 136 million bucks to ''settle up'' and wrote a check. When they said to

the Postal Service, ''But we're permitted to mail our insurance solicitations at nonprofit rates,'' and the Post Office said, ''No, you're not,'' and they had to cough up $2.4 million to get off the hook there, and that will be the eternal struggle for them and should be.

Remember, this is the group of worthies who clog your mailbox with 1.5 percent of all the nonprofit mailings in their class in the United States and this is evidence of the level of trust and reliability that they have in this country.

If everyone in Congress really likes to thump their chest and say that they always stand up to the special interests, well, the AARP is the biggest, toughest, canniest, most powerful slugger, the most ruthless and, I think, the most deceitful of them all.

So I trust my colleagues will show their true mettle and legendary courage in ''standing tall'' as we all deal with this remarkable 1,800-pound gorilla in the days and months to come.

I thank the Chair.

Several Senators addressed the Chair.

The PRESIDING OFFICER (Mr. SANTORUM). The Senator from North Dakota.

Mr. DORGAN. Mr. President, it is my understanding that we have 8 minutes remaining on our time.

The PRESIDING OFFICER. The Senator is correct.

Mr. THOMAS addressed the Chair.

The PRESIDING OFFICER. The Senator from North Dakota is recognized, and they still have 8 minutes.

Mr. THOMAS. The time was to be from 10:30 to noon for the majority leader.

The PRESIDING OFFICER. There are 8 minutes remaining on the Democratic time of the designee for the Democratic leader, and he asks for recognition.

THE ECONOMY AND SOCIAL SECURITY

Mr. DORGAN. Mr. President, the Senator from Wyoming is now and always has been one of the most colorful presenters on the floor of the Senate. He has also been an excellent Senator. I occasionally find much to agree with him about. This morning, I found several areas in which we disagree. I always find it interesting that it upsets some when you come to the floor of the Senate and talk about the economic system in this country and who is doing well and who is not, because the implication of that, they say, is, if you point out who is doing well, it is class warfare.

I pointed out on the floor of the Senate this morning that the average worker in this country, if you had a line of all Americans from the richest to the poorest folks, the average person makes about $26,000 a year and in 15 years has lost $100 a month of income. That is what I pointed out. That is the truth.

I also pointed out that those in the top 1 percent in America are doing very well. I do not regret that. Good for them. The incomes of the top 1 percent have increased in a 16-year period by 79 percent to an average of $576,000 a year. I wish everyone could experience that. That is my point. I wish the fruits of this economy could be available to everyone.

It is not class warfare to point out who is benefiting and who is not. Our job is to try to figure out how we help those who are not.

The fact is, productivity in this country is going up, so the average workers out there are doing their part. Corporate profits are going up. The stock market is going up. But guess what? Wages are going down in real terms, and we better start caring about that as a country. We better start doing something about it.

When someone raises the question, we better stop saying class warfare. It is not constructive. Let us talk about this economy, who wins and who loses, who is rewarded and who is not and how do we lift the middle-income families in this country and give them opportunity, provide jobs with good wages.

What the middle-income people see is lower paychecks, lower wages, and their jobs being shipped overseas, all by the same people who in this upper 1 percent, by the way, are getting million-dollar increases a year in salary because they are downsizing and shipping their jobs out of this country. Can I provide the facts for that? You bet I can. I can tell you who is doing it, when and why and how much they are being rewarded for moving jobs overseas.

Well, enough about that. But I hope we can have a discussion one day on the floor of the Senate about this economic system and trade policy and what we ought to do to address these issues.

The Senator from Wyoming began by talking about Social Security and used the word ''bankrupt'' generously. The Social Security System is not going bankrupt. It does no service to the American people to try to scare people about the Social Security System and so-called bankruptcy.

In the year 2029, the Social Security system will be out of money. The Senator is correct about that. Between now and then, we will have yearly surpluses, until about the year 2013. So about 34 years from now, unless we make some adjustments, we will have a problem. We will make adjustments. We have in the past and will in the future. The fact is that our responsibility is to make adjustments.

The Senator from Wyoming said the Republicans are doing what has always been done—that is, using the Social Security surpluses as part of the revenue of the operating budget. The best I can say is that the Senator says this is business as usual. I guess it is. I thought this was about reform and change. The Senator says this is business as usual. It has always been done, so we are going to keep doing it.

In 1983, I say to the Senator from Wyoming, I was on the Ways and Means Committee. I voted on and worked on that Social Security reform package. If the Senator will go back to the markup form, I offered an amendment that day. It was on the same thing I speak about today—that is, you should not collect payroll taxes, which are, by nature, regressive, promise people it is going to go into a trust fund and then pull it over into the operating budget and use it. That is dishonest, and I said that 12 years ago; dishonest, I say again on the floor of the Senate today. Am I a Johnny-come-lately on this issue? You better believe I am not. I have talked about this for 12 years.

This is dishonest budgeting. It was by Democrats, and it is by Republicans. It is dishonest and it ought to stop. The Senator said we have always done these things. But nobody ever did what was done last Friday. I hope, and will wait today for somebody to put in the RECORD what was done late Friday night, taking $12 billion out of the Social Security accounts in the reconciliation bill in order to fund other parts of the bill. It has never been done. It is a violation of the law, and the only reason it was done was because of the language we used, ''notwithstanding any other provision of law.''

I challenge anybody on the floor of the Senate today to come demonstrate that this has been done before. It has never been done before. It should not have been done on Friday, and it represents phony budgeting. Everybody in this Chamber knows it. So when people say, we are just doing what has always been done—not true. Not true.

There is plenty to talk about on Medicare and Social Security. I happen to think both of these programs have advanced this country's interests. Both programs need adjustments. There is no question about that. I am willing to work with the Senator from Wyoming, and others, in sensible ways to think through in the long-term what we do about these issues. But I do not think it is wrong or unreasonable for us to ask questions about the priorities of cutting $270 billion from what is needed in Medicare in the next 7 years and then deciding to cut taxes, especially after we say to you, well, at least limit the tax cut to those below a quarter-million dollars a year and back off on the adjustments you intend to make for some of the poorest of the poor, who rely on Medicaid and Medicare. If we are told we cannot do that because that is not our priority, then we understand we have very different priorities.

I am not alleging that you all do not care about Social Security or Medicare. I think there are some who do not. I think there are some who never believed in it, who never wanted it and, even today, if given a chance, would vote, probably in secret, to get rid of both. The fact is, I happen to think

both have advanced this country's interests and helped us to be a better country. I think when we, as Democrats and Republicans, are required to make adjustments in these programs, we would be well to make adjustments without putting them in a vehicle where we have decided, also, before we balance the budget, to provide a significant tax cut. I understand there is even reason to disagree on the tax cut. I think working families deserve a lower tax burden. I would like to see us do the first job first: Balance the budget, and decide after we have done that job how we change the Tax Code and provide relief for working families.

Mr. THOMAS addressed the Chair.

The PRESIDING OFFICER. The Senator from Wyoming.

Mr. THOMAS. Mr. President, I think the time until 12 o'clock is set aside for discussion on this side of the aisle, to talk a little bit about what we have been doing over the last couple weeks, to talk about some of the heavy lifting going on—balancing the budget, strengthening Medicare, reforming welfare, and doing something to reduce the tax burden on middle-class Americans. We want to talk a little about moving to the negotiation table, so that what is being done here can be done to affect the American public.

I yield 10 minutes to the Senator from Georgia.

PROTECTING MEDICARE

Mr. COVERDELL. I thank my colleague from Wyoming. I, of course, take some issue with the Senator from North Dakota. He quoted the statistics—to digress a moment—that indicated that Social Security was solvent until 2029, or something like that. The same people that he is quoting have told him, also, that Medicare is bankrupt in 6 years. They seem to forget that. Those trustees are really credible when they talk about Social Security, but they are not credible when they talk about Medicare.

Those same people that he is quoting are the ones that are telling the other side of the aisle that we better get serious about doing something about Medicare. The proposal that we voted on the other night should make everybody who is a beneficiary, or potential beneficiary, very comfortable, because that proposal guarantees a quarter-century of solvency. It takes it out just like Social Security. The proposal that we got from the other side of the aisle gives us a Band-Aid that would give us 24 additional months. I do not think there is a senior citizen in this country that is comforted by somebody making—I think he referred to it as ''adjustments,'' that give you 24 months of survival.

I think one of the strongest things that we have done is to effectively modify this program so that it is intact, it is secure, and there are more choices, and it is solvent for a quarter-century.

He also stated—reluctantly, I would say, after badgering the idea that we brought forward—that taxes ought to be lowered on the working families of America. He reluctantly, at the end, indicated that, well, maybe that is all right.

Let me tell you, it is more than all right. The other day on the floor, I mentioned that when Ozzie and Harriet were the quintessential family in America, Ozzie sent 2 cents of every dollar he earned to Washington. Today, that average family sends 24 cents out of every dollar to Washington, so that we can set the priorities for those families.

We have marginalized middle America. The Senator from North Dakota referred to the 1 percent that are wealthy. I might say that you could take this 1 percent and the 15 percent that are poor and on Government programs, and they are not terribly affected by this policy. They are either so wealthy that it does not matter to them, or they are in the Government program. But it is the vast middle class that bears the burden of what has been happening in Washington for the last 25 years. More and more has been extracted from that family and, as a result, they are less and less able to care for the housing and the education and health of that family. We have all acknowledged that the family is the core unit for maintaining the health of the country. But the Government has been pounding and pounding on that family for a quarter-century.

Today, half of their wages are consumed by one Government or another—a quarter in Washington, and the other quarter is divided between State and local government. An average family today earns $40,000 a year. I guess that is supposed to be rich, if you listen to the other side of the aisle.

Mr. President, $40,000—and by the end of the day they have somewhere between $20,000 and $25,000 to take care of all the needs of that average family.

If what was passed here this past Friday finally becomes law, we should talk about what that means, Mr. President, to this average family. It means that their interest payments on their mortgage is going to drop, and if that average mortgage is $50,000, they will save $1,081 a year in interest payments on their mortgage. They are going to save $180 a year on the interest payments on their car. They are going to save $220 a year in interest payments on auxiliary loans, whether it is for a student loan or refurbishing of their home. That comes up to almost $1,500 or $1,600 a year net on their kitchen table.

On top of that, that average family has two children. They are going to get a $500 credit for each child; $1,000, Mr. President, on the kitchen table.

So we have put $2,000 to $3,000 back in the account of every average family in America. That is an increase of anywhere from 10 to 20 percent of their disposable income. Tell me when middle America would have received either in salary increases or any other benefit of that significance, 10 to 20 percent more disposable income.

The people that have been paying these bills, that have been paying the bills for Medicare and for Medicaid and for Federal retirement and the interest on our debt deserve relief, they deserve it, because we depend on them to educate, to house, clothe and keep healthy the future of America. That is what these proposals do—they return resources to the average working family in America.

Now, Mr. President, just an hour ago there was a joint session of the policy committees on the House side and we heard from major economists on Wall Street about these budget proposals. It was amazing. To the person they said, ''Stick to it. America has got to have balanced budgets.''

If we achieve these balanced budgets, everybody will prosper, interest rates will drop. They already give us credit, this new Congress, from lowering it from 8 percent to 6 percent. They say if we actually pass this, and only 3 out of 10 Americans think we have the guts to do it, it will drop another percentage point. Interest rates will drop, inflation will drop, and the economy will expand. This family will put $2,000 more into its own welfare and the people in that family that are looking for a new job will be standing in shorter lines and there will be fewer pink slips.

The fact that America would seize control of its destiny and manage its financial affairs, as any family in business has to do, will be a boon to America. Every one of these people said to us, ''Don't blink, don't retreat. Get this done and the real beneficiaries are middle America.''

They passed out this chart, Mr. President. It is hard to see, but it shows the relationship to the growth in spending to inflation. When we are irresponsible as caretakers of our financial affairs in the Congress, and we spend too much—more than we have—we cause inflation to go up, we cause interest rates to go up, and then there is less available for expansion, and we cause people to lose their jobs.

Given what we are looking at, it is mindboggling to me that the other side of the aisle is not right at the table trying to find a way to support change in the way Washington has been operating.

Mr. President, we have been told that unless the United States does something very quickly, that within 10 years all U.S. revenues, all of our wealth, will be consumed by five things: Social Security, Medicare, Medicaid, Federal retirement, and the interest on our debt. And nothing is left.

That was presented to a group the other day in my home State and a woman stood up and said, ''How in the world would we defend ourselves?'' Good question. We could not. World rogues would love it if we stumbled

into the next century, crippled financially and unable to maintain the status of the superpower that we are. Five expenditures, and it is all gone.

Last April the trustees of Medicare came forward and said, ''Look, it is bankrupt. Congress and Mr. President, do something about it.''

I yield the floor.

Mr. THOMAS. Mr. President, I yield 10 minutes to the Senator from Minnesota.

THE $500-PER-CHILD TAX CREDIT

Mr. GRAMS. I want to thank Senator THOMAS, my good friend from Wyoming, for setting aside this time on the floor today for my freshmen colleagues and I to share our perspective on the Second American Revolution.

There may be 11 freshmen new to the Senate this year, but we speak with a single voice when we talk about the mandate handed to us by the voters last November.

Beginning last Wednesday morning and continuing for 20 hours, this Senate undertook a historic debate. For 20 hours, as we outlined the Balanced Budget Reconciliation Act, we had the opportunity to outline for the American people a new vision for this country.

Our vision is about standing up for taxpayers and their families. It is about reining in the big government that has inserted itself more and more deeply into their lives over the last 40 years.

Our vision—this new approach to governing—begins with balancing the budget, preserving Medicare, redefining welfare, and letting the people keep more of their own money, through our $245 billion package of tax relief.

Forty years of backroom wheeling and dealing by my colleagues across the aisle have dealt the American people nothing but a string of losing hands.

The big spenders may have had a long run, but they never played by the rules. Instead of using their own money, they demanded—over and over again—that the taxpayers be the ones to ante up.

With this Congress, however, it is a whole different game.

We are no longer going to let the Government gamble away the taxpayers' hard-earned dollars. In fact, we are going to keep those dollars out of the Government's hands in the first place.

As you know, the centerpiece of our tax relief package is the $500-per-child tax credit, and I am proud that my colleagues stood with me to ensure that this desperately needed provision remains at the heart of our reconciliation bill.

The $500-per-child tax credit will return $23 billion nationwide every year to working-class families, and those families have been vocal in sharing their thoughts on what kind of difference the child tax credit would make in their lives.

Since I began working on the $500-per-child tax credit 3 years ago, as a Member of the U.S. House, I have been receiving letters urging Congress to follow through on our promise of middle-class tax relief.

The letters have come from Minnesotans and from concerned Americans across this country, as well.

I hope they do not mind if I share parts of their letters with my colleagues.

Just a few: From Alabama, where the $500-per-child tax credit would return $354 million annually, I received this note on the very same day we began debating the reconciliation legislation.

The letter said:

> Please continue your work toward Medicare reform, a balanced budget over 7 years, and tax cuts. The people of this country are with you and waiting for this to happen.

From California, where the $500-per-child tax credit would return $2.6 billion annually:

> Our families desperately need tax relief, and our government needs to stop spending so wastefully.

Another letter, signed a ''California Democrat,'' read in part:

> Thank you for your support of the family tax credit. As a parent of three, I know parents need the help.

From Florida, where the $500-per-child tax credit would return $973 million annually:

> Thanks for your efforts this past year in supporting tax relief for families!

From Georgia, where the $500-per-child tax credit would return $570 million annually:

> I am writing to thank you for proposing the budget plan that would cut federal spending more than President Clinton's, and for supporting tax relief for families. We can use all the help we get!

From Illinois, where the $500-per-child tax credit would return $1.1 billion every year:

> We are a one-paycheck family struggling to keep our heads above water. Two of our children are in a private school. The burden of paying for the public and private systems is great for us.
>
> Nonetheless, we must do what we know to be best for our children. It is encouraging to know there are members of the government who understand our struggle and are working on our behalf.

From Minnesota's neighbor to the south, Iowa, where the $500-per-child tax credit would return $326 million annually:

> Thank you for supporting tax relief for families. Keep up the great job!

From Kentucky, where the $500-per-child tax credit would return $300 million annually:

> We realize you are fighting a tough battle and we fully support you on this issue. Keep fighting!

From Michigan, home State of Senator SPENCER ABRAHAM, who has been one of the Senate's most vocal advocates on behalf of family tax relief, and where the $500-per-child tax credit would return $977 million annually:

> I want to commend and thank you for remembering and supporting the needs of families at tax time. Specifically, I want to thank you for spending the past year arguing for the $500 per-child tax credit.
>
> There aren't very many people in Washington who remember the pro-family community in our country—and even fewer people in Washington who will support the family.

From Montana, where the $500-per-child tax credit would return $46 million annually:

> We just wanted to take the time to say thank you for supporting tax relief for families. We appreciate your stand for us parents.

From Nevada, where the $500-per-child tax credit would return $95 million annually:

> Tax relief is really needed. We know—we have four children, one income.

From New Hampshire, where the $500-per-child tax credit would return $102 million annually:

> My reason for this letter is to thank each of you for supporting tax relief for families and to ask you to continue to do so until the tax relief becomes reality.

From New York, where the $500-per-child tax credit would return $1.4 billion annually:

> Thanks for your work to try to get President Clinton to make good on his promise to give tax relief to families.

From Oklahoma, where the $500-per-child tax credit would return $269 million annually:

> As a concerned citizen, a voter, and a taxpayer, I want to let you know there are a lot of us middle-income, family-heads-of-households who support you firmly.

For the Presiding Officer in the chair, the Senator from Pennsylvania, where the $500-per-child tax credit would return $1 billion annually:

> Please continue to keep the profamily community in mind. The family network, its strength, is what keeps this Nation strong.

From South Carolina, where the $500-per-child tax credit would return $320 million annually:

> Thank you for supporting tax relief for families. Keep up the good work!

From Tennessee, where the $500-per-child tax credit would return $446 million annually:

> Thank you for supporting tax relief for families. Also, please continue to work for the deficit and keep it a point of public awareness.

From Texas, where the $500-per-child credit would return $1.6 billion annually:

> I am in favor of a tax cut for families.
>
> I believe that is one reason many people do not have more children these days—the Government taxes us so much, and tries to tell us how we should live and raise our children. I have three children of my own.

From Washington State, where the $500-per-child tax credit would return $537 million annually:

> Thank you for your work this term to get tax relief for families. It is such a hard fight.

From Wisconsin, Minnesota's neighbor to the east, where the $500-per-child tax credit would return $505 million annually:

> Thanks for your efforts to give families tax cuts.

And finally, Mr. President, the letters have poured in from my home

State of Minnesota, where the $500-per-child tax credit would return $477 million annually, completely eliminating the tax liability for nearly 46,000 Minnesotans: This letter came from Northfield, MN:

I'm encouraging you to support passage of a $500 per-child tax credit that goes to all tax-paying families with children under 18. Let's start strengthening society by supporting the backbone of the society—families!

Then there is this letter from a family in Roseville, MN:

A $500 Federal tax credit for each dependent is not a Federal hand-out, but would allow parents to keep more of the money that they make, and to use it to care for their own children.

A $500 Federal tax credit for each dependent would unquestionably strengthen many families—especially middle-class and economically-disadvantaged families.

And finally, a family in Minnetrista, MN, took the time to share these insights with me:

As the mother of seven children with one income, I am especially interested in the $500 per child tax credit. We refuse to accept aid from Federal or State programs that we qualify for.

We believe this country was built with hard work and sacrifice, not sympathy and handouts. We also believe that we can spend this money more effectively than the Government, who has only succeeded in creating a permanent, dependent welfare class with our money over the last 40 years.

Let's get back to basics.

Getting back to basics is what our budget plan is all about, Mr. President. That is why we are balancing the budget, protecting Medicare for the next generation, fixing a broken welfare system.

That is why we are cutting taxes, too. And if these letters are any indication, the American people are solidly behind our back-to-basics approach.

I yield the floor.

The PRESIDING OFFICER. The Senator from Wyoming.

Mr. THOMAS. Mr. President, I thank my friend from Minnesota. Those of us on this side of the aisle are excited about the opportunities that are here. We are excited that we have worked for 8 or 9 months now toward this time, toward the time to have actually passed the kinds of changes that we bring with us from the election last year. These are the freshmen and sophomores. These are the Senators who are relatively new to this body and are really wound up about what we are able to do here and want to keep moving. So I am delighted they are here.

I yield now 10 minutes to the Senator from Tennessee.

BALANCING THE BUDGET

Mr. THOMPSON. Mr. President, first of all I commend the Senator from Minnesota for his excellent presentation. After listening to those who are always for higher taxes and will use any means to fight any kind of tax cut on the basis that it is just a giveaway to the rich, it is refreshing to hear actually what this tax cut would do, the $500-per-child tax cut the Senator from Minnesota has fought so long and so hard for. The letters coming from people who work hard, pay their taxes, raise their kids and obey the law, and find it tougher and tougher to get by—that is obviously who this tax credit will go to benefit. It belies the accusations on the other side that, of course, this is just a tax cut for those who do not need it.

Our friends on the other side of the aisle have made a profession of trying to decide who in America deserves to keep more of the money they are earning and who deserves to have it sent to Washington for those enlightened Members of this body to spend for them.

So I think we are making substantial progress when we are obviously getting our message across to the American people as to exactly what this tax cut is all about. It goes to help those people who everybody in this body says they are concerned about. We are hearing all this rhetoric about the rich, the rich, the rich, and how everybody is for the working person and the working family. If everybody was for the working family and everybody is concentrating on doing something for the working family, why is it the working family feels they are getting worse and worse off every year? As I said, those people who work hard, raise their kids and pay their taxes—this, finally, will do something to reach the people that everybody says they are trying to reach in this country. This will actually serve that purpose.

Mr. DOMENICI. Will the Senator yield?

Mr. THOMPSON. I will be happy to yield.

Mr. DOMENICI. Just for 30 seconds.

The PRESIDING OFFICER. The Senator from New Mexico.

Mr. DOMENICI. Mr. President, I commend the Senator from Wyoming, Senator Thomas, and all those who are helping him. I think it is imperative that we respond when the other side comes to the floor making statements that are half truths and irresponsible. I commend him for it. I hope he does it every time they come to the floor. Across this land, the real facts of what we are trying to do are getting lost in the plethora of facts that are coming out that have very little to do with what we have done.

I hope the Senator does one on Medicare. Just put a chart here and show what we did, so the American public will see it. We know when the people see what we have done they favor what we are doing. It is when they are told things we are doing that we are not doing that they begin to wonder about this balanced budget.

So I commend my colleague for it, and those who are helping him, very much. I am hopeful they will continue to do it.

I yield the floor.

Mr. THOMPSON. Mr. President, I commend the Senator from New Mexico who has been a leader with regard to responsible budgeting in this country. It is always easier to give somebody something. It is always easier to maintain the status quo and to tell people they can continue on indefinitely the way we have been going and hold yourself up to accusations of hurting those in need, of not caring for the elderly.

Some Member on the other side of the aisle said, apparently, the only elderly that you know live in Beverly Hills. Those kinds of tactics are designed to scare people and appeal to the greedy side of people's nature, the implication being that as long as we can get ours today we do not care about our children, and we certainly do not care about our grandchildren.

We heard the statement earlier, ''Social Security is not in trouble. Social Security is not going bankrupt. Of course, in about 30 years it is going to run out of money.'' But the implication is, we do not have to worry about that because most of us will have gotten ours by then.

I am concerned, not only about today and my own mother who is dependent on it, I am concerned about my children and my grandchildren, as we all should be. That is what we are talking about here. That is the difference, I think, in the debate nowadays from what it has been in times past. That is the reason that many of us ran for political office for the first time in our lives, because people are sick and tired and fed up with business as usual. We see the results of it. We see in many respects our country is going downhill.

So we passed a reconciliation package to do something about that. People said they wanted a balanced budget. We are on our way to a balanced budget, to save Medicare—not to destroy it, but to increase spending for Medicare, but at a reduced rate of growth; to change a failed welfare system from something that was supposed to do good for people that has changed into something that has done an immeasurable disservice to many, many people in this country; to give more back to people who are earning hard-earned dollars to keep in their pockets.

The President, I thought, pretty much agreed with those concepts. We have come a long way, because some time ago the advisers to the President were saying we really did not need a balanced budget; and then, yes, maybe we need one but in 10 years; then, yes, maybe we need one and then OK, maybe 7 years.

The President pledged to reform welfare as we knew it back during the campaign. He acknowledged that Medicare was going bankrupt, and that we had to do something about it. He has proposed increasing Medicare spending by 7.1 percent a year. We have proposed increasing spending by 6.4 percent a year. It seems pretty close to me. It looks to me like we are fairly close together, at least on some of these basic concepts. And, yet, what does the

President do when we passed the reconciliation package? He says he will veto it, and basically he is not willing to negotiate—that we are destroying Medicare: that his 7.1 percent is a responsible percentage of growth but our 6.4 percent would destroy Medicare. These are scare tactics, even though we are spending twice the rate of inflation under our proposal; appeals to greed; appeals to grandparents. And there is the implication that, if you are making $100,000 a year, or if you are retired, you do not have to make any kind of incremental adjustment, we can continue on not only just increasing spending, which we are all saying that we will do, but increase spending at the rate that we are increasing now or closer to it.

So people must be confused as to what the President's position is. Is he for a balanced budget? Is he for changing welfare as we know it? Is he for doing something about Medicare, or not? He says he is. Yet, he seems to not be willing to even sit down at the table to work out these differences that some might interpret as being not all that great, that we might be able to work out.

I think the answer is clear that we are in the era now of political posturing, that the President feels he must come into this process feeling strong, feeling tough—and that is OK—delivering the message, and posturing himself. That is OK. A deal will be worked out of some kind, and, if it is not, that will be up to the President. But I think probably even more important than this particular resolution is that we will get by somehow. Even more important than that is the question of whether or not we have a commitment to these basic things. We can argue and fight over the details. That is why we have two branches of Government. That is why we have separation of powers, and checks and balances in this country. That is fine.

But the real question we have to face up to is whether or not we as a people, as a Congress, and a President are committed to the underlying propositions, for example, of a balanced budget because, if we are not, we are going through all of this for nothing. We are going to have to do so much more for so long. If we cannot pass this first hurdle, we will never make it past the others because we are making the initial downpayment on the balanced budget. We are going to have to own up to our responsibilities year after year after year. If we cannot solve these problems that merely have to do with numbers, how are we going to address the other major problems that are facing our country—with the problems of the world economy where wages are stagnating, especially among our younger people; the problems of the inner city where we see youth violence skyrocketing, youth drug use skyrocketing, illegitimacy skyrocketing; all of these social problems. If we cannot solve these numbers problems, how in the world are we going to address those? How are we going to address the underlying problem, probably that overshadows the rest of them? And, that is the cynicism that some of the American people have in this country toward their own Government, toward their own Government's ability to get things done.

Those are the underlying questions. Those are the more serious ones. I think that we can make a statement to the American people as we have tried to do in Congress by taking the tough votes, taking the tough measures, saying we cannot have everything exactly the way we have always had it, and we are going to speak the plain truth. We can tell the American people that we can do this, and because we did do this we can address these other problems that lie down the road before us.

So I urge the President, if he is serious about balancing the budget, changing welfare as we know it, saving Medicare, if he is serious about the statement that he made that he raised taxes too much, if he is serious about the position that, yes, we should have a tax cut, then I would urge him to sit down at the table and let us talk about those details. Because I think the message that I would like to deliver—and there are a lot of the new Members here who would like to deliver it, along with some of the maybe not-so-new Members—is that regardless of what the policies that have been around here in times past, things are different now, and we are not going to continue to roll over these problems to the next generation.

Thank you, Mr. President.

Mrs. HUTCHISON addressed the Chair.

The PRESIDING OFFICER. The Senator from Texas.

Mrs. HUTCHISON. Mr. President, thank you.

THE REPUBLICAN TAX PLAN

Mrs. HUTCHISON. Mr. President, I appreciate hearing from my friend, Senator THOMPSON from Tennessee, who differentiates between the new Members and the not-so-new Members. And I do not know in which category I fall. But I am pleased to be on the same side of this issue because I think some of the new Members are standing up and trying to talk the way people are talking back home.

I was really struck the other day when I was listening to C-SPAN in one of the call-in programs, and a woman called in with a very simple question. She said, ''My husband and I are working two jobs, and we make $25,000 a year. How is this going to help us?'' I think what Americans are saying is that it is the way Americans are talking. They are saying it is a legitimate question, simple and to the point. And we can answer her question, and we can give her a good answer.

What happens to her? Under the new budget, a single mother with one child working two jobs making $15,000 a year will have more money to feed her family and make ends meet. Instead of an EITC check of $864, which is what she would get this year, next year under the Republican plan she will get a check for $1,425. If she has two children, that will go up to $2,488. So she is not going to pay taxes at all. It is going to be how much she gets as an incentive for doing what she is doing, and that is working two jobs instead of being on welfare. She is going to have the incentive of getting a check back from the Government, and not paying taxes, if she is a working mother with one or two children.

What about the married couple? This is the woman who called into C-SPAN the other day. For this year, a married couple with two children and an income of $25,000 will pay $929 in income tax. That is this year. With the new Republican budget, next year that couple will not pay taxes at all. Instead, they will get an EITC check of $171.

So we are going to eliminate taxes on 3.5 million families that would pay taxes today, that will pay taxes for 1995—3.5 million families in America that are paying taxes this year under our plan will not pay taxes at all next year.

That is what it means in real terms. This is what we are trying to do.

In 1974, families spent 33 percent of their income on the necessities of housing, health care, and utilities. In 1995, that is 46 percent of a person's income, a family's income. We have heard people talking on the floor about what the real income is. People are making more. But they do not feel like their quality of life is as good. They do not feel like they are able to buy as much for their families, or go out to eat once a week anymore, or go to a movie once a week like they used to be able to do. Yet, they are earning more. What is wrong? That is what is wrong. Instead of 33 percent of their income going to necessities, it is 46 percent. That does not count clothes or food.

So what we are trying to do is put the money back into the pockets of our families, and we are putting money into the pockets of our working poor.

Let us talk for a minute about the marriage penalty. Right now in our country, unfortunately, we have a marriage penalty. We should be encouraging young couples to get married. But, instead, we discourage them with a marriage penalty.

I heard someone on the floor say, ''Oh, if we can do away with the marriage penalty, it will cost the Treasury $25 billion.'' Well, the Wall Street Journal, I think, puts it in perspective. They said wait a minute. To do away with the marriage penalty will save the taxpayers of America $25 billion.

This is money that belongs to the person who worked for it. It does not belong to the Treasury. It belongs to the person who worked for it.

Now, everyone in our country is here because we want to pay our fair share.

We want to participate in paying taxes for the things that we cannot do ourselves. Everybody has that attitude. It is when the taxes encroach so much on the quality of life and when the family does not really see what that does for them that we start getting people saying, ''Wait a minute. I am paying 39 percent; I am paying 27 percent; I am paying 15 percent,'' whatever it is, ''and I do not see the results. And I don't feel that my taxpayer dollars are being spent wisely.'' That is when people step up and say, ''Let's put this in perspective.'' And that is what we are trying to do.

Under the Republican plan, we increase the standard deduction for married couples that are filing jointly. By the year 2005, the marriage penalty will be eliminated for couples that do not itemize their deductions. That is the right approach. That is encouraging families.

Also encouraging families is homemaker IRA's. This is something that I and other women Members on both sides of the aisle have been very active in pursuing, and that is because we are saying we value the American family unit. The family unit is the core of our society. And yet, if you are a homemaker working inside the home, doing your part to strengthen society, you cannot set aside $2,000 a year in an IRA for your retirement security. If you work outside the home, you can. But if you work inside the home, you cannot.

We are going to change that with the budget reconciliation package that has passed both Houses of this Congress. We are saying the homemaker makes a contribution to the strength of our country that is every bit as important, if not more so, than the contribution made by people who work outside the home.

So we are going to correct an inequity that has been in our system. That helps the one-income working family. Many people sacrifice for the homemaker to stay home with the children. And when they sacrifice, they also are going to have to make a sacrifice for retirement security, and I think that is wrong and so did a majority of both Houses of Congress.

Then there is the homemaker who becomes displaced after 25 years of marriage; she becomes divorced or she loses her husband. She, too, is discriminated against in retirement security because she does not have that nest egg to build up for her retirement, which she is entitled to. This is in the bill that has passed both Houses.

We also add to other investment savings opportunities. America has one of the lowest savings rates of any industrialized country of the world. Why is that? One reason is we tax it twice. We tax savings when you earn it, and we tax it while it is in a savings account. It is taxed twice. Most industrialized countries do not do that.

We are going to provide more savings alternatives in this bill so people can put money into an account and the savings will mount tax free, so that when they need it, when their income levels are such that they need it, they are going to be able to pull it out tax free. Or, if they do not wait until retirement because they have an emergency need such as education for children, or first home or health care emergency, that is going to be provided for as well.

So it gives people an incentive to save because they know they can draw it out for an emergency and yet they are going to be able to earn money tax free either for their retirement security or for their emergency needs. This is going to be a savings incentive bill that is also, besides helping the family that is trying to take care of its retirement needs or emergency needs, going to spur economic activity which creates new jobs for people coming into our system.

So this is a new approach. That is for sure. And many times when you have something new, people are scared. They do not know what to expect, and so they wonder: what is all of this new action going to produce? We are trying to have some simple and basic themes. We are trying to help to encourage the American family. We are trying to encourage the working families that are having a hard time making ends meet but they are not on welfare. They are working to make ends meet, and we are encouraging them by taking more of them, 3.5 million more of them off the tax rolls completely. We are going to do away with the marriage penalty. We are going to try to spur investment to create new jobs in this country. It is very simple. We are trying to save Medicare for our citizens that are on Medicare now as well as for the future.

The Medicare trust fund is going broke. The President's own Cabinet people say it is going broke. Our plan is going to save it—not by cutting it but by slowing the rate of growth from 10 percent per year to 6.4 percent per year. Even 6.4 percent per year growth is more than we have in the private sector health care industry now. That is why we think it is reasonable. We are going to save the system. But we are going to do it over a 7-year period so that we can grow gradually rather than having a meat-ax approach. We are doing the responsible thing for this country. We are also keeping a promise. We are doing what we said we would do. We told the people in the 1994 election: Here is what you can expect if you vote for me. The people did vote for us, and now we are giving them what they expected and what they asked for.

Did we make a few mistakes? Probably. Do I agree with everything in the bill? No. Probably no one on this floor does either. But we can afford to come back again and correct mistakes that we might have made. What we cannot afford to do is nothing. That is the only mistake that we cannot afford to make. We cannot afford not to fix the Medicare problem. We cannot afford not to balance this budget. And we cannot refuse to keep the promises that we made—for tax cuts, for encouraging the American family, for encouraging the working families of our country. It is going to help the working people of our country and the elderly as we save the Medicare system.

I thank the Chair. I thank him for his leadership, and the Senator from Wyoming and others who are speaking to try to set the record straight. It is scary. There is no question that people not knowing what to expect are afraid. We have to let people know exactly what we are doing and hope that their common sense makes them understand that this is going to be good in the long term for our children and grandchildren so that we do not give them this $5 trillion debt that we are bumping up against in 2 weeks in this country.

I thank the Chair.

Mr. THOMAS addressed the Chair.

The PRESIDING OFFICER. The Senator from Wyoming.

Mr. THOMAS. Mr. President, I thank the Senator from Texas.

I think it is extremely important that we walk through this bill; it is a large bill; it covers lots of things; but to talk about how it will affect each of us as citizens of this country. And so I congratulate the Senator on doing that.

Let me just observe that one of the principal things we are doing is thinking about young people, is talking about what kind of shape we want this country to be in when we go into a new century. We have maxed out on our credit card. We charged it to the young people who are coming, and it is time we do something about that.

I now yield our time remaining to the Senator from Washington State.

Mr. GORTON. Mr. President, I have been informed by the Senator from Missouri that he has a brief interruption which he would like to make. I yield to him for that purpose.

Mr. ASHCROFT addressed the Chair.

The PRESIDING OFFICER. The Senator from Missouri.

VISIT TO THE SENATE BY PETER DUGULESCU, MEMBER OF THE ROMANIAN PARLIAMENT

Mr. ASHCROFT. Mr. President, I am pleased to be able to introduce to Members of the Senate Peter Dugulescu, a Member of the Romanian Parliament. Peter is a friend of mine of some time, and was influential in bringing much greater levels of democracy to Romania.

As a matter of fact, when the revolution in Romania began, he was part of a crowd in the city of Timisoara where 100,000 people had gathered one day to protest the lack of religious freedom there. They had called for a pastor to come to speak to the crowd. And no one felt confident enough in the regime to come and speak to the crowd. And Peter finally offered himself to the crowd.

This was during the days of President Ceausescu. When Peter went to speak to the crowd and lead them in prayer, it was a turning point in the revolution of Romania. He now serves in the Romanian Parliament and is a testimony to the kind of courage that real patriots exhibit.

It is my pleasure to have him accompany me to the floor today. And I just wanted to thank the Senate for the opportunity to allow me to commend him, not only for the example he has set for his fellow citizens in Romania, but to commend him for the kind of example he sets, his dedication of principle and commitment to strong ideals and values and commitment to his God and recommend him to citizens around the world.

I thank the Senator from Washington for allowing me to make this interruption. And I hope that someday I have a chance to return the favor. Thank you very much.

Mr. GORTON addressed the Chair.

The PRESIDING OFFICER. The Senator from Washington.

Mr. GORTON. What is the state of business, Mr. President?

The PRESIDING OFFICER. Does the Senator seek to extend the period of time for the transaction of morning business?

Mr. GORTON. In the absence of such a request, what would take place?

The PRESIDING OFFICER. The regular order would be to close morning business.

EXTENSION OF MORNING BUSINESS

Mr. GORTON. I ask unanimous consent that morning business be extended for a period of 5 minutes.

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

THE RECONCILIATION BILL AND THE BUDGET

Mr. GORTON. Mr. President, I have heard many of the comments of my eloquent and thoughtful Republican colleagues about the reconciliation bill and the budget which has just been passed, their thoughtfulness with respect to the way we have caused the Medicare system to be preserved, protected, and strengthened, the fact that in doing so the percentage of the premium which individuals will pay for their Medicare part B coverage will not be increased, except for those who are wealthy enough to be able to afford and who, for that matter, ought to pay for a greater portion of the cost of their health care rather than passing that cost onto the backs of working Americans.

I have heard, particularly, the references of my colleagues to the long-sought and most welcomed reductions in the tax burdens on the American people. But, Mr. President, I want to emphasize one aspect of those tax reductions which have frequently before been overlooked. While there is in total almost $250 billion in tax relief for the American people in the reconciliation bill this body passed early last Saturday morning, the overwhelming bulk of those tax reductions, 80 percent of them, in fact, comes from two sources: The closing of certain corporate and business tax loopholes amounting to about 10 percent of the gross tax reductions and a $170 billion dividend which the Congressional Budget Office has told us will be the benefit to the Federal Treasury of passing a budget which clearly will be balanced by the year 2002.

Mr. President, I think that is a vitally important concept. The tangible dividend to the American people of our balancing the budget will be $170 billion in lower interest payments on the Federal debt and an increased tax collection under the present system because of greater prosperity, more opportunity, more employment, a better lifestyle that a balanced budget will give to the people of the United States.

Mr. President, that is the overwhelming source of the tax reductions that are included in this bill. We, as Republicans, believe that if we balance the budget, that dividend ought to go to the American people, not to further or for additional spending programs. And that profoundly differentiates ourselves from our opponents in this battle who consistently have demanded more spending on the part of the Federal Government.

Now, Mr. President, perhaps the most remarkable illustration of the differences between two of the three sides of this battle is the fact that the President of the United States claims that he has presented a balanced budget when, in fact, he has not done so but has simply estimated the deficit out of existence.

The Congressional Budget Office, the agreed upon arbiter of the fiscal direction in which this country is proceeding, has offered us no dividend in connection with President Clinton's budget proposals. Not $170 billion, not $150 billion, not $10 billion have they offered us should we pass the President's budget. Why? Because, of course, under Congressional Budget Office figures, it does not balance in the year 2002. In fact, it barely gets below $200 billion at any time between now and that year. That is perhaps the greatest single illustration of the proposition that the White House offers us stones for bread, that it gives us nothing that will ever lead us to a balanced budget and does nothing in the way of a fiscal dividend to the American people and thus no source for tax relief for the people of the United States.

That $170 billion dividend, I wish to emphasize, is only the dividend that a balanced budget provides for the Treasury of the United States. It is perhaps one-quarter to one-third of the overall benefit to the American people. If we pass a law which will cause the budget to be balanced, in addition to that $170 billion in a return of lower taxes, the American people will benefit to the tune of $300, $400, $500 billion in higher wages, in greater income, in broader opportunities, in economic growth in the country as a whole.

So, what we have done, Mr. President, is that we have passed a set of proposals which will improve the condition of the American economy and the American people by close to $1 trillion between now and the year 2002. If only we can get the White House to agree to it or to agree to a budget which has the same impact.

That is a magnificent triumph, Mr. President. I believe it is unprecedented at any time in the last two or three decades. And in addition to all of the other dividenda that come from a smaller Government, less control and influence on the part of the Government over our lives, a reform of the welfare system, the preservation of Medicare, in addition to all of these other dividends, is this potential for a better and a more prosperous America. And that, Mr. President, is the justification for what we propose to do, and what we passed in this body late last Friday night or early last Saturday morning.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

Mr. DOLE. Mr. President, was leader time reserved?

The PRESIDING OFFICER. The Senator is correct.

Mr. DOLE. I thank the Chair.

(The remarks of Mr. LUGAR, Mr. DOLE, and Mr. CRAIG pertaining to the introduction of S. 1373 are located in today's RECORD under ''Statements on Introduced Bills and Joint Resolutions.'')

RURAL LOCAL INITIATIVES SUPPORT CORPORATION

Mr. BOND. Mr. President, earlier this morning I joined my good friends of the Local Initiatives Support Corp. to kick off LISC's new rural LISC initiative. I was pleased to be joined by Roger Young, the commissioner for the Eastern District of Audrain County, MO; David Thayer of Central Missouri Counties HDC; and David Stanley, chairman and CEO of Payless Cashways, Inc., who support this initiative. I thank them for their tireless efforts in support of finding new ways to leverage funding through public-private partnerships for addressing the housing and economic needs of rural, distressed communities.

I emphasize that rural communities face an economic decline of substantial

magnitude. Nearly 17 percent of rural Americans live below the poverty level, and across all major racial, ethnic, and age groups, these residents are poorer than those in metropolitan areas and have less opportunity. While most of the rural poor are working, their wages are at or below minimum wage. The rural poor also face a bleak housing situation—one in four poor rural families live in substandard housing, and nearly half pay over 50 percent of their income for rent. A lack of human and financial capital, as well as an inadequate physical and communications infrastructure, compound the economic and housing difficulties that face the rural poor.

Earlier this month, I chaired a hearing before the Senate Committee on Small Business which focused on proposals to revitalize rural and urban communities and Paul Grogan, president of LISC, provided insightful testimony at that time. At this hearing, we had the opportunity to discuss legislation I am drafting to target Federal contracts to small businesses that locate in economically distressed communities, which I call HUBZones. To be eligible, small businesses would need to hire at least 35 percent of its work force from the HUBZone to receive valuable preference in bidding on Government contracts. I believe this is one way the Federal Government can provide a significant incentive to encourage small businesses to provide a value added in terms of jobs and investment to economically distressed rural communities.

I applaud the efforts and commitment of LISC for establishing the rural LISC initiative which will be responsible for a public-private partnership that will commit over $300 million to 68 nonprofits in 39 States and Puerto Rico for community revitalization efforts in rural areas. LISC has a longstanding commitment to finding new approaches and strategies to address the problems of distressed communities through public-private partnerships. Moreover, LISC has long operated as a linchpin to successful community-based investment in urban areas through community development corporations. I emphasize that I support the need to develop public-private partnerships as the primary vehicle to implement positive and community-based policies to address distressed communities, in both urban and rural areas. For too long, the Federal Government has acted as a ''Mother-May-I'' that has lost touch with the individual needs of individual communities. Most of the current housing reform legislation, whether in through the appropriation or authorization process, recognizes the need to consolidate housing and community development programs and to redirect the responsibility for decisionmaking from the Federal Government to State and local governments.

In particular, like many urban areas, the Federal Government has been unable to establish effective policies to meet the many and unique needs of rural areas. LISC deserves particular praise for taking a leadership role in organizing and focusing its expertise, resources, and the marshalling of public and private sector capital on the unique and individual needs of rural areas. Rural LISC represents a major and significant new public-private partnership which will direct critical new investment to rural CDC's. I emphasize these CDC's are committed to transforming rural distressed communities from the grassroots up.

Finally, the Federal Government has failed to understand the needed dynamic to solve local problems in distressed communities. Instead of mandating one-size-fits-all policies at the Federal level, Congress and the Federal Government need to refocus the decisionmaking for local communities from the Federal Government back to States and localities. LISC brings to the table expertise and a history of commitment of listening and responding to local needs. I expect the rural LISC public/private partnership approach to provide a powerful tool and model for how best to address the needs of rural areas effectively and efficiently.

HHS REPORT ON THE SENATE AND HOUSE WELFARE BILLS

Mr. MOYNIHAN. Mr. President, a September 14, 1995, report by the Department of Health and Human Services concludes that the Senate welfare bill would push 1,100,000 children into poverty, and that the House bill would force 2 million children below the poverty line. The report, which has not been officially released by HHS, was the subject of a front-page news story in the Los Angeles Times on Friday, October 27. The New York Times and Washington Post ran their own stories about the report the next day.

I first learned of the existence of this report 2 weeks ago, but was unable to obtain a copy until last Friday. The administration had previously refused to acknowledge that any such report existed.

Mr. President, over the years Congress has on occasion missed opportunities to help our Nation's dependent children, but never before in our history have we calculatedly set out to injure them. The administration's own analysis shows that this is precisely what will occur under either bill now before the conference committee on welfare. Surely we will not permit this to happen. Surely the President will not permit this to happen.

I urge all Senators to read the administration's report, and I ask unanimous consent that it be printed in RECORD.

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

THE PRELIMINARY IMPACT OF THE SENATE REPUBLICAN WELFARE PROPOSAL ON CHILDREN (THE WORK OPPORTUNITY ACT OF 1995 (S. 1120))

THE IMPACT ON POVERTY AND INCOME DISTRIBUTION

On Child Poverty:

S. 1120 will push 1.1 million more children into poverty, an increase of almost 11 percent in the number of children living below the poverty line.

The child poverty rate will rise from 14.5 percent to 16.1 percent. (See methodology for a description of the poverty measure used.)

On Poverty in Families:

An additional 1.9 million persons in families with children will fall below the poverty line.

The poverty gap for families with children will increase $4.1 billion, or 25 percent. As a result, a total of $4.1 billion in additional income will be required to bring these families up to the poverty threshold.

On Income Distribution:

The poorest families will face the largest program cuts under S. 1120. In families with children, those in the lowest income quintile will lose an average of almost $800 of their annual income, or 6 percent.

Eleven percent of families with children in the lowest income quintile will face significant losses in annual income of 15 percent or more. For families in the lowest quintile, who have an average income of $13,400, this represents a loss of more than $2,000 in annual income.

The severity of the impact of S. 1120 on poor families exacerbates the deteriorating economic situation for these families who have lost a greater share of their income in the past 15 years than families with higher income. Income for families with children in the lowest income quintile has declined by 20.7 percent over the period 1979–1990, compared to 24 percent growth for families in the highest income quintile.

TABLE 1.—THE IMPACT OF THE SENATE WELFARE REFORM PROPOSAL ON CHILD POVERTY

[Simulates effects of full implementation in 1993 dollars]

	Current law	Senate proposal	Change current
CHILDREN UNDER 18			
Number of people in poverty (in millions)	10.1	11.2	1.1
Poverty rate (in percent)	14.5	16.1	1.6
FAMILIES WITH CHILDREN			
Number of people in poverty (in millions)	17.1	19.0	1.9
Poverty rate (in percent)	11.8	13.2	1.5
Poverty gap (in billions)	$16.3	$20.4	$4.1
ALL PERSONS			
Number of people in poverty (in millions	29.2	30.5	2.3
Poverty rate (in percent)	10.9	11.7	0.8
Poverty gap (in billions)	$45.9	$52.0	$5.1

85tes: Senate Republican welfare reform proposal simulations include the impact of S. 1120, as amended, on AFDC, SSI, and Food Stamps. Model incorporates a labor supply and state response.

This definition of poverty utilizes a measure of income that includes case income plus the value of food stamps, schools lunches, housing programs, and EITC, less federal taxes to compare to the poverty thresholds.

Source: TRIM2 model based on data from the March 1994 Current Population Survey. Prepared on Sept. 14, 1995.

TABLE 2.—THE IMPACT OF THE SENATE WELFARE REFORM PROPOSAL ON FAMILY INCOME

[By Income Quintiles and Family Type Stimulates effects of full implementation in 1996 dollars]

	Total reduction in income (in billions)	Average income under current law	Average income reduction per family	Percent change	Percent of families losing 15% or more of their income
FAMILIES WITH CHILDREN					
Lowest	−$6.0	$13,441	−$798	−5.9	10.9
Second	−3.2	21,838	−422	−1.9	4.2

TABLE 2.—THE IMPACT OF THE SENATE WELFARE REFORM PROPOSAL ON FAMILY INCOME—Continued

[By Income Quintiles and Family Type Stimulates effects of full implementation in 1996 dollars]

	Total reduction in income (in billions)	Average income under current law	Average income reduction per family	Percent change	Percent of families losing 15% or more of their income
Third	−1.1	32,016	−150	−0.5	0.9
Fourth	−0.4	45,868	−50	−0.1	0
Highest	−0.4	79,154	−52	−0.1	0
Total	−11.2	38,735	−292	−0.8	3.2

Notes: The comparison shown is between the Senate Republican Leadership welfare reform proposal and current law. The simulations include the impact of the provisions in S. 1120, as amended, on AFDC, SSI, and Food Stamps. Model incorporates a labor supply and state response.

The definition of quintile in this analysis uses adjusted family income and sorts an equal number of persons into each quintile. Adjusted family income is derived by dividing family income by the poverty level for the appropriate family size.

Source: TRIM2 model based on data from the March 1994 Current Population Survey.

METHODOLOGY

These preliminary results are based on the TRIM2 microsimulation model, using data from the March 1994 Current Population Survey. Overall, these estimates tend to be a conservative measure of the impact of S. 1120 on poverty and income distribution. The analysis assumes that states will continue to operate the program like the current AFDC program (i.e., they will service all families eligible for assistance); that states will maintain their 1994 spending levels; and that recipients are not cut off from benefits prior to the five year limit. Additionally, the results are conservative because not all provisions are included and because the data do not identify all persons who would potentially be affected by the program cuts. The model also assumes dynamic change in the labor supply response for those affected by the time limit provision, based on the best academic estimates of labor supply response.

The results compare the impact of the Senate Republican welfare reform proposal with current law. The computer simulations include the impact of the fully implemented provisions in S. 1120, as amended, on AFDC, SSI, and the Food Stamp Program in 1996 dollars and population. S. 1120 will decrease spending on AFDC-related programs by $8.8 billion, in 1996 dollars. Spending on children formerly eligible for SSI will decline by $1.5 billion. The Food Stamp Program will be reduced by $1.5 billion.

The poverty analysis is displayed in 1993 dollars. The definition of poverty in this analysis utilities a measure of income that includes cash income plus the value of food stamps, school lunches, housing programs, and the EITC less federal taxes. This income is then compared to the Census Bureau's poverty thresholds, adjusted for family size. For example, a family of three today (1995), is living in poverty with the income below $12,183; a family of four with income below $15,610.

The following are the specific provisions of S. 1120 that were modeled (these provisions may not reflect the final version of the Senate welfare reform bill):

AFDC

Reduce AFDC spending as a result of the block grant; Limit receipt of AFDC benefits to five years with a 15 percent hardship exemption; Deny benefits to immigrants; and Eliminate $50 child support disregard.

Deny benefits to immigrants; and Deny benefits to some children formerly eligible because of changes in the definition of disabilities.

STAMPS

Reduce the standard deduction; Reduce benefits to eligible households from 103 percent of the cost of the Thrifty Food Plan to 100 percent; include energy assistance as income in determining a household's eligibility and benefits; Eliminate indexing for one- and two-person households; and Lower age cutoff for disregard of students' earned income from 21 to 15 years; Require single, childless adults to work.

TABLE 1.—THE IMPACT OF CONGRESSIONAL PROPOSALS ON CHILD POVERTY

[Simulates effects of full implementation in 1993 dollars]

	Current law	House proposals	Change from current law
CHILDREN UNDER 18			
Number of people in poverty (in millions)	10.1	12.1	2.0
Poverty rate (in percent)	14.5	17.4	2.9
FAMILIES WITH CHILDREN			
Number of people in poverty (in millions)	17.1	20.6	3.5
Poverty rate (in percent)	11.8	14.2	2.4
Poverty gap (in billions)	16.3	24.5	8.1
ALL PERSONS			
Number of people in poverty (in millions)	28.2	32.2	4.0
Poverty rate (in percent)	10.9	12.4	1.5
Poverty gap (in billions)	46.9	55.8	9.9

Notes: The comparison shown is between Congressional House Republicans proposals and current law. Simulations include the impact of the House of Representatives welfare plan, HR 4 on AFDC, SSI, food stamps, and housing programs; the EITC proposal adopted by the Committee on Ways and Means; the House of Representatives proposal affecting LIHEAP appropriations; and the Budget Resolution proposal concerning federal employee pension contributions. Model incorporates a labor supply and state response to the welfare block grant.

This definition of poverty utilizes a measure of income that includes cash, the EITC, less federal taxes, to compare the poverty threshold.

Source: TRIM2 model based on data from the March 1994 Current Population Survey. Dated on Oct. 2, 1995.

EXPENDITURE LIMIT TOOL

Mr. CONRAD. Mr. President, I rise in strong opposition to the budget expenditure limit tool, known as the BELT, that would place artificial price caps on Medicare and jeopardize the quality of the health care received by millions of senior citizens. I ask unanimous consent to have printed in the RECORD at the conclusion of my remarks several letters of support for the motion I had planned to make to strike the BELT. It is imperative that the Senate strike this ill-advised provision in order to preserve Medicare beneficiaries' ability to choose their own doctor and health plan.

The PRESIDING OFFICER. Without objection, it is so ordered

(See exhibit 1c)

Mr. CONRAD. In the interest of time, the point-of-order I had planned to make against the BELT provision has been included in the omnibus Byrd rule point of order being made by Senator EXON. However, I believe it is important to highlight the impact of the BELT, because it is a potential disaster for the Medicare Program and has not received anywhere near the attention it deserves.

The BELT amounts to what many of us have called a noose around the necks of older Americans. The BELT imposes artificial price caps on Medicare for the first time in history. And rather than work in a balanced fashion, the BELT only attacks fee-for-service Medicare. It cuts fee for service and ultimately forces seniors to use health plans they don't want and doctors they don't know.

The reconciliation bill allows seniors to choose coverage options other than traditional Medicare fee-for-service. I support that. But I only support it as an option. Seniors should not be forced into managed care. Unfortunately, the BELT could ultimately make managed care the only option for Medicare beneficiaries.

The BELT renders the so-called choice under Medicare an illusion. There will be more choice for a short time. But then the noose will tighten. It will slowly bleed fee-for-service Medicare dry. And if we learned anything from last year's health care debate, it is that health plans with insufficient resources will wither on the vine. And given yesterday's remarks by the Speaker of the House, that seems to be what some of my Republican colleagues have in mind for the Medicare Program.

The BELT promises to make even more draconian cuts in Medicare fee-for-service than the Republicans have already proposed. As the BELT tightens, Medicare will have fewer resources to provide needed health care to our parents and grandparents. The quality of Medicare fee-for-service will deteriorate and seniors will have little choice but to move into managed care. Medicare fee-for-service will wither on the vine.

During last year's health debate, we heard a great deal about artificial government cost controls. Harry and Louise told the Nation that arbitrary cost controls could bankrupt the insurance plans on which millions of Americans depend, leaving people without adequate insurance coverage.

The BELT provision does to Medicare what Harry and Louise said artificial cost controls would do to the national health care system. It inflicts arbitrary cost controls on Medicare at a moment's notice, and without congressional oversight. And it will force seniors into health care plans that may not meet their needs.

The letters I have entered into the RECORD expressed the concern of beneficiaries and providers, alike, that the BELT will erode the integrity of Medicare. The American Association of Retired Persons, National Council of Seniors Citizens, American College of Physicians, Healthcare Association of New York State, and North Dakota Hospital Association are only a handful of those who have expressed opposition to the BELT. The Congressional Budget Office has also said the BELT is unworkable and unwise, and I ask unanimous consent that CBO's analysis also be included in the RECORD.

Mr. President, the BELT has no place in this bill. It promises to erode and eventually destroy the integrity of Medicare fee-for-service. I hope my colleagues will support the point of order and strike the BELT provision from the bill.

EXHIBIT 1

NORTH DAKOTA HOSPITAL ASSOCIATION,
Bismarck, ND, October 25, 1995.

Senator KENT CONRAD,
Hart Senate Office Building,
Washington, DC.

DEAR KENT: The members of North Dakota Hospital Association are in strong support of your amendment to strike the Medicare Budget Enforcement Limiting Tool (BELT) from the Senate Reconciliation Bill.

It is our understanding that the proposed Senate Republican Medicare legislation to reach $270 billion in Medicare cuts reduces payments to hospitals by more than $86 billion over seven years. On top of that, legislation has been proposed to also reduce Medicaid funds to hospitals by $182 billion during that same amount of time. The magnitude of these reductions causes great concern for North Dakota, which has a large and growing population of citizens over 65 years of age.

In visiting with our administrators, they are hard pressed to understand how they can cut budget or plan to serve this population and others, when the BELT provision would entail additional reductions based on whether or not certain savings are achieved.

A number of our facilities, Cavalier County Memorial Hospital in Langdon; Jamestown Hospital in Jamestown, Tioga Medical Center in Tioga and Carrington Medical Center in Carrington have all publicly expressed concerns that the amount of proposed reductions, with lookbacks added, will mean that in seven years they cannot guarantee that their doors will be open.

Half of our facilities are co-located with and include long-term care facilities. Those that care for a large percentage of Medicare patients in their hospital and mostly Medicaid supported residents in their nursing homes will receive a double hit from which they also might not be able to recover. In a rural state like ours, you can imagine that access becomes a critical issue if a void is left in an area where distances can mean the difference between life and death.

It seems grossly unfair to single out healthcare providers as the group responsible for obtaining savings not achieved. It also seems grossly unfair to ask a particular segment of the business world in our country to operate with a system in which orderly business operations would be interrupted based on a compliance order not determined until the very last minute.

Our facilities are operating as cost-efficiently as possible, while still maintaining the quality expected of them by their patients. We feel it is imperative to the solvency and survivability of many of our providers that the BELT provision be excluded. NDHA supports your efforts and hopes your fellow legislators will understand how detrimental this provision would be to the healthcare facilities in our state and also support you in this effort.

Sincerely,

ARNOLD R. THOMAS,
President.

HEALTHCARE ASSOCIATION
OF NEW YORK STATE,
Washington, DC, October 24, 1995.

Senator KENT CONRAD,
Hart Senate Office Building,
Washington, DC.

DEAR SENATOR CONRAD: On behalf of the Healthcare Association of New York State, representing over 400 hospitals and health care providers, I would like to take this opportunity to express our support for your amendment to the Senate Budget Reconciliation Bill that would strike the Medicare Budget Enforcement Limiting Tool (BELT).

The Senate Republican Medicare legislation currently under consideration will be devastating to the health care delivery system. The $270 billion of Medicare cuts that would be required by the legislation would reduce Medicare hospital payments by more than $86 billion over the next seven years. Reductions of this magnitude, combined with $182 billion in proposed Medicaid cuts, would jeopardize the ability of health care providers to adequately care for our nation's senior citizens.

The Medicare BELT provision could exacerbate these already tremendous reductions. By placing absolute Medicare spending limits in the statute, health care providers that will already be receiving payment updates that do not keep pace with inflation could be faced with additional reductions—even if cost overruns are due to conditions beyond providers control.

There are many factors that contribute to increases in Medicare spending that can not be predicted in advance with absolute certainty. Placing the weight of a Medicare global budget on the backs of health care providers could mean absolute rate cuts and threaten the solvency of many hospitals, nursing facilities, home-health agencies, and other health care providers. It is critical that the BELT provision be dropped from Senate Medicare legislation and HANYS supports your efforts.

Sincerely,

STEVEN KROLL,
Director of Federal Relations.

AMERICAN HOSPITAL ASSOCIATION,
Washington, DC, October 25, 1995.

Senator KENT CONRAD,
Senate Hart Building, Washington, DC.

DEAR SENATOR CONRAD: We are pleased to lend our strong support for your amendment to strike the budget expenditure limiting tool (BELT) from the budget reconciliation bill.

As you know, the bill calls for reductions of $86 billion in hospital services over seven years. This unprecedented level of reductions in the Medicare program will have a dramatic impact on the ability of hospitals across the nation to continue to provide high quality care, not only to Medicare beneficiaries but to all our patients. If the BELT remains part of the bill, providers could be exposed to unlimited additional payment reductions beyond the deep cuts already proposed.

We are not only concerned about potential additional reductions, but also that these reductions would be made for reasons beyond hospitals' control. For example, if certain reforms not related to hospital behavior do not achieve the level of savings estimated by the Congressional Budget Office, then hospital payments would be arbitrarily cut. That's simply unfair given the $86 billion cut we are already being asked to absorb.

Even CBO, in a letter to Chairman Roth dated October 20, 1995, states that the ''use of the BELT would not be necessary.''

Thank you for your leadership on this important issue.

Sincerely,

RICK POLLACK,
Executive Vice President.

NATIONAL COUNCIL
OF SENIOR CITIZENS,
Washington, DC, October 26, 1995.

Hon. KENT CONRAD,
U.S. Senate, Senate Office Building, Washington, DC.

DEAR SENATOR CONRAD: The National Council of Senior Citizens supports your motion to strike from the Medicare section of the Reconciliation bill the ''BELT'' provision. This provision would severely cut resources from the traditional Medicare fee-for-service program and would restrict the range of ''choices'' generated by the ''reformed'' Medicare program. Average-to-lower income Medicare beneficiaries would be forced from fee-for-service into cut-rate, managed care programs.

Senator, a ''choice'' you can't afford is no choice at all.

We support your motion.

Sincerely,

DANIEL J. SCHULDER,
Director, Department of Legislation.

AARP,
Washington, DC, October 26, 1995.

Hon. KENT CONRAD,
U.S. Senate,
Washington, DC

DEAR SENATOR CONRAD: I am writing to express AARP's appreciation for the amendment you are planning to offer to strike the Budget Enforcement Limiting Tool (BELT) from the Medicare provisions of the Senate budget reconciliation bill. The BELT proposal would reduce traditional Medicare Fee-for-Service (FFS) provider reimbursements if Medicare spending in a fiscal year is projected to exceed an arbitrary amount set in the bill. The Congressional Budget Office (CBO) estimates that the provisions contained in the bill would meet the budget resolution target of saving $270 billion over the period between 1996 and 2002 and that the BELT would not be required. However, the CBO estimate assumes that the plan works, that is, that there is sufficient migration into managed care, that the provider reductions and increased premiums and deductibles control Medicare spending and that CBO's baseline assumptions are correct.

If any of these variables are incorrect, then the formula-driven BELT would reduce FFS spending to meet the targets set in the bill. Formula-driven approaches to budget cutting have always concerned AARP, in part, because of the rigidities they build into the system and their inherent potential for error and misestimation. This bureaucratic mechanism is one of many in the huge 2,000 page budget bill that the public knows nothing about. Older Americans will only find out about in after the Senate acts.

Congress has structured this bill to create incentives for beneficiaries to move into commercial health insurance plans and has capped the growth of premiums paid into those plans. The BELT provision would then cap the FFS part of the program. AARP is concerned about what kind of coverage will be available at the turn of the century. Will providers still be willing to see patients in a FFS setting? Will commercial health plans be willing to offer comprehensive coverage without huge out-of-pocket costs for beneficiaries? Will Medicare still be able to meet the health needs of older Americans?

In addition, we believe the current structure of the BELT contains silent beneficiary costs. For instance, under the Senate bill the Part B premium is expected to cover 31.5 percent of Part B annual spending. However, because the Senate writes the dollar amount of the premiums into law, rather than the percentage, and if the BELT is tightened and program spending is lowered, these stated premiums would account for more than 31.5 percent of annual spending. This silently shifts more costs onto beneficiaries.

The same problem occurs with the Part A hospital deductible. The deductible is based, in part, on Medicare's payment to hospitals. If the deductible is calculated before the BELT reduces Part A spending, it would be based on a higher payment amount and would, in turn, shift more costs onto Medicare beneficiaries.

AARP supports your amendment to strike the BELT provision from the Medicare Reconciliation bill. We feel that the long-term

risks to the program and the silent costs it imposes on beneficiaries would be unfair. Older Americans already pay a lot out of their own pockets for medical care—$2,750 on average in 1995 alone—not including the costs associated with long-term. The Senate bill already increases Part B premiums and deductibles and includes a new income-related premium. Adding hidden costs would add to this out-of-pocket burden.

Thank you, again, for your leadership on this amendment. Please feel free to contact me (434–3750) or Tricia Smith (434–3770) if you would like to discuss this amendment further.

Sincerely,

MARTIN CORRY,
Director, Federal Affairs.

AMERICAN COLLEGE OF PHYSICIANS,
Washington, DC, October 26, 1995.

Hon. KENT CONRAD,
U.S. Senate, Hart Senate Office Building, Washington, DC.

DEAR SENATOR CONRAD: As the Director of Public Policy for the American College of Physicians (ACP), I am writing to express the ACP's support for your amendment to eliminate the budget expenditure limit tool (BELT) from the Medicare reform legislation currently pending before the Senate.

The ACP is the nation's largest medical specialty society and has more than 85,000 members who practice internal medicine and its subspecialties. The College has consistently objected to the BELT provisions in the legislation because they establish arbitrary budget limits that dictate future payment amounts and impose price controls. These provisions make the simplistic and incorrect assumption that spending increases, regardless of cause, should be recouped by lowering payments to hospitals, physicians, and other providers.

Rather than arbitrary price controls, the College believes that the more effective way to achieve cost containment in the Medicare program, is to address the long-term factors that contribute to excess capacity and inappropriate utilization of services.

Thank you for your attention to this important matter.

Sincerely,

HOWARD B. SHAPIRO,
Director, Public Policy.

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, October 20, 1995.

Hon. WILLIAM V. ROTH, Jr.,
Chairman, Committee on Finance, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office (CBO) has prepared the enclosed cost estimate for the Medicare reconciliation language reported by the Senate Committee on Finance on October 17, 1995.

The estimate shows the budgetary effects of the committee's proposals over the 1996–2002 period. CBO understands that the Committee on the Budget will be responsible for interpreting how these proposals compare with the reconciliation instructions in the budget resolution.

This estimate assumes the reconciliation bill will be enacted by November 15, 1995; the estimate could change if the bill is enacted later.

If you wish further details on this estimate, we will be pleased to provide them.

Sincerely,

JUNE E. O'NEILL,
Director.

Enclosure.

FAIL-SAFE MECHANISM (BUDGET EXPENDITURE LIMITING TOOL)

The proposal incorporates a complex mechanism designed to ensure that Medicare outlays in a given two year period would not exceed the Medicare outlays specified in the bill for that period. The budget expenditure limiting tool (BELT) would operate both prospectively and retrospectively to control fee-for-service expenditures. Expenditures in the Choice market would not be directly affected because they would be determined by the updates to capitation rates specified in the bill.

Overview of the BELT

The BELT would reduce fee-for-service payment rates in order to eliminate any estimated Medicare ''outlay deficit''. A Medicare outlay deficit would occur if spending in fee-for-service Medicare for the current year and preceding one exceeded the combined outlays for those years specified in the bill. On October 15 of each year, the Office of Management and Budget (OMB) would report whether a Medicare outlay deficit was projected for that fiscal year. If so, a compliance order would be issued that would first require all automatic payment-rate updates to be frozen or reduced. If a freeze was insufficient to keep projected spending within the budget targets, proportional reductions would be made in payment rates for all providers.

The following March, OMB would release a report comparing current estimates of Medicare spending with the estimates released in October. If a compliance order was in effect for the year and the March projection continued to show a Medicare outlay deficit through the end of the year (despite previous rate reductions), the Administration would order further reductions in provider payment rates for the remainder of the fiscal year. Conversely, if the March projection indicates that current payment rates would more than eliminate the Medicare outlay deficit, those rates would be raised for the remainder of the fiscal year.

Following the release of OMB's October and March reports, the Congress would have a limited time in which to seek modifications to compliance orders. At least 60 percent of the members of each House would be required to approve provisions that would either lower the target reduction in spending or reduce the proposed payment reductions to less than the amounts necessary to eliminate the projected excess spending.

After fiscal year 1999, the Secretary of Health and Human Services could vary the adjustments in payment rates—in a budget-neutral way—to take geographical differences into account. The Secretary would be required to relate such variations to the contributions of different areas to excess Medicare expenditures.

Effects of the BELT

CBO's estimates assume that the specific policies to reduce Medicare spending in the bill would be sufficient to meet budget targets, and that use of the BELT would not be necessary through 2002. If the BELT was triggered, however, it probably would not be effective in controlling Medicare expenditures.

Uniform, across-the-board payment rate reductions that would be required by the BELT to meet a dollar savings target would not have uniform impacts on all providers, and would be extremely difficult to implement. A given percentage reduction in payment rates might be more or less stringent depending on the ability of different providers to adjust by increasing the volume and intensity of services they provide. Determining appropriate across-the-board reductions in payment rates to meet the budget targets would be complex, because estimators would have to take into account the variation in behavioral responses from different provider groups when faced with the same proportional reductions in payment rates. Allowing geographic variation in payment rate adjustments would add another layer of complexity to the whole process.

Rate adjustments under the BELT could be both frequent and inaccurate, and could increase uncertainty among providers. The October adjustment would be based on incomplete data for the previous fiscal year, and no data for the current year. Although more complete data would be available for the March adjustment, it would still include less than six months of data from the current year. Even minor discrepancies between the October and March projections would lead to payment rate adjustments under the BELT. Frequent, unpredictable changes in payment rates could interfere with the orderly business operations of providers.

The proposal also raises other issues of implementation. Compliance orders issued in October and March are intended to be effective immediately. Even if formal public notification requirements were waived, however, carriers and fiscal intermediaries would presumably require some advance notice. Moreover, the first steps in a compliance order would be to freeze or reduce automatic payment updates. But those updates do not generally occur at the beginning of the federal fiscal year. Updates for Part B payment rates, for example, are made on a calendar year basis while those for inpatient hospital operating payments are made at the beginning of each hospital's fiscal year. How across-the-board cuts in payment rates from the BELT would be integrated with the existing update policy is unclear.

THE BAD DEBT BOXSCORE

Mr. HELMS. Mr. President, the impression will not go away: The $4.9 trillion Federal debt stands today as a sort of grotesque parallel to television's energizer bunny that appears and appears and appears in precisely the same way that the Federal debt keeps going up and up and up.

Politicians like to talk a good game—and talk is the operative word—about reducing the Federal deficit and bringing the Federal debt under control. But watch how they vote. Control, Mr. President. As of Tuesday, October 31 at the close of business, the total Federal debt stood at exactly $4,985,262,110,021.06 or $18,924.14 per man, woman, child on a per capita basis. Res ipsa loquitur.

Some control.

TRANSPORTATION APPROPRIATIONS

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Mr. SPECTER. Mr. President, as a member of the Senate Subcommittee on Transportation Appropriations, I am pleased to speak in support of the fiscal year 1996 Transportation appropriations conference report. This is an important piece of legislation, providing $37.5 billion for purposes including funding our Nation's highway, rail, and air transportation infrastructure, mass transit, Amtrak, and pipeline safety. This legislation will keep Americans on the move, create jobs, and improve our infrastructure, resulting in additional environmental and energy benefits.

I commend Chairman HATFIELD and our ranking minority member, Senator

LAUTENBERG, for their efforts in negotiating this comprehensive bill and for recognizing the particular importance of some provisions to Pennsylvania, including highway and transit funding levels.

Given the difficult budget constraints faced by the subcommittee, I am particularly pleased that the bill provides $750 million for Amtrak, including improvements to the Northeast corridor. Amtrak service is essential to Pennsylvanians and I have long stressed the importance of ensuring the viability of a truly national passenger rail service.

The conference report has also adopted a $1.45 billion funding level for airport construction grants-in-aid, $200 million more than the Senate version of the bill. The statement of managers directs the Federal Aviation Administration to fairly consider a letter of intent application from Philadelphia International Airport, which has sought funding for construction of a new runway.

Given the significance to Pittsburgh of the airport busway project, I am very pleased that the conference report provides $31.6 million for fiscal year 1996 to continue construction. I urged our subcommittee to provide this level of funding because this project will ease traffic congestion between downtown and the Pittsburgh International Airport and will mitigate the impact of the Fort Pitt Bridge closing, which would otherwise create a monumental headache for Pittsburgh residents. With spending cutbacks in so many areas, we are fortunate to get this substantial amount of funds for the busway, which means so much to people who live in the Pittsburgh area.

I remain disappointed that the conference report only provides $400 million for mass transit operating assistance, which will lead to cuts of as much as 40 percent for some transit systems. In fiscal year 1995, transit systems received $710 million in Federal operating assistance, which they used to keep fares down and maintain service. On August 9, my distinguished colleague from Pennsylvania, Senator SANTORUM, and I offered an amendment to restore $40 million to the $400 million provided in this bill for mass transit operating assistance. Unfortunately, our amendment was defeated by 68 to 30.

As always, I remain committed to the millions of Pennsylvanians and other Americans who rely on public transit to commute to work, shop, and carry on their lives. Mass transit operating assistance keeps the Nation moving by keeping fares lower and maintaining existing routes. Pennsylvania's citizens and communities depend on good public transportation for mobility, access to jobs, environmental control, and economic stability. It lets the elderly visit their health care providers, shops, or friends. In rural areas, buses are essential to reduce isolation and ensure economic development. And, children use public transportation to go to school in some areas. Without affordable mass transit people in America's inner cities can't get to work. Congress has been considering welfare reform and requirements that people have jobs. If they can't afford to get to work, or bus routes are cut, we are just making it that much harder for lower income Americans to get off welfare.

Although I am troubled by the extent of the mass transit assistance cuts, on balance the Transportation appropriations bill is a good bill, containing much else of importance to Pennsylvania and the Nation, and that is why I supported the conference report as a conferee. However, I intend to keep up my efforts next year to preserve funding for mass transit, and to work with our chairman to ensure that Congress does not go too far, too fast in reducing assistance to transit agencies throughout the Nation.

In closing, Mr. President, I would note that the conference report contains a provision on telecommuting that I authored, section 345, which requires the Secretary of Transportation to study successful private and public sector telecommuting programs and to disseminate to the general public and to Congress information about the benefits and costs of telecommuting. As my colleagues are aware, telecommuting is the practice of allowing people to work either at home or in nearby centers located closer to their home during their normal working hours, substituting telecommunications services, either partially or fully, for transportation to the traditional workplace. I believe that it is in the national interest to encourage the use of telecommuting because it can enable flexible family-friendly employment, reduce air pollution, and conserve energy. Further, as a Senator from Pennsylvania, with major urban areas such as Pittsburgh and Philadelphia, I recognize there is a real need to improve the quality of life in and around America's cities.

According to a July, 1994 Office of Technology Assessment report, between 2 to 8 million American workers already telecommute at least part time. A 1994 survey by the Conference Board found, however, that in 155 businesses nationwide, only 1 percent of employees telecommute, although 72 percent of the businesses had such an option. According to the Office of Technology Assessment, the most significant barriers to telecommuting are business and worker acceptance and costs. My provision responds to the need to broaden public awareness of the benefits and costs of telecommuting, and to identify and highlight successful programs that can be duplicated.

Mr. President, the fiscal year 1996 Transportation appropriations conference report is worthwhile legislation and deserves to be signed into law by the President.

ORDER OF PROCEDURE

Mr. DOLE. Mr. President, let me indicate to my colleagues that we are not going to proceed on the instructions to conferees at this point on the so-called reconciliation package. We may do it the next day. We may do it next week, but not today. It seems to me that we need to first talk to the President of the United States. Hopefully, we will get to do that this afternoon.

One of the things the President complained about is that we are not passing appropriations bills. I would like to now turn to the conference report to accompany the foreign operations appropriations bill, if there is no objection.

Mr. DASCHLE. Mr. President, Senator DOLE, the majority leader, and I had the opportunity to talk yesterday. It was my understanding that we were going to go to the conference. I understand his reasons for delaying the consideration of the conference matters until a later time, subject to discussion with the President.

I am disappointed that we have not had the opportunity to talk about this until this very moment. But I would hope that if we would go to the foreign operations and work through it in good faith, there is no reason why—I know there are some difficult issues out there that we are going to have to address, but I know the majority leader is cognizant of our schedule this evening. I hope we can accommodate that schedule. I will work with him to see that we can work through this bill and deal with the issues that we must confront prior to the time we resolve this matter.

This is one of the bills that the President has indicated that he ought to be able to support and sign. But, obviously, there are some troubling issues that we have to work through, and we will do that.

With that understanding, I have no objection to moving to the foreign operations legislation.

Mr. DOLE. I appreciate the Democratic leader, Senator DASCHLE's cooperation. I was not aware of the other until about 11:50. I will talk to the Senator privately about it. Senator DOMENICI came to my office, and he feels that, at least as far as today is concerned, there is something else that is more important than discussing a motion to instruct conferees. So we do now have consent to go to the foreign operations appropriations bill. There is one amendment in disagreement.

We will accommodate the schedule this evening, whatever happens.

Mr. DASCHLE. I thank the majority leader.

FOREIGN OPERATIONS, EXPORT FINANCING, AND RELATED PROGRAMS APPROPRIATIONS ACT, 1996—CONFERENCE REPORT

Mr. DOLE. Mr. President, I submit a report of the committee of conference

on H.R. 1868 and ask for its immediate consideration.

The PRESIDING OFFICER. The report will be stated.

The legislative clerk read as follows:

The committee on conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H.R. 1868) making appropriations for foreign operations, export financing, and related programs for the fiscal year ending September 30, 1996, and for other purposes, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses this report, signed by all of the conferees.

The PRESIDING OFFICER. Without objection, the Senate will proceed to the consideration of the conference report.

(The conference report is printed in the House proceedings of the RECORD of October 26, 1995.)

Mr. BURNS addressed the Chair.

The PRESIDING OFFICER. The Senator from Montana.

Mr. BURNS. Mr. President, I ask unanimous consent to proceed as in morning business for 15 minutes.

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

The Senator from Montana is recognized.

Mr. BURNS. I thank the Chair.

Mr. BURNS. Mr. President, I would like to talk about yet another example of Federal bureaucratic actions made without regard for the will of the people, the will of the Congress, the good of the country and basic common sense. We need to restore a degree of sensibility and sanity to the manner in which this country gradually converts to the metric system.

The 1988 trade bill contained language which established the metric system as the preferred system of measurement for the United States. Why was the language on the trade bill? The rationale was that it would improve the ability of American companies to export goods to metric-based countries if American firms could be moved to produce those goods in metric versions.

The principal tool for urging American companies to switch to the metric system has been to use government procurement policy. The trade bill included language ''to require that each Federal agency, by a date certain and to the extent economically feasible by the end of the fiscal year 1992, use the metric system of measurement in its procurement, grants, and other business-related acdtivities * * *.''

The problem I am addressing today arises from the unfortunate fact that the Federal agencies responsible for implementing the metric policy either forgot to read or are completely ignoring the remainder of the above sentence: ''* * * except to the extent that such use is impractical or is likely to cause significant inefficiencies or loss of markets to U.S. firms, such as when foreign competitors are producing competing products in nonmetric units;''

Congress never intended for the switch to metrication to be forced at any cost or without regard to its impact on people and industry. Issues such as impracticality and the loss of markets to U.S. firms were paramount in the minds of everyone aware of this language. Without these important considerations, the metric language would not have remained in the bill to become law.

Yet, we see today that Federal construction procurement policy for the various departments and agencies is completely ignoring this language and pushing ahead with metrication policies without any formalized plans for avoiding the pitfalls. In fact, they are going far beyond the level of metrication called for in the trade bills, and that is causing staggering problems for some industries. These problems are compounded by Federal procurement policies that hinder industry rather than promote trade.

Simply converting an industry to metric units of measurement is usually not a major problem. Converting the numbers from inches and pounds to millimeters and kilograms is a difference on paper which can be made by editing the marketing literature and computer design programs. The physical size of the product remains the same. This is known as a soft-metric conversion, and does little to interfere with efficient and well-established production practices or costs. The Government is allowing a soft conversion for most construction industries.

The problem is that some industries have been targeted to do more than use metric units of measurement; they are being required to change the size of their products as well. This is called a hard-metric conversion, and it can throw existing production practices into an uproar. At this point, industry is forced to change production practices. Even a minute change in size required by the Federal Government can force a business to completely retool and deal with all the problems with managing a second, hard-metric inventory of goods. This is Federal bureaucracy run amok.

And who picks up the tab for this intrusive Government policy? The taxpayer, that is who. Converting to hard-metric will add to the cost of Federal contracting jobs. And the industry will be forced to pass along the conversion costs to the Government and on down to the taxpayer. Under hard-metrication, the taxpayers are forced to pay a hefty ''metric premium,'' whether they want to or not.

Mr. President, it is time to pass legislation that will take away the ability of the Government in Washington DC, to send whole established industries into a tailspin, to put small businesses out of the running for Federal contracts, and force the taxpayers to foot the bill for a warped view of metric purity.

There does not need to be a wholesale attack on the metric system. It is true that many industries can convert to the metric system with little or no trouble or expense, and that is fine. However, there are those cases where there are substantial, compelling industry-specific economic, trade or production factors that call for a soft-metric conversion. Industries that would bear unreasonable burdens in switching to hard-metric should instead be allowed to convert to soft-metric.

The Federal Government should refrain from developing or using designs, or requiring bids for hard-metric products when a soft-metric conversion is technologically feasible and certain other criteria relating to specific small business, trade and economic criteria are present:

The product is not available from at least 50 percent of the production sites, or hard-metric product does not constitute at least 50 percent of the total domestic production, and;

A hard-metric conversion would require small manufacturers of a product to spend more than $25,000 to purchase new equipment, and;

The economics and customs of the industry are such that any offsetting trade benefits would be negligible, or that hard-metric conversion would either substantially reduce competition for federally assisted contracts or would increase the per-unit cost to the taxpayers, or that hard-metric conversion would place small domestic producers at a competitive disadvantage to foreign competitors.

Mr. President, metrication may well have merit on paper and may have some positive impact on American business generally. Gut it is difficult to say how much, if any, impact it is having on business. Business is usually good at making decisions based on sound-business sense. Which is more than I can say for the Federal Government in this case.

We need to move legislation quickly, since I am aware that several Federal agencies are actively pursuing the development of hard-metric designs to be used on federally assisted construction. Federal agencies should strongly consider putting their design and bidding efforts on hold if they involve hard-metric product.

I ask unanimous consent to have a letter printed in the RECORD.

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

NATIONAL
CONCRETE MASONRY ASSOCIATION,
Herndon, VA, October 26, 1995.

Hon. CONRAD BURNS,
U.S. Senate,
Washington, DC.

DEAR SENATOR BURNS: I am very pleased to learn that you have taken note of the plight the concrete masonry (C/M) industry is facing with regard to the hard-metric conversion the federal government is forcing on our producers. I would like to take this opportunity to explain why hard-metric conversion is terrible public policy, why it is so bad for the C/M industry, for the federal procurement agents and for the taxpayers, and why a soft-metric alternative is absolutely imperative.

Concrete masonry is the industry term for concrete brick and block. It is a very common, basic building component and is essentially a commodity. It is made by pouring concrete into molds of various shapes and sizes, and then drying the product for the requisite amount of time. Over the course of decades, the industry has developed uniform shapes and sizes that are common throughout the construction industry. All C/M manufacturers have purchased and maintain complete sets of molds to make the product, and they maintain inventories of various shapes and sizes.

Virtually all the producers in the country make product based on the English foot-pounds system. That is because virtually the entire American market uses English-based block. The standard concrete block everyone knows is 8″ x 8″ x 16″.

Even though the long history of the C/M industry is based on the English system, it would be fairly simple to convert to the metric system of measurement—if that were all that Federal procurement officers required. The C/M industry has made it very clear that it can convert to the metric system immediately if that will satisfy the government's requirement for metrication. All our producers have to do is express the standard concrete block in metric dimensions, 194mm x 194mm x 397mm. That only requires a change in our sales materials and some basic changes in our computer design programs. Changing the unit of measurement without changing the physical size is referred to as a soft-metric conversion.

However, the C/M industry is being told by federal contracting agents that converting to metric is not enough, that they want the industry to actually change the size of its product to achieve metrication and round numbers. Changing the physical size of the product in addition to changing the unit of measurement is called a hard-metric conversion.

There is nothing whatsoever in any legislation requiring a hard-metric conversion of any product. The words do not appear in any bill or any statement of policy by Congress. There is no legislative history showing any desire by any elected official to force any industry to change the size of its products or to radically change their production practices. If anything, the legislative history of the 1988 Trade Bill and the metric language attached thereto clearly indicates that this kind of intrusion into industry activity was exactly what the Congress was trying to avoid.

According to publications issued by the Construction Metrication Council, a group of federal construction policy officials in various departments and agencies who are coordinating metrication in U.S. construction, some industries are being required to engage in hard-metric conversion even in cases where it will be extremely costly, inefficient, and impractical to do so. The large majority of products will be allowed to use a soft-metric conversion, which should be the policy for all products. But some unfortunate businesses like the C/M industry have been targeted for hard-metric conversion and are being thrown into turmoil as a result.

The hard-metric block that the Council has defined is 190mm x 190mm x 390mm. This is roughly one-eighth of an inch smaller than the soft-metric version that the industry could produce today at minimal or no additional cost. However, that one-eighth of an inch difference for hard-metric would require C/M manufacturers to purchase an entirely new set of hard-metric molds in order to produce hard-metric product.

Concrete block molds generally range in cost from $10,000 to $30,000 per mold, and it takes many types of shapes and sizes to complete a typical large, complex federal construction project. Individual C/M producers have told me it could cost between $250,000 and $300,000 per producer to buy a complete compliment of hard-metric molds. NCMA has estimated that if the entire domestic C/M industry shifted to hard-metric production, it would cost between $250 million and $500 million.

That makes the government's eighth of an inch for hard-metric the most expensive eighth of an inch in American history.

Let's keep in mind that a hard-metric block is not stronger, not safer, not more durable, not more resistant to fire nor more energy efficient nor more anything useful. Perhaps that is the reason why there is no demand whatsoever in the American private sector for hard-metric concrete block. Nobody wants it because there is no reason to want it. The only difference is that it is more expensive, hard to find and difficult to produce.

Requiring a business like the C/M industry to convert to hard-metric shows an amazing lack of knowledge about or concern for the industry itself. Let's keep in mind that the rationale behind the metric language in the Trade Bill was to promote the trade stance of American companies. It so turns out that concrete masonry is only rarely traded in international commerce and is nearly never transported overseas. In addition, this is an industry whose product is so much like a commodity that the average profit margin per unit is 2 cents. The economics of the industry are such that it isn't feasible to ship block to Europe or Japan or anywhere beyond the border regions of Canada and Mexico. Most block is used within 50 miles of the point of production. Any trade benefit that might offset initial costs for other industries is utterly negligible for the block industry.

But the consequences of this policy get even worse. The vast majority of C/M producers in America are small, often family-held businesses. In NCMA, 62 percent of all of our member companies have one block-making machine. These companies will immediately be pushed out of the market for federal government contracts, the first victims of an economically negligent metrication policy. There is no means by which many smaller businesses can hope to recoup the huge capital outlay required to start up an entirely new line of products merely to satisfy the hard-metric preferences of federal bureaucrats. There is virtually no private sector demand for hard-metric product, so any income to offset the capitalization cost would have to come from the occasional federally-assisted project. Federally-assisted construction is less than 5 percent of the entire domestic construction market. Such projects are vitally important to the bottom line of a successful bidder, but they are too infrequent in most cases to justify the investment and, indeed, the risk, of buying a new line of production molds and hoping enough business comes along to eventually recover the initial investment.

Is this how the 1988 Trade Bill was supposed to improve the ability of American firms to engage in foreign trade? Hard-metric conversion would work a trade burden on the domestic C/M industry, not a trade benefit. It would seem that this was exactly the unintended consequence that Congress sought to avoid in the 1988 Trade Bill.

Aside from the tremendous burdens it would place on the C/M industry, there would be increased construction costs to produce what amounts to a specialty product. I mentioned previously that there would be no way for a small block manufacturer to recoup its costs. Actually, there would be a way—by passing those additional costs on to the consumer, which in this case is the taxpayer. I understand that federal contracting agents are willing under the metrication policy to accept higher bids in order to obtain hard-metric product—a ''metric premium'' in the range of 1 to 5 percent. They have to because hard-metric product is often in very short supply or non-existent.

It gets worse. There are rumors that this metric premium may quietly but quickly get out of hand. During a June hearing before the House Science Subcommittee on Technology, chaired by the Honorable Connie Morella, Mrs. Morella told one of the witnesses that she had heard that a new advanced technology laboratory being constructed at NIST near Gaithersburg, Maryland is being built to hard metric specifications, and that GAO estimates the additional cost will be 20 or 25 percent. The witnesses did not deny that this was the case.

Just how serious is the issue of reduced competition for bids? NCMA recently sent a metrication questionnaire to the 798 C/M producers it knows to exist throughout the country. 398 responded, an astonishing response rate of 49 percent, which gives some idea of how important this issue is to the individual companies. Of those companies responding, I said it currently makes hard-metric block, 397 said they do not. Only two companies said they have hard-metric molds onsite to make the product. It is likely there are others who can make the product, but it is very clear that there is precious little availability of the product the government is asking for in the country today, and little capacity to make it.

Recently, I was contacted by a contracting agent for the Centers for Disease Control in Atlanta. He had a big hard-metrication problem of his own. It seems he had made calls to 32 block manufacturers to determine availability of concrete masonry. All 32 said they could provide all the block the CDC would need, and at competitive prices. But when the CDC agent asked whether the companies could supply hard-metric block, immediately all but 6 of the companies dropped out. Of the remaining six, 3 said they could provide soft-metric block. The last 3 companies indicated they might do whatever it takes to win the bid, but the agent believed that none of those companies presently have hard metric capability.

Clearly, the taxpayers will pay more per unit, enjoy less competition and have far fewer sources of product than can be had using a soft-metric conversion. Indeed, federal procurement policy staff have told me their design staff are currently designing projects in hard-metric block even though they have no idea where they will obtain the hard-metric material. It is entirely possible that there will be no responsive bidders in hard-metric, requiring the government to redraw plans and bid in soft-metric, all at increased costs to the taxpayers.

NCMA has gone to great lengths to persuade the federal contracting authorities on the basis of these considerations to relent on the hard-metric concrete block requirements.

We have thoroughly briefed the Construction Metrication Council on the problems we would face. We have provided position papers and fact sheets. We have met in small groups with the federal employees charged with developing agency procurement policy. We have invited CMC staff to speak directly with C/M producers. We have told federal construction representatives that there is only a relative handful of C/M producers in America that can produce hard-metric material. We have pleaded with CMC officials to reconsider the caveat language in the 1988 Trade Bill clearly showing that metrication is not meant to cause substantial inefficiencies and loss of markets to U.S. firms, but

our entreaties have fallen upon deaf ears. The end result is that we have had cordial, business-like meetings but the drive for hard-metric concrete block continues unabated. The federal procurement policy officials keep telling block manufacturers to make hard-metric block or they won't be adequately responding to federal solicitations.

We have been told point-blank that if companies have to go by the wayside in order to convert to hard-metric, so be it, that is the price of progress.

It is clear to me that the only solution at this point is a legislative solution.

On behalf of united C/M producers throughout the country, I would urge that you and your colleagues pass legislation to restore the original intent of Congress and prevent the terrible, ironic consequences that the hard-metric conversion of concrete masonry would create.

With best wishes.

Sincerely,

RANDALL G. PENCE,
Director of Government Relations.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

FOREIGN OPERATIONS, EXPORT FINANCING, AND RELATED PROGRAMS APPROPRIATIONS ACT, 1996 MIDDLE EAST FACILITATION ACT OF 1995—CONFERENCE REPORT

The Senate continued with the consideration of the conference report.

Mr. MCCONNELL. Mr. President, we have before the Senate this morning the conference report on the foreign operations bill. This measure passed the House yesterday at 351 to 71.

I might just say before what I hope will be just a brief debate, I am not currently aware of any other Senators on this side of the aisle who wish to speak. Senator LEAHY should be here momentarily and it is our hope that we could have fairly early on here a rollcall vote on the conference report itself.

There is an amendment in disagreement related to the abortion issue which may take a little more debate and then a vote a little bit later. But it is our hope, and if there are no objections or problems with that, that we might be able to get to a vote on the conference report rather soon.

Let me say, although we had very limited resources, I believe this bill legislates our national priorities—it provides both security and flexibility.

The conferees produced legislation below our allocation, $1.5 billion below last year's levels and nearly $2.7 billion below what President Clinton requested. So clearly we have made a reduction in foreign assistance.

In spite of these reductions, our security interests have been clearly served by earmarking funds for our Camp David partners and extending the Middle East Peace Facilitation Act.

We also advance our national security priorities in the New Independent States by completing a shift in resources from Russia to Ukraine, Armenia, Georgia, and the other States that used to be part of the Soviet Union.

We have also linked aid to Russia to termination of the nuclear deal with Iran. In the interest of maximizing the administration's leverage, I suggested the restriction take effect 3 months after the date of enactment of this bill giving the Vice President the opportunity to negotiate a solution to this problem in his January meetings with Chernomydin.

We have served U.S. interests while affording the administration a great deal of flexibility.

There are three ways we have offered flexibility.

First, we have provided transfer authority between accounts. For example, NIS resources can be used to fund the Warsaw Initiative and Partnership for Peace programs. Second, we have consolidated various development aid accounts into one account with limited conditions; and, third, there are very few earmarks.

I think the House would have preferred to provide a blank check giving the administration the option to make all funding choices, but after 3 years of unfulfilled commitments, the conferees agreed upon the necessity to set funding levels for specific countries, which was, of course, the imprint of the Senate bill.

For my colleagues who are concerned about earmarking resources for specific projects, let me assure them we have avoided such action. We have funded countries and categories of activities such as programs to strengthen democracy, rule of law and independent media, but have not dedicated any resources for any organization or project within these broad accounts.

The conference report largely reflects the priorities identified by the Senate. The conferees agreed to the Senate's provisions on a range of issues from Pakistan to an amendment offered by Senator HELMS to ban AID's move to the Federal triangle.

One of the few items where the Senate position did not prevail concerns Mexico City and funding for abortion. We are reporting back an amendment in disagreement which I would like to take a moment to explain.

The House passed language which banned assistance to any organization which fails to certify that they are not performing abortions. In addition, the House banned assistance to the UNFPA unless the President certified programs in China had been terminated.

The Senate stripped out the language at the subcommittee level and substituted language requiring the same standards for determining eligibility for assistance be applied to both governments and to nongovernmental and multilateral organizations. The senate also required no funds be used to lobby on the question of abortion.

Unfortunately the conferees were unable to reach any agreement on this matter.

Fundamentally, let me just say that the Senate appears to be narrowly prochoice, as these terms generally describe positions Senators have taken. The House appears to be prolife. So we were unable to come together in the conference report.

The House has sent over a substitute measure which restricts assistance to organizations which provide abortions but makes exceptions where the life of the mother, rape or incest are involved—a solution which tracks the so-called Hyde standards. The compromise also includes language which requires the President to certify that the UNFPA will terminate programs in China compared with the previous language requiring the President to certify that UNFPA already has terminated China programs. My understanding is this distinction was drawn because UNFPA plans to cease China programs at the end of this calendar year, thus it is a standard the administration could meet.

I hope my colleagues will support the conference report as it is entirely consistent with the votes and views of the Senate expressed September 21. It is my intention to also support the compromise language proposed by the House in the amendment in disagreement since I believe it is consistent with language which the Congress has been able to support in the past. But, clearly, Mr. President, it is a statement of the obvious to say that is an issue upon which the Senate and the House are deeply divided.

With regard to the abortion issue, the vote, I would just report to my colleagues—I think I said earlier the vote on the full conference report in the House yesterday was 351 in favor, 71 against. On the abortion amendment in disagreement, in the House the vote was 231 in favor of the House position, which I have just outlined; 187 against.

So, at some point during the day we will have a vote on the conference report and then a vote on the amendment in disagreement. It is my hope, as I indicated earlier, that we can have a vote on the conference report sometime very soon. I believe Senator LEAHY is on his way and I did want to give notice to everyone there could well be a rollcall vote on the conference report sometime very soon.

Mr. STEVENS. Mr. President, I am grateful that the conferees have included my amendment to require the U.S. Agency for International Development to contract out mapping and surveying work to qualified U.S. companies when such work can be accomplished by the private sector. This provision was based on my concern that while AID requires mapping and surveying in countries that receive development assistance, this mapping and

surveying work is most often contracted out by AID to other government agencies. In many instances Federal agencies are aggressively marketing their mapping capabilities to foreign governments, and through AID, in direct competition with qualified U.S. companies. Despite language in previous committee reports, the amount of U.S. private sector contracting for such services has not increased.

The purpose of this amendment is to move the mapping and surveying requirements of AID to private U.S. firms. Under current Federal policy on such commercial activities, if an activity has not been justified by the provider agency—like the U.S. Geological Survey—for continued in-house performance, AID shall obtain the required services directly from a commercial source. No agency has performed the requisite commercial activities study to justify in-house performance in mapping and surveying, so this provision is a clarification to enforce the existing policy of the Federal Government to rely on, and not compete with, the private sector pursuant to the Office of Management and Budget circular A–76.

I would like to clarify one point with regard to the intent of this provision, and to ask my good friend from Kentucky and the Foreign Operations Subcommittee chairman, Senator MCCONNELL, if this is his understanding of this AID mapping and surveying amendment language? Specifically, it is not the intent of this provision to change Federal procurement law or the Federal Acquisition Regulations. Although the language in the amendment uses the word ''bidding,'' contracts for mapping and surveying services should be awarded to qualified U.S. firms in accordance with the standard and accepted procedure for such services found in 40 U.S.C. 541 et seq. and section 36.601–4(a)(4) of the Federal Acquisition Regulations. This amendment provides for increased contracting out of mapping and surveying services by AID, using the normal qualifications based selection process. Does the Senator from Kentucky concur with this clarification?

Mr. MCCONNELL. Senator Stevens, thank you for defining this wording of the AID mapping and surveying amendment, and, yes, I concur in this clarification.

Mr. STEVENS. I think the Senator from Kentucky.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

The Senator from Vermont is recognized.

Mr. LEAHY. Mr. President, we have before us, as the distinguished chairman of the subcommittee has said, the foreign operations conference report. It is not the conference report I would have liked to have written as a bill. I suspect it is probably not precisely the conference report that the Senator from Kentucky would have liked to have written. It is, however, the best that we could do in not only a very difficult budget climate but one in which there are probably more tugs and pulls, philosophical, ideological, and policy, on the Committee on Foreign Operations than I have seen in many a year.

The bill, incidentally, is $130 million below the level that was passed overwhelmingly, by a 5-to-1 margin, in the Senate on September 21. I wish in this case we could have maintained the Senate level because it is a very small price to pay for American leadership abroad. We find we can easily spend billions and billions of dollars going in either as peacekeeping forces or military forces when there are troubles abroad, but we cannot spend a tiny, tiny fraction of that to help avoid those troubles beginning in the first place.

I do wish to commend Senator MCCONNELL for his efforts to get this bill through the conference and to the President's desk. We had a very lengthy meeting. I think we went to about midnight or so on our committee of conference ironing out all but the one issue, the issue that is before this body in true disagreement, and in fact in this case that is on international family planning. I will have an amendment to reinstate the Senate position. I will do that for myself and for Senator KASSEBAUM and for others, and to go back to the Senate position. I will do that after we pass the conference report, which I fully expect will be passed.

That amendment, which I will then offer, will simply reaffirm what the Senate is already on record doing. In fact, the President has made it very clear that he will veto this bill unless we fix this one provision, the item that is in disagreement.

So in this case we did the best we could. I feel that we are not meeting many of our international commitments, and I would just close with this thought. We all take great joy at seeing the cold war ending. Every one of us, if we travel abroad, like saying we are Americans, without saying it here at home. The fact is we are the most powerful nation history has ever known. We are the largest economy history has ever known. But with that comes certain responsibilities. Frankly, we have backed off on these responsibilities worldwide. Other countries have picked up on them.

Japan spends not only as part of their budget but more in actual dollars in areas of foreign aid than we do. That is not all done out of altruism. They have found that as they have helped the economies of a number of developing countries, these developing countries then buy goods from Japan; their exports go up while our exports are going down. They create more jobs in Japan while we lose jobs in America. Why? Because they are willing to invest in the future economies of some of these countries. We do not want to invest the pennies in the future economies of some of these countries even though it creates dollars and dollars and dollars here in the United States. We do not want to spend the pennies to create some of the jobs and the economic benefits in some of these developing countries even though we will create far more jobs in the United States, even though all of us know that as exports go up it is one of the single greatest boons to our economy here in the United States.

Instead, we let this export business go to other countries. We let these jobs go to other countries. We do not show that kind of leadership.

We are not doing enough to stop wars and internal struggles worldwide even though we know that we will get sucked into them eventually and spend a heck of a lot more after the fact. It is kind of like preventive medicine. We do not want to spend the money on preventive medicine but, by gosh, we come in with troops to take care of the costs in the emergency room afterward. Well, there are going to be a lot of emergency rooms worldwide, and the most powerful nation on Earth is going to be called upon. Maybe we ought to start doing a little preventive medicine. It is going to cost us a lot less in the long run. It is going to be far more important to our national security, and it is going to improve our own economy.

With that, Mr. President, I would ask for the regular order.

Mr. MCCONNELL. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

Mr. DOMENICI. Mr. President, the Senate is now considering the conference report accompanying H.R. 1868, the foreign operations and export financing appropriations bill for fiscal year 1996.

The final bill provides $12.1 billion in budget authority and $5.9 billion in new outlays to finance the Nation's foreign assistance programs.

When outlays from prior-year budget authority and other completed actions are taken into account, the bill totals $12.2 billion in budget authority and $13.9 billion in outlays for fiscal year 1996.

The subcommittee is within its section 602(b) allocation for both budget authority and outlays. The bill is $84.4 million in budget authority under the subcommittee 602(b) allocation and at the outlay allocation.

I commend the conferees for supporting the North American Development Bank in the final bill.

Mr. President, I ask unanimous consent that a table displaying the budget

committee scoring of the final bill be printed in the RECORD.

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

FOREIGN OPERATIONS SUBCOMMITTEE SPENDING TOTALS—CONFERENCE REPORT

[Fiscal year 1996, in millions of dollars]

	Budget authority	Outlays
Nondefense discretionary:		
Outlays from prior-year BA and other actions completed	68	7,950
H.R. 1868, conference report	12,060	5,892
Scorekeeping adjustment	.....	.....
Subtotal nondefense discretionary	12,128	13,842
Mandatory:		
Outlays from prior-year BA and other actions completed	.....	.....
H.R. 1868, conference report	44	44
Adjustment to conform mandatory programs with Budget Resolution assumptions	0	0
Subtotal mandatory	44	44
Adjusted bill total	12,172	13,886
Senate Subcommittee 602(b) allocation:		
Defense discretionary	.....	.....
Nondefense discretionary	12,212	13,842
Violent crime reduction trust fund	.....	.....
Mandatory	44	44
Total allocation	12,256	13,886
Adjusted bill total compared to Senate Subcommittee 602(b) allocation:		
Defense discretionary	.....	.....
Nondefense discretionary	−84	−0
Violent crime reduction trust fund	.....	.....
Mandatory	.....	.....
Total allocation	−84	−0

Note.—Details may not add to totals due to rounding. Totals adjusted for consistency with current scorekeeping conventions.

Mr. PRESSLER. Mr. President, I intend to vote for passage of the conference report to H.R. 1868, the foreign operations appropriations bill. I do so because there are a number of vitally important provisions in this legislation, chief among them being the extension of the Middle East Peace Facilitation Act. I share the concerns of many of my colleagues regarding Palestinian compliance with the peace accords, and will continue to follow this issue with great interest. With this bill, the American taxpayer once again is investing in what all hope to be a historic and lasting peace in the Middle East. It is up to us here in Congress to be sure that it is a wise investment, and that the conditions that brought about it are met.

I must confess I will vote in favor of this bill with great reluctance. I am very disappointed that the House and Senate conferees agreed to keep in the bill Senate language that would repeal a portion of Federal law that prohibits United States aid to Pakistan as long as the President fails to certify that Pakistan is not in possession of a nuclear explosive device—a law otherwise known as the Pressler amendment. The provision in H.R. 1868 would allow nonmilitary aid to resume to Pakistan, and would authorize the President to transfer $370 million in military equipment sought by Pakistan but not delivered because of the Pressler sanctions. By including this provision, this Congress has put the American taxpayer back in the business of subsidizing a nuclear program that this Nation does not recognize under the Nuclear Nonproliferation Treaty [NNPT]. Even worse, today the U.S. Congress has sent a chilling message: Nuclear proliferation pays.

This is a frustrating day, Mr. President. Ten years ago, the U.S. Congress passed the Pressler amendment. In so doing, we made it clear that the United States could not condone, through foreign aid, Pakistan's drive for the bomb. It was our hope that the leverage of foreign aid would deter Pakistan from developing nuclear weapons. If it did not, it was important from the standpoint of nonproliferation that the United States not subsidize Pakistan's nuclear program. That was the purpose behind the Pressler amendment.

By and large, the Pressler amendment has worked. First, though never verified, Pakistan claims it has ceased developing weapons grade enriched uranium. Second, the threat of Pressler sanctions has deterred a number of states that pursued active nuclear weapons research programs in the 1980's, including Argentina, Brazil, South Korea, Taiwan, and South Africa. This successful track record now risks being reversed.

I have expressed my strong concerns on this issue in this Chamber already in great detail. I will not repeat them here. The bottom line is clear: Our Nation's nonproliferation policy is in serious jeopardy, and it is not just with respect to the Pressler amendment. We have heard many reports that the communist Chinese have shipped M–11 related missile technology to both Pakistan and Iran in violation of the Missile Technology Control Regime. Under a law I drafted, the President has presumptive authority to impose sanctions against the responsible parties in China if he has reason to believe an MTCR violation has occurred. Yet, the President is unwilling to exercise that authority. Further, the current House and Senate versions of the intelligence authorization bill contain language that would give the President unprecedented discretion to waive U.S. nonproliferation laws.

Mr. President, just last year, the President stated that no foreign policy issue was more important to the security of all people than nuclear nonproliferation. Yet, the current administration is engineering an unprecedented rollback in U.S. nonproliferation laws and policies. The administration's actions do not match its rhetoric. This demonstration of doublethink would be very humorous if the issue was not so very serious.

For those of us in Congress who have devoted many years on nonproliferation issues, these recent developments are very disturbing. As the world's sole remaining superpower, the signatories of the NNPT look to us to set the example and enforce the rules. Yet, today, we are changing the rules of the nuclear nonproliferation game to benefit one proliferator. This is the worst possible message we could send to those nations who have played by the rules.

PAKISTAN PROVISION

Mrs. FEINSTEIN. Mr. President, I rise in support of the Foreign Operations Conference Report, but I do so with regret because of the provision in this bill relating to Pakistan.

There is much in this conference report that I support, and which I believe the conferees have every right to be proud of.

The bill maintains our assistance to Israel and Egypt, sending a message of the United States' firm support of our allies in the Middle East, and our encouragement of their efforts to achieve a comprehensive peace.

The bill extends the Middle East Peace Facilitation Act by 18 months, allowing the President to continue to provide assistance to the Palestinians and conduct relations with the PLO, while requiring strict compliance by the PLO and the Palestinian Authority with all of their commitments. This is a further demonstration of U.S. support for the peace process.

The bill provides assistance for Armenia, Ukraine, and other former Soviet republics to help ensure that democracy takes hold, and the assistance to Russia is appropriately conditioned on Russian cooperation with the United States in various areas.

The bill significantly increases the budget for international narcotics programs, demonstrating that controlling the scourge of the international drug trade is among our Nation's highest international priorities.

Unfortunately, included in the conference report with all these positive provisions is a provision that I think is extremely dangerous. The House conferees agreed to adopt the Senate language on Pakistan, which was added to the bill as a Brown amendment. Among other things, this provision allows the President to transfer to Pakistan some $368 million worth of sophisticated military equipment at a time when Pakistan is still committed to pursuing weapons of mass destruction.

I realize that we have debated this issue at length, but the objections to this provision bear repeating.

Sanctions were invoked against Pakistan in 1990 because President Bush could not certify that Pakistan did not possess a nuclear explosive device. Nothing has changed since that time. To this day, neither President Bush nor President Clinton has been able to make such a certification.

Pakistan's commitment to continuing its nuclear program makes it wholly inappropriate—even irresponsible—for the Congress to authorize the release to Pakistan of a significant package of sophisticated military equipment.

I realize that this provision has the support of the administration, but I must say that in advocating this proposal, the administration is also acting irresponsibly. An administration that says that nonproliferation is one of its

highest international priorities should not be transferring weapons to Pakistan until Pakistan has made vast improvements on the nonproliferation front.

There is a further concern about transferring these weapons. The package of equipment may not be significant enough to substantially alter the military balance in the region, but it is enough to exacerbate an unstable political situation. The political symbolism of the returning equipment will be handing a propaganda victory to the extremist Indian opposition heading in next spring's elections.

The Indian Government is already coming under intense domestic pressure to respond to the transfer of these weapons. I very much fear that India will respond by deploying their Prithvi missile, which could launch a bona fide ballistic missile race in South Asia. Pakistan might well respond by deploying the M–11s many believe they have acquired from China.

If this scenario plays itself out, the United States will be responsible for fueling an extremely dangerous arms race in one of the most unstable regions in the world.

Having said all this, I want to make two additional points. First, I want to urge the government and people of India not to overreact to this turn of events.

Indian politicians may exploit these weapons for their own gain and stoke the flames of paranoia in the pursuit of votes. But I want to urge the Government of India not to respond to this weapons transfer by significantly upgrading their military posture, and in particular, not to further escalate the arms race in South Asia.

Second, if we must transfer these weapons to Pakistan, we are entitled to expect something in return. As I have said in the past, I favor resuming nonmilitary assistance to Pakistan in order to expand our ability to cooperate on anti-terrorism activities, antinarcotics efforts, peacekeeping, environmental protection, and other areas. I consider those provisions of the Brown amendment to be helpful in enabling us to rebuild our troubled relationship with Pakistan.

But we have every right to expect improved cooperation from Pakistan, not only in these areas, but in nonproliferation as well. Pakistan's unfortunate record of developing nuclear weapons and seeking to acquire ballistic missile technology has exacerbated tensions and contributed to instability in South Asia. As we have in the past, I would urge Pakistan to reverse course and contribute to building a new, more stable South Asia.

Mr. President, I believe we have made a mistake with the passage of the entire Brown amendment. With the help of both India and Pakistan, we can help ensure that this mistake does not spawn other, even greater mistakes.

The PRESIDING OFFICER. Is there further debate on the conference report? If not, the question is on agreeing to the conference report. The yeas and nays have been ordered. The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. LOTT. I announce that the Senator from Oregon [Mr. HATFIELD] and the Senator from Alaska [Mr. STEVENS] are necessarily absent.

I further announce that, if present and voting, the Senator from Oregon [Mr. HATFIELD] would vote ''yea.''

Mr. FORD. I announce that the Senator from New Jersey [Mr. BRADLEY] is absent because of illness in the family.

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

The result was announced—yeas 90, nays 6, as follows:

[Rollcall Vote No. 559 Leg.]

YEAS—90

Abraham	Feinstein	Lugar
Akaka	Ford	Mack
Ashcroft	Frist	McCain
Baucus	Glenn	McConnell
Bennett	Gorton	Mikulski
Biden	Graham	Moseley-Braun
Bingaman	Gramm	Moynihan
Bond	Grams	Murkowski
Boxer	Grassley	Murray
Breaux	Gregg	Nickles
Brown	Harkin	Nunn
Bryan	Hatch	Pell
Bumpers	Heflin	Pressler
Burns	Helms	Pryor
Campbell	Hutchison	Reid
Chafee	Inhofe	Robb
Coats	Inouye	Rockefeller
Cochran	Jeffords	Roth
Cohen	Johnston	Santorum
Conrad	Kassebaum	Sarbanes
Coverdell	Kennedy	Shelby
D'Amato	Kerrey	Simon
Daschle	Kerry	Simpson
DeWine	Kohl	Snowe
Dodd	Kyl	Specter
Dole	Lautenberg	Thomas
Domenici	Leahy	Thompson
Dorgan	Levin	Thurmond
Exon	Lieberman	Warner
Feingold	Lott	Wellstone

NAYS—6

Byrd	Faircloth	Kempthorne
Craig	Hollings	Smith

NOT VOTING—3

Bradley	Hatfield	Stevens

So the conference report was agreed to.

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

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

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The question before the Senate is the amendment in disagreement, which the clerk will report.

The assistant legislative clerk read as follows:

Resolved, That the House recede from its disagreement to the amendment of the Senate numbered 115 to the aforesaid bill, and concur therein with an amendment as follows:

In lieu of the matter proposed by said amendment, insert:

: Provided, That none of the funds available under this Act may be used to lobby for or against abortion.

PROHIBITION ON FUNDING FOR ABORTION

SEC. 518A. (a) IN GENERAL.—(1) Notwithstanding any other provision of this Act or other law, none of the funds appropriated by this Act for population assistance activities may be made available for any foreign private, nongovernmental, or multilateral organization until the organization certifies that it will not during the period for which the funds are made available, perform abortions in any foreign country, except where the life of the mother would be endangered if the fetus were carried to term or in cases of forcible rape or incest.

(2) Paragraph (1) may not be construed to apply to the treatment of injuries or illnesses caused by legal or illegal abortions or to assistance provided directly to the government of a country.

(b) LOBBYING ACTIVITIES.—(1) Notwithstanding any other provision of this Act or other law, none of the funds appropriated by this Act for population assistance activities may be made available for any foreign private, nongovernmental, or multilateral organization until the organization certifies that it will not during the period for which the funds are made available, violate the laws of any foreign country concerning the circumstances under which abortion is permitted, regulated, or prohibited.

(2) Notwithstanding any other provision of this Act, paragraph (1) shall not apply to activities in opposition to coercive abortion or involuntary sterilization.

(c) Subsections (a) and (b) apply to funds made available for a foreign organization either directly or as a subcontractor or sub-grantee, and the required certifications apply to activities in which the organization engages either directly or through a subcontractor or sub-grantee.

(d) COERCIVE POPULATION CONTROL METHODS.—Notwithstanding any other provision of this Act or other law, none of the funds appropriated by this Act may be made available for the United Nations Population Fund (UNFPA), unless the President certifies to the appropriate congressional committees that (1) the United Nations Population Fund will terminate all family planning activities in the People's Republic of China no later than March 1, 1996; or (2) during the 12 months preceding such certification, there have been no abortions as the result of coercion associated with the family planning policies of the national government or other governmental entities within the People's Republic of China. As used in this section the term ''coercion'' includes physical duress or abuse, destruction or confiscation of property, loss of means of livelihood, or severe psychological pressure.

AMENDMENT NO. 3041

Mr. LEAHY. Mr. President, I move to concur in the House amendment with an amendment that I send to the desk on behalf of myself and the Senator from Kansas [Mrs. KASSEBAUM].

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Vermont [Mr. LEAHY], for himself and Mrs. KASSEBAUM, proposes an amendment numbered 3041 to the amendment of the House to the amendment of the Senate No. 115.

Mr. LEAHY. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

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

The amendment is as follows:

In lieu of the matter proposed, insert the following: ''*: Provided,* That in determining eligibility for assistance from funds appropriated to carry out section 104 of the Foreign Assistance Act of 1961, nongovernmental and multilateral organizations shall not be subjected to requirements more restrictive than the requirements applicable to

foreign governments for such assistance: *Provided further,* That none of the funds made available under this Act may be used to lobby for or against abortion.''

Mr. LEAHY. I will yield to the Senator from Arizona in a moment. Just so that colleagues will understand what is happening here, the amendment that the Senator from Kansas [Mrs. KASSEBAUM] and I have sent to the desk is an amendment on the one amendment in disagreement. We resolved 192 out of the 193 amendments in the committee of conference. This is the one so-called Mexico City policy of the 1980's, one in disagreement.

After having been reported, it is open to second-degree amendment, which I understand the Senator from Arizona is going to make on an entirely different issue. But for those who have been asking me about the Mexico City policy, my understanding is what we would then do is debate the amendment of the Senator from Arizona, there would be a vote on that, and then we would begin the debate on the Mexico City amendment.

AMENDMENT NO. 3042 TO AMENDMENT NO. 3041

(Purpose: To permit the continued provision of assistance to Burma only if certain conditions are satisfied)

Mr. MCCAIN. I have a second degree perfecting amendment, which I send to the desk.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Arizona [Mr. MCCAIN], for himself and Mr. KERRY, proposes an amendment numbered 3042 to amendment No. 3041.

Mr. MCCAIN. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

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

The amendment is as follows:

At the end of the pending amendment add the following:

SEC. . Notwithstanding any other provision of this Act, funds made available in this Act may be used for international narcotics control assistance under chapter 8 of part I of the Foreign Assistance Act of 1961, or crop substitution assistance, directly for the Government of Burma if the Secretary of State certifies to the appropriate congressional committees that any such programs are fully consistent with United States human rights concerns in Burma and serve a vital United States national interest. The President shall include in each annual International Narcotics Control Strategy Report submitted under section 489(a) of the Foreign Assistance Act of 1961 (22 U.S.C. 2291h(a)) a description of the programs funded under this section.

Mr. MCCAIN. Mr. President, I have discussed this amendment with the distinguished Senator from Kentucky, the manager of the bill, and with the Senator from Vermont. I do not believe this should take very much time.

I ask for the yeas and nays on this amendment.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

Mr. MCCAIN. Mr. President, this amendment would modify the provision in the conference report that prohibits funding for international narcotics control assistance in Burma. The amendment would modify that prohibition by permitting such assistance only if the Secretary of State certifies to Congress that such programs are fully consistent with the United States human rights concerns in Burma, and that they serve a vital United States national interest.

I emphasize that the secretary must certify that a program such as this serves a vital U.S. national security interest.

That vital national interest is obvious, Mr. President. Sixty percent of the heroin that comes to this country originates in Burma—60 percent. We have a compelling, urgent responsibility to do whatever we can to eliminate or at least reduce Burma's export of that dangerous narcotic. Without a strategy that addresses the heroin trade in Burma, we have no effective antinarcotic program at all.

I can well understand the Senate's desire to influence the Burmese regime's treatment of the Burmese people. That treatment has been abominable and well deserves our severe reproach. I visited Burma last March and was exposed to a pretty representative sampling of how abominable that treatment has been and continues to be.

Daw Aung San Kyi's release was a very welcome development. But in and of itself it does not represent evidence of political reform or even an indication of progress toward an objective standard of human rights in Burma. Burma has a very long way to go.

I feel very strongly that the United States must actively support the cause of human freedom in Burma, and make it unmistakably clear to Burma's State Law and Order Restoration Council, the SLORC, that the United States, indeed, all of the civilized world expect them to begin respecting the will and the rights of the Burmese people.

But what I have difficulty understanding is why we must refrain from acting in our own national interest while we attempt to act in the interest of the Burmese people. I could understand the objective of this provision if it stated that no funds for drug control could be made available directly to the SLORC. I would not support this assistance either if the State Department were proposing to simply provide money to the SLORC with the promise that the SLORC would use it to eradicate poppy fields. It is quite probable that such funds would be used by the SLORC to further oppress ethnic minorities in Burma, like the Wa.

But, Mr. President, that is not what the administration proposes to do with this assistance. First, it is a relatively small amount of money that we are talking about, with most of it going to the efforts of the United Nations Drug Control Program [UNDCP] in Burma. Two million dollars would be provided to the U.N. to work with ethnic minorities on crop substitution and other programs intended to begin making some, although admittedly small, progress in reducing poppy cultivation. None of that assistance would be funneled through the SLORC.

A limited—a very limited amount of assistance, $50,000, I believe—would be provided to train Burmese customs officials. But I fail to see the harm in that, given that the amount is so small, and the need for better Burmese control of drug smuggling at the borders so obvious.

Mr. President, $2 million isn't going to solve America's heroin problem. But I do not see how we begin to get any control over that problem absent some kind of program in Burma.

Opium production in Burma has skyrocketed in recent years. It is, by far, the largest heroin producing country in the world. Again, 60 percent of heroin in the United States originates in Burma.

The enormous increase in heroin production globally has substantially reduced the street price of heroin while simultaneously increasing the purity, and, consequently, the lethality of the drug. Overdoses—fatal overdoses—have increased rapidly in the United States.

Sadly, as long as there is demand for heroin, we will never be able to keep it out of all our children's hands. But if in Burma and elsewhere our efforts make some progress in restricting the flow of heroin to the United States, we will make the drug more expensive and less readily available on our streets that it is today.

Mr. President, before I conclude, I should also add that in meetings attended by American Embassy officials in Rangoon, Daw Aung San Suu Kyi, the Nobel Prize winner, clearly the leader of that nation, who has been a beacon of hope for freedom and democracy for the people of Burma and people of the world, whose stature is such that she was awarded the Nobel Peace Prize, and she, Daw Aung San Suu Kyi, expressed her support for counternarcotics assistance to Burma. In fact, she maintained such assistance would not directly or indirectly help the SLORC to retain power and, on the contrary, might encourage the SLORC to make additional human rights concessions. For my part, her opinion should be what drives the decisions made here in the U.S. Senate. I think it is clearly sufficient justification to approve of this very modest antidrug program.

I am convinced that the counternarcotics assistance envisioned for Burma is consistent with our human rights goals in Burma. But I repeat, to ensure that it remains so, this amendment requires the Secretary to certify that all the programs which our assistance would support are fully consistent with our human rights concerns in Burma.

Mr. President, I believe, as we have in many other countries, the United

States can advance its values and protect our national interests in Burma simultaneously. They are not mutually exclusive and should not be treated so.

I understand the committee's motive for this provision. I must disagree with the means by which it hopes to achieve its objective. I hope Senators also disagree with those means and support the amendment to help in some small way reduce the flow of heroin to the streets of America.

Mr. President, this amendment is supported by the administration. This amendment is supported by Daw Aung San Suu Kyi. I have no brief for the ruling junta of army officers that control Burma—their human rights record is despicable. If any of this money were going to help that organization, I would not be proposing it.

We started a war on drugs some years ago, and we have either declared unconditional surrender or we have forgotten about it. I do not know which. Whatever, there is an increase in the use of heroin in this country. There is an increase in the purity of that heroin. There are lethal overdoses that are being taken of that drug as we speak.

I believe that there are many ways to win the war on drugs. The primary one is to reduce the demand here at home. We also must attack the supply in whatever way we can.

I want to point out again, Mr. President, I probably would not have proposed this amendment if it had not been for the express support of this program by this remarkable, extraordinary woman, a woman who transcends human events, a woman who has suffered for her country, whose father was a martyr to an assassin's bullet as he was the leader of this poor country. Mr. President, if the person who clearly, if there were an election tomorrow, would win by an overwhelming majority, a landslide, were not in support of this amendment, I would not be proposing it, and I hope that the Members of this body will heed her words rather than anyone else's, including my own.

I yield the floor.

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

Mr. McCONNELL. Mr. President, in July, Suu Kyi was released after 6 years under house arrest. It was the first glimmer of hope for Burma since the military crackdown in 1988. As she has repeatedly and emphatically stated since her release, nothing else has happened. She has been released and that is it. Burma is not one step closer to implementing the results of the elections of 1990.

Burmese citizens are still suffering at the hands of one of the worst police states in the world. In fact, since Suu Kyi was released, there have been more arrests, more Burmese men, women, and children have been forced from their homes into concentration camps, more villages have been burned to the ground by the government troops.

In fact, a recent Amnesty International report asserted unequivocally that the situation has dramatically deteriorated inside Burma in the last 2 months. Let me be clear, the situation has gotten worse since Suu Kyi's release.

Yet this is the very government that the amendment of my good friend from Arizona would have us cooperate with. Reasonable people can differ about how best to handle this situation, but I must say with all due respect to my good friend from Arizona, I see it a little differently. A government guilty of arbitrary detentions, torture, forced relocations, and killings is, it seems to me, a questionable government with which to deal.

The Assistant Secretary of State for Asia, Win Lord, shares this view. When I asked him what were the major impediments to an effective counternarcotics effort he said, ''What is gong to solve the problem over the long run is a popular, representative open government—all other efforts are minuscule compared to whether you have an open system there.'' I could not agree more with Secretary Lord's statement. A military junta, with an army of 350,000, assembled exclusively to terrorize its own people—they have no external threats, this army is to terrorize Burmese people—a military junta about which Assistant Secretary of State for Asian affairs, Winston Lord, has testified, ''The only impediment to cooperation on narcotics is their lack of interest.'' Their, meaning the SLORC.

Secretary Lord has testified we can only expect to see real cooperation on narcotics if democracy is restored. They had an election in 1990. The SLORC did not honor the election. Suu Kyi had been under house arrest since 1988, until this July. The situation has deteriorated since then. The question I guess we have before us is whether cooperation with this regime will produce a positive result. I am as concerned about the fact that 60 percent of the heroin coming into this country is coming from Burma as anyone else. It seems to me reasonable people can differ as to how to approach this problem, but I think we should be moving to isolate the military junta, rather than pursuing the amendment of my good friend from Arizona. That is why we should support the restoration of democracy and implement the results of the 1990 election.

Let me just conclude by noting that Suu Kyi has urged all nations to suspend investment in Burma, to take all steps possible to isolate this pariah regime. She opposes any efforts to legitimize this repressive regime.

My good friend from Arizona has argued that his amendment is not about cooperating with SLORC, but that is precisely what the State Department budget materials recommend. That is what the State Department is in effect recommending here. So it seems to me that is exactly what the State Department has in mind. They are seeking funds to train SLORC in counternarcotics efforts.

My good friend from Arizona has indicated that he believes Suu Kyi supports this cooperation. I know that is what the administration has represented as her position. The administration said Suu Kyi supports this approach.

But I might point out to my colleagues, to members of the House International Relations Committee who met with her, and in interviews with the international media, she has explicitly and repeatedly said she does not support cooperation with SLORC.

In fact, when she was advised the assistance we have provided had been used to attack ethnic groups on the border, I was advised she was horrified. It is the administration's interpretation of Suu Kyi's wishes that my colleague is relying upon, and I can understand his relying on the administration, I suppose. But there is substantial evidence, it seems to this Senator, that the administration is not correctly relating Suu Kyi's position to us. They are incorrectly characterizing her position.

There are others, including the international press and members of the House International Relations Committee, who have met with Suu Kyi and come to a different conclusion. So reasonable people here can differ.

I know my friend from Arizona's intentions are the best. He has been to Burma. He knows a lot about Southeast Asia. But it just seems to this Senator that cooperation with SLORC is not in our best interests. It seems to this Senator there are a number of people, both reporters and House Members, who have spoken with Suu Kyi who reached the conclusion that she would not favor this approach.

I simply hope the Senate will not go on record supporting the amendment of the Senator from Arizona. The issue of Burma is not going to go away. He is extremely knowledgeable about Burma, has very strong opinions about Burma. There are others of us who are also interested in what we might be able to do to bring about the end of SLORC and the return of democracy.

I hope we could all kind of sit down together and, not using this particular bill as a vehicle, sit down together and figure out what our best approach to Burma ought to be. With all due respect to my friend from Arizona, it seems to me cooperation with SLORC on drugs would be like cooperating with Iran on counterterrorism. It seems to me highly unlikely that this would be a productive relationship.

So I hope the amendment of the Senator from Arizona will not be approved. I will make a motion to table when we

finish our debate. I understand we are going to be finishing up pretty quickly.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Vermont [Mr. LEAHY] is recognized.

Mr. LEAHY. Mr. President, I, like the distinguished chairman, cannot support the amendment and will join in his motion to table, not because I disagree with the Senator from Arizona in wanting to stop the flow of heroin from Burma. I totally agree with him in wanting to do that. I acknowledge his expertise in that part of the world. Anybody who has watched the evidence from the various law enforcement and international agencies knows of the tremendous flow of heroin from Burma. But I do not think this would stop it. In fact, I believe it will be money basically lost.

The SLORC itself is involved in the drug trade. They are an army that violates the human rights of their own people. They oppress their own people. They stop dissent in their own people. But, also, they take drug money themselves.

A U.N. program is not going to make any measurable difference. We are dealing with an outlaw government. We should not be doing something that might suggest that we accept this government in any way. These are drug dealers and thugs. They themselves are profiting from something we would be asking them to stop. So, while I will be happy to look at other areas when this bill next comes up, or any other bill, I will not support this.

I might also say I hope, having cleared 192 out of 193 amendments in disagreement, that we might be able to send back to the other body just one amendment in disagreement, something that will be debated and voted on following the debate and vote on the amendment of the Senator from Arizona.

The PRESIDING OFFICER. The Senator from Arizona [Mr. MCCAIN] is recognized.

Mr. McCAIN. Mr. President, a cable sent back from the State Department, which I have a copy of, concerned a long interview that took place with Aung San Suu Kyi on July 14 of this year. I quote:

Speaking to the Richardson-Rohrabacher amendment seeking to bar any USG drug control assistance to Burma, Aung San Suu Kyi disapproved, opining that, while the ''stick'' of impending trade sanctions had been useful in prompting her release, offering USG counternarcotics assistance to the SLORC would be a useful ''carrot'' to encourage additional progress.

The SLORC's desire to benefit from the political legitimacy accompanying USG drug control aid is well known, pointed out the NLD leader. She cited exchange of information and training as two specific types of counternarcotics assistance she could envision occurring now.

By the way, I ask unanimous consent the entire cable be printed in the RECORD.

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

SANCTIONS AND DRUG CONTROL AID DISCUSSED

NLD LEADER SEES DRUG CONTROL AID AS USEFUL ''CARROT''

11. Speaking to the Richardson-Rohrabacher amendment seeking to bar any USG drug control assistance to Burma, Aung San Suu Kyi disapproved, opining that, while the ''stick'' of impending trade sanctions had been useful in prompting her release, offering USG counternarcotics assistance to the SLORC would be a useful ''carrot'' to encourage additional progress.

The SLORC's desire to benefit from the political legitimacy accompanying USG drug control aid is well known, pointed out the NLD leader. She cited exchange of information and training as two specific types of counternarcotics assistance she could envision occurring now. While the SLORC would appreciate this aid, it would not improve the regime's staying power.

12. Berkowitz expressed concern that an exchange of information on drug traffickers and operations with the Burmese authorities might hurt the Wa, who are poor farmers with no alternative other than poppy cultivation. Suu Kyi clarified that the type of information she was taking about would not be that which could be used to attack harmless people. Rather, information on drug traffickers' movements would assist Burmese officials in locating and interdicting drug operations.

She turned to Tin 00, calling him an expert on the Wa, and asked him for expanded views on this issue. Tin 00 noted that poor Wa might be hurt, but added that the exchange of information on areas of poppy cultivation would be good, though the government may not take action against poppy cultivation in ethnic areas even when provided precise information on their location. Aung San Suu Kyi did not seem unduly worried when Berkowitz raised, the possibility that drug control efforts in the Wa area might alienate Wa farmers who depend on drug production for their sustenance.

Mr. MCCAIN. Mr. President, unless misinformation—and perhaps it is—is being conveyed from our Embassy in Burma, I think it is pretty clear what Aung San Suu Kyi's position is on this issue.

Also, let me point out, as I did in my opening statement, I do not support any money going through the Burmese Government known as SLORC. This money would not go through the Burmese Government known as SLORC. It specifically would be provided to the United Nations to work with ethnic minorities on crop substitution and other programs intended to begin making some, although admittedly small, progress in reducing poppy cultivation. None of that assistance would be funneled through the Government.

So I am sorry the Senator from Vermont either is misinformed or did not pay attention to what I had to say; perhaps both.

But the fact is that this money would not—I repeat, not—go through the settlement. If it would go through the Burmese Government, then I am convinced Aung San San Suu Kyi would not approve of it. After all, she is the one spent 4 years under house arrest and was a martyr who watched her countrymen be slaughtered by the same group of people. Everybody has their own opinion.

But let us not distort the facts here. The facts are that we have credible evidence from a cable sent to the United States State Department which clearly indicates her support of certain types of drug control programs. That is reality, and that is a fact.

The other fact that I think we ought to emphasize here is that the money would not go through the Burmese Government. And nobody—I mean nobody that I know of—would support funding through that government.

I would also suggest that perhaps the Senator from Vermont—Vermont is a little bit different from what it is in Arizona. Perhaps in Vermont he does not have kids overdosing on drugs in the streets of the capital of his State. Mr. President, I do. The Senator from Vermont said it will not do much good. Maybe it will not do much good. But I know that people are dying in my home State from overdoses of heroin, from lethal doses of heroin that come directly from Burma, because it is a proven fact that 60 percent of the heroin that comes into the United States comes from Burma.

So, in all due respect to the Senator from Vermont and the people in his State, it is a compelling, urgent, and terrible problem that we have to take every possible step to cure. One of them would be to reduce the cultivation of this drug where it originates which does not require the participation of the Burmese Government.

Mr. President, it is a $2 million program we are talking about here. I am a bit curious why we should have to take up so much time of the Senate in a very large multibillion-dollar piece of legislation. But I would be willing to vote on the motion of the Senator from Kentucky to table whenever he feels that we should.

I yield the floor.

Mr. MCCONNELL. Mr. President, by way of very brief response to my friend from Arizona, the cable to which he referred was prepared a few days after Suu Kyi's release back in July. She subsequently learned that we provided information to SLORC on an alleged drug caravan which turned out to be used to attack ethnic groups on the border. Her views 2 days after being totally isolated for 6 years has since been fully informed by facts, which are that the money in all likelihood will end up with SLORC. She has since repeatedly opposed this cooperation, and in interviews, both with the press and with Congressmen who have been there, believe that it may threaten Burmese citizens.

Again, let me say reasonable people can differ about this. I totally respect my friend from Arizona and his interest in involvement in this issue. Fundamentally, it seems to me, the question is whether we should be cooperating with the SLORC, one of the worst regimes in the world, if not the worst.

I think we have probably debated this amendment fully. I am not aware of anybody else who wishes to speak.

Mr. President, I move to table the McCain amendment, and I ask for the yeas and nays.

The PRESIDING OFFICER (Mr. FRIST). Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to the motion of the Senator from Kentucky to lay on the table the amendment of the Senator from Arizona. On this question, the yeas and nays have been ordered, and the clerk will call the roll.

The legislative clerk called the roll.

Mr. LOTT. I announce that the Senator from Oregon [Mr. HATFIELD] is necessarily absent.

I further announce that, if present and voting, the Senator from Oregon [Mr. HATFIELD] would vote ''yea.''

Mr. FORD. I announce that the Senator from New Jersey [Mr. BRADLEY] is absent because of illness in the family.

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

The result was announced—yeas 50, nays 47, as follows:

[Rollcall Vote No. 560 Leg.]

YEAS—50

Akaka	Faircloth	McConnell
Bennett	Feingold	Mikulski
Biden	Gorton	Moseley-Braun
Boxer	Gregg	Moynihan
Brown	Harkin	Murkowski
Bryan	Heflin	Murray
Bumpers	Hollings	Pell
Burns	Inhofe	Pryor
Byrd	Inouye	Reid
Campbell	Jeffords	Robb
Chafee	Kassebaum	Rockefeller
Cochran	Kennedy	Santorum
Coverdell	Kohl	Sarbanes
D'Amato	Lautenberg	Shelby
Daschle	Leahy	Stevens
DeWine	Levin	Wellstone
Exon	Lott	

NAYS—47

Abraham	Frist	Mack
Ashcroft	Glenn	McCain
Baucus	Graham	Nickles
Bingaman	Gramm	Nunn
Bond	Grams	Pressler
Breaux	Grassley	Roth
Coats	Hatch	Simon
Cohen	Helms	Simpson
Conrad	Hutchison	Smith
Craig	Johnston	Snowe
Dodd	Kempthorne	Specter
Dole	Kerrey	Thomas
Domenici	Kerry	Thompson
Dorgan	Kyl	Thurmond
Feinstein	Lieberman	Warner
Ford	Lugar	

NOT VOTING—2

Bradley	Hatfield

So, the motion to lay on the table the amendment (No. 3042) was agreed to.

Mr. MCCONNELL. Mr. President, I move to reconsider the vote by which the motion was agreed to.

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

The motion to lay on the table was agreed to.

Mr. LEAHY addressed the Chair.

The PRESIDING OFFICER. The Senator from Vermont.

AMENDMENT NO. 3041

Mr. LEAHY. Mr. President, what is the pending business?

The PRESIDING OFFICER. The motion of the Senator from Vermont to concur in the House amendment with an amendment.

Mr. LEAHY. Thank you, Mr. President. Just so my colleagues understand, and I know there are a number of Senators on both sides who are going to want to speak, let me back up a bit.

First, the Senate has voted in favor of the conference report. The conference report reflected a conference that agreed on 192 out of 193 amendments. Now we have the 1 remaining amendment of those 193 which is in true disagreement, and we have received from the other body their proposal.

I have moved to amend their amendment in disagreement with an amendment by myself and the Senator from Kansas, Mrs. KASSEBAUM. What happened is the Senate conferees were not able to agree to a House provision that would reinstate the so-called Mexico City policy of the 1980's. As Senators may recall, the Mexico City policy caused much division in this country and picked up a lot of ridicule for this country abroad. It prohibits the U.S. Government from using its funds to support private family planning organizations that use their own funds to provide counseling and other services relating to abortion.

What my amendment does, it strikes the House provision and it replaces it with the identical Senate language that passed this body on September 21. Senator KASSEBAUM, who is the original author of this language, is a cosponsor of this amendment.

The amendment says that in determining eligibility for assistance, non-Government and multilateral organizations shall not be subjected to requirements more restrictive to requirements applicable to foreign governments for such assistance; provided further that none of the funds made available under this act may be used to lobby for or against abortion.

So no matter what your position is on abortion, U.S. money cannot be used to lobby for or against it. This has been very carefully thought out to give Senators who have strong views on the subject of abortion a common ground and be respectful of the views on both sides of this issue.

The sad thing about the House provision, which we are now seeking to amend and send back to the other body, is that it is not only totally and utterly unnecessary, but if it prevailed on this bill, it guarantees a veto, and the work of the Senator from Kentucky, Mr. MCCONNELL, and myself, as well as all the other Senators who joined with us in putting together the foreign aid bill, goes down the drain.

Our bill explicitly, and I wish Senators would listen to this, the Senate bill explicitly prohibits the use of any U.S. funds for abortion. Period. End of sentence. No qualifications.

It is the same prohibition that we have had for years. It is the same prohibition we had in the last Republican administration. It is the same prohibition we have in this administration. No funds in this bill can be used for abortion.

We are really ending up debating bumper-sticker slogans. We are ending up debating—I do not know—fundraising letters, whatever, but we are not debating the reality of the foreign aid bill.

The amendment I offered simply continues current law and practice, and at a time when support for voluntary family planning programs and women's reproductive health is growing around the world, it would be ridiculous for the United States to, once again, surrender its leadership in this area as we did back in the eighties.

Some have defended the House provision, because it only prohibits U.S. support for foreign organizations. That is precisely the problem. It is by supporting foreign organizations that we implement our family planning programs. We do not stop the population explosion in other parts of the country by saying we will send the money to Planned Parenthood of Winooski, VT. We do it by sending the money where family planning might help. In fact, let me give just one example of what the House provision would do.

A current program that uses United States funds to train Russian doctors in providing family planning services would have to shut down because it takes place in a Russian hospital. In that Russian hospital, Russian funds are used to perform legal abortions. In Russia, the average woman has seven abortions, something I find, and I hope most people would find, to be a terrible situation.

But in our program, which tries to help the Russian doctors teach family planning so they will not be having seven abortions, the House provision says you cannot do that. You cannot do that because in the place where they would teach that, somewhere else in that same building abortions might take place.

Well, come on, this is Alice in Wonderland. You teach alternatives to abortion at a place where people who are interested in that subject might be.

The whole point of this program is to promote contraceptives and alternatives to abortion. It does not ask for money for abortion, it seeks alternatives. Every dollar is for voluntary—voluntary—family planning. I say to my colleagues, if you vote against the amendment of the Senator from Kansas and myself, let there be no mistake, that opposes voluntary family planning if you vote against it.

The other point I want to emphasize is no funds in this bill can be used in China. I heard the debate earlier about people who are concerned about what happens in China. Well, I am concerned. I am appalled by forced sterilization. I am appalled by forced abortions. I am appalled by the Chinese

Government telling people, under pain of all kinds of strictures, how many children they can have. We all are, but do not knock down our ability to help the voluntary family planning in other countries by holding up as a straw man somehow the situation in China.

Chinese population policy should be condemned, but do not condemn the program. In fact, the House provision would prevent the United States from contributing to the U.N. population fund. It is the largest international family planning agency in the world. UNFPA does not fund abortion. It has an explicit policy against supporting abortion. It funds contraceptives, education and informs about family planning in 140 countries. It is absolutely vital the United States play a leading role in the U.N. agency at a time when the decisions we make today will determine if the world population doubles or even triples. The Chinese population policy should be condemned, but do not condemn an organization that seeks to demonstrate to the Chinese Government that they can achieve the same results with voluntary family planning.

As I said, we contain a prohibition against using U.S. funds in China. That is despite the fact U.N. programs in China promote voluntary family planning and human rights.

Mr. President, let us not go backwards, not when so many governments are finally seeking out and limiting rates of population growth. Many of these countries are already impoverished. We have the technology, the expertise and the interest in helping. The amendment in the House requires UNFPA to withdraw from China. That is a decision not for UNFPA but its governing board, which is made up of its donor governments. By attaching a condition UNFPA cannot meet, we cut off funding for programs in 139 other countries.

So just understand what is here. In the amendment of the Senator from Kansas and myself, no money for abortion, no money for child care, but money for voluntary family planning. If you are against voluntarily family planning, vote against it. But if you would like to see, as we do, the ability to give some of these countries alternatives to abortion, then vote with us. And also, with all the work that has gone into this bill, let us complete the bill so it can actually be signed into law by the President and not vetoed.

I see the cosponsor, my good friend from Kansas, on the floor. I yield to her.

Mrs. KASSEBAUM. Mr. President, I ask unanimous consent that Senator HATFIELD be made a cosponsor of this amendment.

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

Mrs. KASSEBAUM. Mr. President, the language that I am cosponsoring with my colleague from Vermont is, as he has said, identical language that was included in the Foreign Operations appropriations bill, which passed the Senate in September by a vote of 91–9.

It is also language similar to that which passed the Senate in 1984 and in 1989. At this time, as Senator LEAHY pointed out, House and Senate conferees were able to reconcile every other aspect of the legislation, except this issue. The House insisted upon their language, we insisted upon ours and, thus, the bill was reported out of conference with this language in disagreement. I think that if the House passed the language they passed and if we pass the language offered in this amendment, it is my understanding that a continuing resolution would continue for the bill with everything passed—the language of everything passed in a continuing resolution, except current language reporting the issue at stake in disagreement here.

The language that has been introduced does not change the current U.S. policy that prohibits funding for abortion activities. It simply ensures that foreign governments and nongovernmental organizations will be treated in the same way with respect to establishing eligibility for U.S. population assistance. If abortion is legal in a country and if a foreign government is engaged in population assistance programs, why should we tell a nongovernmental agency or organization working in that country that they cannot use U.S. funds? It seems to me they should be able to use them for population assistance, Mr. President. That is what this issue is about. It is not about abortion.

As I think all colleagues know, this issue first came about in 1984 at the International Conference on Population in Mexico City. The Reagan administration announced that any nongovernmental organization which used private or non-U.S. funds to contract abortion-related activities would be prohibited from receiving U.S. population assistance. If they use their own private, or if their own non-U.S. funds in any way are involved, as the Senator from Vermont pointed out, then they could not receive any U.S. funds for population assistance.

I just feel that it is far too limiting, Mr. President. It really cripples us in our ability to help other nations deal with population assistance initiatives.

Since 1973, the United States has prohibited the use of U.S. dollars by any recipient of U.S. population assistance to pay for abortions abroad. I support this.

However, Mr. President, this amendment, as I said before, is not about an abortion. As the Senator from Vermont pointed out, it would prohibit funds going to China. It would also prohibit funds which could be used for lobbying for or against abortion. So I think it is important to keep in mind exactly what it is about. It is about supporting nongovernmental organizations in creating safe, effective, comprehensive family planning programs—programs that are designed to prevent the need for abortion.

Mr. President, some of my colleagues have argued that the United States should not have a role in international population assistance programs. But while some contend that there is no relationship between world population and our national security, a closer look, I think, at all the factors involved make it clear that population stabilization is in our best interest. Without such an effort, the world's political, economic, and environmental forces balance precariously on the verge of chaos.

I think I came to realize this most clearly as I have spent a number of years on the Africa Subcommittee in the Foreign Relations Committee. It has shown me that arguments to the contrary are misinformed. The population assistance initiatives are important. There is no doubt in my mind, for example, that overpopulation played a major role in compounding famine in Africa. I do not think I need to point out to anyone here the tragedies that have resulted from that, or could result from that, and the importance of doing thoughtful, constructive population assistance initiatives. It is not easy. We have to be very sensitive to cultural differences as we work in other countries and support work in other countries. But, clearly, it seems to me that it does have merit and it is important.

I realize that many of my colleagues here are tired of this fight. But I continue to believe strongly in preventing the need for abortion by working to establish effective family planning programs. I hope my colleagues will similarly recognize the need to prevent what has been called the international gag rule from ever emerging as an obstacle to creating effective policy.

I urge my colleagues to vote in favor of this amendment. I suggest, Mr. President, it is not really an issue of the President vetoing this bill. In my mind, it is an issue of the merit or demerit of this amendment. I feel strongly that this amendment really says that we do care about working together with nongovernmental organizations, with other countries, being sensitive and constructive with family planning initiatives.

Mr. FEINGOLD. Mr. President, I ask unanimous consent to be added as a cosponsor.

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

Mr. FEINGOLD. Mr. President, I rise in strong support of the Leahy-Kassebaum amendment. The Senator from Vermont and the Senator from Kansas have done more in the last few minutes to clarify this issue than I think has been done for some time—the very clear point that the Senate position on this in the past does not provide Federal funding for abortions through these organizations. That is the fact. For that reason, I stand in strong opposition, as well, to the House language.

The House language endangers our national interests. It is not simply an

antichoice or antiabortion, or a proabortion issue, as some of the proponents say. What it is is antifamily planning. The House position smacks of being against the interests of women and international development.

Population assistance is a critical component of our foreign aid program, and a worthy investment in bracing for the threats to U.S. national security that will arise throughout the 21st century.

Even President Nixon, who was not known as a prochoice activist, listed population growth ''among the most important issues we face * * * a world problem which no country can ignore, whether it is moved by the narrowest perception of national self-interest or the widest vision of common humanity.''

Indeed, President Nixon pledged full U.S. support and cooperation in supporting U.N. population and family planning programs at the same time the United States played an active role in founding the U.N. population fund known as the UNFPA.

If we were to enact the House language, Mr. President, we would cut off support for UNFPA as well as the crucial private organizations supporting family planning and women's rights and manageable population growth.

Mr. President, the world population today stands at 5.7 billion people, almost double what it was in 1960. It is growing by about 100 million people per year. Most of this growth is in the developing world in regions that cannot, of course, sustain their current populations.

The environmental and economic effects of this population program are very significant. The effect on women as a population is really disastrous. If development efforts are going to be successful, they have to include the full participation of women—at least 50 percent of the world population.

However, if women are not given control of their own bodies, or if they are compelled to carry and deliver unlimited numbers of children, then they cannot be full partners. They cannot be full partners politically, economically, or socially in the development of their country.

The U.S. population programs, in conjunction with international strategies, have actually yielded incredible results for our country and for the world. We have seen reductions in maternal mortality rates. We have seen improved child survival statistics. We have seen increased literacy among women. And we have seen healthier, burgeoning economies in many parts of the world.

Mr. President, this in turn strengthens U.S. efforts to promote food security, international trade, and improved public health, all of which improve our standard of living. And they also reduce the risk of disaster assistance or the deployment of U.S. troops, as the Senator from Kansas was alluding to in her previous remarks.

I have had the opportunity to work with the Senator on the Foreign Affairs Committee on the subcommittee concerning Africa where these problems can become very, very severe very quickly.

The provision of population assistance and family planning services is important to the United States. Mr. President, again, it is hardly support for abortion—although the House amendment infers this.

In fact, Mr. President, that is what I think is the fundamental misunderstanding in this debate, and I think we need to dispel that today. Abortion does not equal family planning; in fact, responsible and safe family planning reduces the need for and incidence of abortion. Nevertheless, somehow this debate always winds up being a bit of a red herring debate about abortion.

Mr. President, if the proponents of the House amendment were trying to prohibit U.S. funds from being used to pay for abortion, they already achieved that goal many years ago. U.S. foreign assistance cannot by law be used to pay for abortion. Let me repeat that: U.S. foreign assistance cannot by law—by current law—be used to pay for abortion. It says so throughout the foreign aid law, and it is reiterated in this conference report that we are considering right now.

Now, Mr. President, barring people from speaking about family planning, contraceptives, and abortion will not solve the problem, not to mention the fact that it is a blow for the concept of free speech that the United States worked so hard to promote throughout the world.

Similarly, cutting off private groups which use funds from other sources for their abortion activities is only going to hurt the pursuit of U.S. Government interests. As in the 1980's when we saw some of these regressive policies applied, most effective organizations turned down U.S. funding since they could not and would not agree to these conditions.

I commend them for their perseverance, but I think it was shameful that the United States did not contribute to programs designed to meet our own needs. These are the reasons that the House language on Mexico City policy and the gag rule have to be stripped from this conference report and why the Kassebaum language should be restored.

As for these counterproductive restrictions on UNFPA, I again submit, as I and others did before the Foreign Affairs Committee, that this is an attack on family planning. It is not a serious attempt to stop abortion, nor is it a serious attempt to do anything about the disgusting practice of coercive abortion.

Pulling out of the U.N. population fund is not going to stop coercive abortion in China, for the simple fact that UNFPA does not engage if any coercive abortion procedures in China now. UNFPA's mandate in every country, including China, is the provision of family planning services and maternal and child health care in 140 countries around the world. It has no mandate—it has no mandate—to engage in the provision of abortion or abortion-related services.

Mr. President, in reality, it is programs supported by the UNFPA that make abortion less likely. If I believe that withdrawing from the UNFPA would reduce the incidence of coercive abortion in China, I would wholeheartedly support such a move.

Human rights abuses such as this should be addressed at the United Nations and through diplomatic and economic levers such as the most-favored-nation status approach, which I have advocated and continue to advocate with regard to China.

In fact, this is one of the reasons why I introduced legislation this year with the chairman of the Foreign Relations Committee, Senator HELMS, to withdraw MFN from China.

Mr. President, prohibiting United States contributions unless the UNFPA pulls out of China is going to do nothing to solve this problem. UNFPA officials have already expressed their firm opposition to the practice of coercive abortion despite what some Members on this floor have said in what amounts to misquoting the organization.

I ask unanimous consent to have printed in the RECORD, Mr. President, a letter I received from the UNFPA on their perceptions on the China policy, which I hope will clear up the misunderstanding.

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

UNITED NATIONS POPULATION FUND,
New York, NY, July 26, 1995.

Senator RUSSELL FEINGOLD,
Senate Russell Building, Washington, DC.

DEAR SENATOR FEINGOLD: It has just come to my attention that on June 28, 1995 during a debate on the House floor, Representative Chris Smith quoted Dr. Sadik, Executive Director of UNFPA, ''China has every reason to feel proud of and pleased with its remarkable achievements made in its family planning policy and control of its population growth over the past 10 years. Now the country could offer its experiences and special experts to help other countries.'' Senator Jesse Helms used the same quote in the Senate Foreign Relations Committee Report accompanying S–961.

I believe this quote comes from China Daily, an English language newspaper published in Beijing. I was with Dr. Sadik when she was interviewed for this article in 1991. This article was a terrible distortion of what she actually said. Dr. Sadik did say that China should be proud of its record of improving women's and children's health since 1949. She commended China's continuing efforts to improve maternal and child health by discussing a joint UNFPA and UNICEF project in 300 poor counties in China that especially focuses on improving children's health through training and supplies for treatment of acute respiratory infection and diarrhea, promotion of prenatal care and nutrition, breast-feeding, assisted deliveries and family planning that assured several contraceptive choices and informed consent.

She went on to say that this project was a model that could be replicated in other countries.

I have no idea why Dr. Sadik was misquoted. I tried unsuccessfully at the time to secure a retraction from China Daily. I remember during her visit being very proud of Dr. Sadik's tenacity and courage and my disappointment with the China Daily article which was not only wrong, but contradictory of her real position.

In fact, during this trip, Dr. Sadik attended a series of meetings that included: the Ministers of Family Planning and Health, the Head of the People's Congress and several of his colleagues and the General Secretary of the Communist Party of China. During these meetings she was very critical of new laws in several provinces requiring sterilization of the mentally retarded. She also successfully negotiated projects designed to increase training for informed consent and voluntary participation in family planning, and research that would examine the safety and efficacy of the Chinese steel ring IUD. The first project, currently ongoing, provides interpersonal counseling training and promotes contraceptive choices for grass-roots family planning workers in several provinces. The second resulted in a Chinese ban on steel ring IUD's in favor of copper based IUD's which in ten years will prevent 35.6 million abortions. It would also prevent 6,300 maternal deaths; 365,000 potential infant and 28,000 potential child deaths.

For 3-½ years I served as UNFPA's Country Director in China. I know first hand what we did and said in China and I can tell you that the way we are frequently portrayed, such as in the statement in question, is absolutely and unequivocally untrue.

UNFPA has always represented international norms and human rights standards as articulated in several U.N. documents including the Universal Declaration of Human Rights, the World Population Plan of Action and the Programme of Action of the International Conference on Population and Development. For example, Chapter VII, para. 12 of the Programme of Action which states ". . . the principle of informed free choice is essential to the long-term success of family-planning programmes; that any form of coercion has no part of play; that governmental goals or family planning should be defined in terms of unmet needs for information and services; and that demographic goals, while legitimately the subject of government development strategies, should not be imposed on family-planning providers in the form of targets or quotes for the recruitment of clients".

In particular, Dr. Sadik has been a champion of human rights, women's equality and reproductive rights. In the 14 years I have known her, I have never heard her use the phrase "population control."

We deeply appreciate your past and continuing support and hope you can help set the record straight regarding the quote used by Representative Smith and Senator Helms.

Sincerely,

STIRLING D. SCRUGGS,
Chief, Information and External Relations Division.

Mr. FEINGOLD. United States funds are already adequately and elaborately protected from being used in China at all. In reality, what the House amendment is trying to do is prohibit U.S. support for family planning in the 140 other countries that the UNFPA operates. It essentially punishes the United States and other countries of the international community for China's human rights violations which the UNFPA, again, is simply not responsible for.

As we look to the 21st century, we should have a post-Mexico City policy on population. The House amendment brings us backward—not forward. Family planning is too important for us to lose ground on. But that is exactly what the House amendment does. It causes us to lose ground on population control.

We cannot let this stand, Mr. President. I urge my colleagues to support the Leahy amendment and to strip this extreme amendment from the bill. I yield the floor.

The PRESIDING OFFICER (Mr. GORTON). The Senator from Texas.

Mr. GRAMM. Mr. President, let me first say I intend to speak for just a moment on the budget and on the President's veto threat.

However, let me say about the pending amendment that the House of Representatives has taken a very clear position that maintains the position that Congress has historically taken—that is, there is a higher standard when you are spending the taxpayers' money.

In spending the taxpayers' money, the House has taken the position that we should not be spending the taxpayers' money either in the United States or around the world to fund abortion on demand, and we should not be spending the taxpayers' money to subsidize forced abortions in China.

I think we need to reject this amendment. I think we need to stay with the House position. I am confident that we will.

Mr. President, our leader, Senator DOLE, and the Speaker of the House, Congressman GINGRICH, are both down at the White House today meeting with the President about the growing confrontation concerning our budget.

I wanted to make some remarks about this confrontation because I think we are coming down to the moment of truth where each of us is going to have to decide what the 1994 elections were about, what we stand for, what we are willing to stand up and fight for, and what we are willing to compromise on.

I want to make just a few observations this afternoon on those subjects.

First of all, we have adopted in both the House and the Senate a budget that does what we promised to do in the election. It balances the budget over a 7-year period. It saves Medicare. It reforms welfare. It changes the relationship between the Government and the people.

In a very modest way, it begins to let working families keep more of what they earn to invest in their own children, their own families, and their own futures.

The President has said so many times that he is going to veto our budget bill, that I think people are beginning to believe him—not that repetition is always a guarantee. But I think we have to start thinking seriously about the possibility that the President might veto the budget bill that we have passed.

I think it is important for individual Members of the Senate to start making it clear where they stand on this issue. That is what I want to do this afternoon.

First of all, the President is asking us, by vetoing our budget, to continue to spend money we do not have on programs we cannot afford.

The President has sent not one but two budgets to Congress, and both of those budgets would increase the public debt by over $1 trillion in 5 years. Neither of those budgets would ever come into balance at any finite time in the future. Both of those budgets would give us a deficit that greatly exceeds $200 billion in the year that our budget would be in balance.

Now, the President says he is going to veto our budget to force us to spend more money. Let me make it clear that no matter what might be agreed to, I am not going to vote to bust the budget that we wrote here on the floor of the U.S. Senate. Under no circumstances am I going to vote to increase spending above the level we set out in our budget.

The President has every right, if he wants to enter legitimately into the debate by submitting a real budget that is balanced over a 7-year period, to negotiate with us about spending priorities. It is obvious his priorities are different, but I think those differences are legitimate, and I think they ought to be debated. But, unless the President is going to submit a budget to us which tell us how he would balance the Federal budget, I am not willing to allow him to force us to back away from our budget.

Our proposal to the President, as a precondition for our negotiation with him, ought to include the following items:

No. 1. Tell us how you would balance the budget over a 7-year period, not by wishing the problem away, but in terms that we can all understand and in terms that the Congressional Budget Office, which is the accountant for this process as designated by the President, can certify will really achieve a balanced budget. From that point we can then begin to compare the two budgets.

Second, it seems to me if the President is really committed to balancing the budget, he ought to endorse the balanced budget amendment to the Constitution, which has passed the House and which is only one vote short of the two-thirds vote needed to pass the Senate and send to the States. I want to call on the President, if he is serious about balancing the budget, to come out and endorse the balanced budget amendment to the Constitution, to help us get one additional Democrat to vote for it, and in the process allow us to send it to the States.

I believe it is high time that we let working people keep more of what they earn. In 1950, the average family with two children sent $1 out of every $50 to Washington. Today, that family is

sending $1 out of every $4 to Washington. I think our action of giving a $500 tax credit per child for every working family in America so they can spend their own money on their own children and on their own futures, is long overdue. There is no circumstance under which I am going to back away from our tax cut so that Bill Clinton can spend more money in Washington, DC.

This is not a debate about how much money we spend on children, but it is certainly a debate about who is going to do the spending. President Clinton and the Democrats want the Government to do the spending. We want the family to do the spending. We know the Government. We know the family. And we know the difference.

So, I think, to conclude and let the debate go back to the amendment before the Senate, for 40 years we have been running up bills in Washington, DC. For 40 years we have been borrowing more and more money. The President's argument to us is, ''We have run up these bills. Raise the debt ceiling and pay the bills.''

It reminds me of an argument that was made when I was a young Member of Congress, in my first year, the first debate I ever participated in. Then-majority leader of the House Jim Wright got up when we were getting ready to vote on the debt ceiling, and he said, ''It is as if your spouse has run up a big bill on the credit card and the bill collector is knocking at the door. You have to pay your bills.''

That is what the President is in essence saying to us.

My response is, let us look at what American families do under these circumstances. They do pay their bills. But they do something we have not done in 40 years. They sit down around the kitchen table, they get out a pad and pencil, they write down how much money they earn, they start adding up their expenses, they put together a budget, they get out their credit cards, they get out the butcher knife, they cut up their credit cards, and they resolve that, while they are going to pay their bills today, they are not going to put themselves in a position where every year the bill collector is pounding on the door.

I believe defaulting on the public debt would be irresponsible. I believe shutting the Government down to make a political point is unnecessary and unfair. But there is something worse than defaulting on the debt. There is something worse than shutting the Government down. And that is continuing a spending spree that will destroy the future of our children. That is worse than both shutting the Government down and defaulting on the debt. And I am not going to vote for a budget, and I am not going to vote for a compromise, that continues the spending spree in Washington, DC.

The American people in 1994 gave us a Republican majority in both Houses of Congress with a clear mandate: Stop the taxing, stop the spending, and stop the regulating. I, for one, am not willing to cut a deal in Washington, DC, with President Clinton, to undercut an election that sought to fundamentally change the way Government is run in Washington, DC.

So I think we ought to negotiate with the President. I think we ought to try to work with the President. But we ought to make it very clear to the President that we are not going to back away from our commitment to balance the budget. We are not going to spend money we do not have on programs we cannot afford. And there is no amount of threat and bluster that can be exercised by the President that is going to induce us to pull down our budget and continue the spending spree in Washington, DC.

I yield the floor.

Ms. MIKULSKI. Mr. President, I rise to support the Leahy-Kassebaum amendment on family planning.

The House has taken an extreme position on international family planning. If their position prevails, the world's poorest women will pay the price. I urge my colleagues to stick with the Senate position. The Senate bill prohibits funds from being used to perform abortions—or to do anything in China. But it does this while continuing to provide family planning services and maternal and children's health care to the poorest people in the world.

The House position is extreme because it would gut our international family planning programs. It would prohibit organizations that use their own funds for abortion services from receiving any U.S. funds. It would prohibit these organizations from offering any information on abortion—even factual information about mortality related to unsafe abortion. The House amendment would also limit U.S. participation in UNFPA—which has the infrastructure, the expertise, and the personnel to be the most effective program for providing family planning services around the world.

The effects of this House position on women's health would be disastrous. Over 100 million women throughout the world cannot obtain or are not using family planning because they are poor, uneducated, or lack access to care. Twenty million of these women will seek unsafe abortions. Some women will die, some will be disabled. Many of these women are very young; they are, in fact, still children themselves. When children have children, they often lose their chance to obtain schooling, a good job, and ultimately, self-sufficiency. If the House position prevails, women will not be able to fully participate in development and democratization.

In this bill, we seek to maintain our modest role in providing family planning to the world's poorest women. To this end, we should be clear about what is in the bill—and what is not.

This bill does not contain money for abortions or abortion lobbying. Federal funds cannot be used to fund abortions and this bill retains this prohibition. In fact, opponents of this amendment include Senators who strongly oppose abortion. They know that effective family planning actually reduces the number of abortions performed. And this bill does not contain money for China. No United States funds may currently be spent in China and the bill retains this policy as well.

This bill maintains current law. It continues to provide modest funding for the United Nations Population Fund [UNFPA]. Without this assistance, the influence of the United States in the UNFPA is cut off. We would have no say on how and where international family planning services are delivered.

This bill continues to provide funds to the most efficient and effective private and nongovernmental organization. It is these organizations who know best how to make a little funding go a long way.

Mr. President, I wish we could do more to ensure that all women have access to family planning. The Leahy-Kassebaum amendment—which reaffirms the bill passed by the Senate—ensures that we continue to do something to help the world's poorest women to control and improve their lives. I urge my colleagues to support this amendment.

Mr. JEFFORDS. Mr. President, we have debated the issue of restrictions on international family planning many times in this body, and I regret that at this stage in the process, this issue threatens to bring down an important foreign aid bill.

This body voted by a significant margin just 1 month ago to preserve a reasoned family planning policy—one that supports important family planning work in the most needy areas around the globe. Population growth is a crisis that cannot be ignored, that will not wait for attention at a later date. Unchecked population growth will ultimately threaten every corner of the globe. And a withdrawal on our part from our current active role in education and technical assistance to successful family planning programs worldwide would be devastating.

Experience has proven that it does not take a lot of money to have a large effect upon population growth. However, it does take efficient programming, consistency, and a commitment for the long term. We put that all at risk in this debate today if we back away from the longstanding position of this body, that restrictions on family planning funding to nongovernmental organizations overseas should be the same as those applied to U.S. organizations.

Mr. President, the stakes in this debate are even higher today than usual. This is the only issue in disagreement between the two bodies on a large and substantive bill; 192 differences have been resolved, resulting in a reasonable bill that, with the exception of this

issue alone, has broad support on both sides of the aisle in both bodies and is acceptable to the administration. Yet, failure to insist on the Senate position on this important issue, namely a continuation of current law, would doom this important legislation to a certain veto. We have enough issues in disagreement with the administration without adding this one to the list.

I thank the Senator from Kansas [Mrs. KASSEBAUM] for her consistent leadership on this issue and I urge support for the Leahy-Kassebaum amendment.

● Mr. HATFIELD. Mr. President, once again the Senate and the House face the prospect of holding up an important appropriations bill over the issue of abortion. I am dismayed that we find ourselves in this position especially because the bill before the Senate clearly and explicitly prohibits the use of U.S. funds to pay or lobby for abortion in our foreign aid programs. The programs at stake involve family planning—not abortion.

I am strongly pro-life and do not support abortion except in cases where the life of the mother is endangered. I am also strongly pro-family planning and have long been an outspoken supporter of our domestic and international family planning efforts. I support family planning because I believe if more couples have access to contraceptives and understand the consequences of the lack of family planning, we can make abortion a moot issue.

But beyond making abortion a moot issue, there are also development and environmental consequences of uncontrolled population growth. According to the United Nations, the 1990's will see the greatest increase in human numbers of any decade, as the world's population grows from 5.3 billion to 6.25 billion by the end of this century. We know that rapid population growth in the developing world can overwhelm the gains made in living standards.

According to the World Bank, in sub-Saharan Africa the 3.7-percent growth in gross domestic product will not be sufficient to offset the effects of skyrocketing population growth, and the number of poor will increase. On the environment front, when we look at ozone depletion, global warming, destruction of tropical rain forests, and the elimination of species diversity, we inevitably see the connection between those phenomena and the population explosion.

The international family planning programs that we fund through the U.S. Agency for International Development and the United Nations Population Fund [UNFPA] ensure that the United States will maintain a leadership role in addressing the population problem. The House limitations which were struck by the Senate would undermine our ability to continue to play this important role.

I would like to mention in particular our support of the UNFPA. The House amendment would prohibit the United States from participating in the UNFPA unless the President certifies that the UNFPA will withdraw its program from China. No one condones China's coercive abortion policy—I certainly do not. In fact, there are specific prohibitions already in law on the use of United States funds for UNFPA's program in China. And although there have been allegations that UNFPA funds were going to support coercive abortions in China, these allegations have never been substantiated. The problem is with China's family planning program, not the UNFPA's.

Despite the fact that the United States has been quite outspoken against the practices in China and has already prohibited the use of our funds there, those opposed to family planning continue to use it as a reason to withdraw all of our support for the UNFPA. This would mean that the U.S. could not participate in a program that has the ability to reach into areas where no single U.S. program can. The UNFPA currently provides voluntary family planning assistance to over 140 countries besides China; 90 of those nations have populations expected to double within the next 30 years. In addition, nearly half of UNFPA's assistance is used for family planning services and maternal and child health care in the poorest, most remote regions in the world. As a nation, we cannot afford to limit our participation in the UNFPA.

Therefore, I am pleased to say that I am a cosponsor of the Leahy-Kassebaum amendment to strike the House amendment and return to current law on lobbying for or against abortion which was so carefully crafted by our colleague from Kansas. I hope that the Senate will retain the position we had when we first passed this bill. Moreover, I hope those on both sides of the issue will take a closer look at what we are doing by polarizing the issue of abortion and using it to hold up these very important funding bills. Can we not come together to try to resolve the abortion question through the authorizing process? If not, I am afraid we are relegating ourselves to years of deadlock and further polarization.●

Mr. BINGAMAN. Mr. President, I rise today in strong support of the amendment to H.R. 1868, the Foreign Operations Appropriations Act of 1996 offered by my good friend from Kansas, Senator KASSEBAUM, and my good friend from Vermont, Senator LEAHY.

Mr. President, international population growth is a significant issue for foreign policy for the United States. It is a significant issue for domestic policy, for that matter. Of all the challenges facing our Nation and the world, none compares to that of increasing population growth.

Our efforts to protect the environment, to promote economic development around the world, and to raise the status of women, will be futile if we do not first address the staggering rate of global population growth.

How can we expect underdeveloped countries to pull themselves up when the world's population is growing at a rate of more than 10,000 people per hour? Today, there are more than 5.7 billion people on this Earth.

We simply must address these issues. We must acknowledge that we cannot talk about population growth without talking about the very real and very tragic effects of overpopulation:

First, the destruction of our environment; and

Second, the destruction of people—mostly women and young children who live in poverty and die from malnutrition, starvation, lack of access to basic health care, and botched illegal abortions.

We need to be working to address these issues instead of spending countless hours debating our philosophical differences on abortion. We have been over that issue more times than any of us care to count.

Mr. President, I believe direct, substantial, and long-term benefits flow to American families from our national investment in sustainable development and population efforts.

Today, as we approach the 21st century, we are facing a world that will be more economically competitive and more challenging than ever before. This is not the time to be weakening our role as the world leader in these areas.

Instead, I believe it is in the best interest of America's children and families for the Congress to reaffirm and solidify our commitment to population stabilization, reproductive choice, and other critical health and sustainable development programs.

For the past 12 years or so, I have spent a lot of my time here in the Senate focussing on the domestic and international high-technology industries. I have worked to develop strategies to strengthen the technology and manufacturing bases in this country and to secure higher wage jobs for Americans.

I have focussed on these issues because of my concern for the long-term economic viability of our Nation. I believe that to secure our economic future, the United States must be fully equipped to compete long term with Japan and other highly developed countries.

But at the same time, I believe we cannot have a successful economic strategy in this country if we do not devote serious attention to the economies of the developing world.

Over the past 10 years or so, growth in U.S. exports to the developing world has exploded; and today, developing countries account for about 40 percent of a growing U.S. export market.

In fact, trade with the developing world is growing at a rate that far exceeds the growth rate of U.S. exports to developed countries.

I believe a significant factor in this growth has been the modest U.S. commitment to development and population assistance in the developing countries.

Mr. President, funding for efforts such as those of the U.N. Population Fund and the UNFPA, are critical to addressing these issues which are among the most serious the world faces and is why I rise in strong support of the Kassebaum-Leahy amendment to the foreign operations appropriations bill and hope that we will once again send a strong message to the House that this funding must, and will, be preserved.

Mr. BIDEN. Mr. President, the Leahy-Kassebaum amendment puts me in a difficult position because it combines two separate issues.

On one hand, I have consistently supported efforts to reverse the so-called Mexico City or International Gag Rule policy and therefore support reinserting the Kassebaum language that overturns the Mexico City policy.

On the other hand, I have consistently opposed United States funding for the U.N. Population Fund while the organization continues to operate in China. The amendment before us would strike a restriction on UNFPA funding that I have supported.

Of course, I must vote yes or no on the entire amendment. I cannot vote for part and against part.

Therefore, upon reflection, I will vote in favor of the amendment. International family planning programs provide important services that lead to healthier families and help to prevent high population growth rates, environmental degradation, and the need for abortion.

We can and we should continue to prohibit U.S. tax dollars from being used for abortions. But, I believe that the U.S. Government should not be dictating what nongovernmental organizations do with their own funds in their work to provide family planning services around the globe, as long as they do not use any Federal funds for abortion.

Nevertheless, I would like to make it clear to my colleagues and constituents that my vote today does not represent a change in my position on U.S. funding for the U.N. Population Fund at this time. We must continue to do all that we can to pressure the Government of China to cease any program of forced abortion or sterilization as a means of population control.

Ms. SNOWE addressed the Chair.

The PRESIDING OFFICER. The Senator from Maine.

Ms. SNOWE. Mr. President, I rise in support of the amendment that has been offered by Senator LEAHY and Senator KASSEBAUM. I ask unanimous consent to be included as cosponsor of that amendment.

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

Ms. SNOWE. Mr. President, first of all I would like to correct a few of the statements that were made by the previous speaker, the Senator from Texas. He said that this position that is embraced in the amendment of Senator LEAHY and Senator KASSEBAUM has been rejected by the Congress in the past. That is not true. Back in 1989 both the House and the Senate, in fact, rejected the Mexico City policy.

In addition, he said this amendment before us today embraces coercive abortion. Nothing could be further from the truth. No one here supports coercive abortions. It is morally wrong, and, furthermore, it is illegal.

The fact is, our policy does not support abortions in terms of international family planning assistance. Unfortunately, this issue has been misrepresented so many times in the past. We have to get beyond those misrepresentations with respect to this issue.

The United States does not support, through its international family planning assistance, abortion. Those funds cannot even be commingled with an organization that may use its funds for abortion. The fact of the matter is, under the Mexico City policy, our funds could still go to a government that uses its own funds for abortion or abortion-related activities. Yet, on the other hand, we deny those organizations who are the most instrumental and the most effective in providing international family planning assistance, family planning money, if in fact they use their own private funds for abortion-related activities.

This amendment would overturn the Mexico City policy. That is what the Senate voted on, and, I might add, by a vote of 57 to 43—57 to 43.

Unfortunately, the House has chosen not to compromise at all on this issue. But I would urge the Senate to stay firm and committed to the position that we have taken—that not only do we reject the Mexico City policy, but that, yes, we continue to provide funds to UNFPA which we are also on record in support of.

I think it is unfortunate that we have so many different issues entangled. The issue is whether or not you support family planning. If you are against abortion, the most reasonable approach to take is to support international family planning programs. The United States has been the forerunner. We were a leader in international family planning assistance. We cofounded UNFPA. We sit on their governing board. Now we are saying, well, we are sorry. We will somehow untangle all of this family planning money under the notion of abortion when, in fact, our money does not go for that purpose. If we are truly serious about supporting family planning programs that are effective, then we have to provide the necessary funding. That is what this is all about. We are asking that we put into permanent law a nondiscriminatory policy on the funding of private organizations, that we treat them the same as we do foreign governments. It is a matter of simple fairness, and it should be preserved.

What we are talking about here today are the programs that are so essential that will make a difference in the developing countries. These include voluntary family planning services, contraceptive research, maternal health programs, and child survival programs.

That is what we are talking about. We are not talking about abortion. The fact is that this Congress back in 1973 passed the Helms amendment that prohibits the use of any U.S. funds for abortion-related activities. That is the law. That will continue to be the law. What we are supporting is assistance through international family planning programs, and to those private organizations that have been the most effective around the world.

So it is a matter of whether or not we want to assist those countries that have a truly difficult problem in controlling population growth, if we deny assistance as American assistance to these programs, such as the International Planned Parenthood Program that provides more than assistance to more than 160 countries. When the Mexico City policy that took effect that Senator KASSEBAUM referred to back in 1984, 50 of those affiliates around the world were denied assistance. This has impaired our ability to support the most capable family planning programs in countries such India, which has more births each year than do Nigeria, Pakistan, Bangladesh, Indonesia, Brazil, and Mexico combined.

I think it is a sad irony that by the time the Mexico City Conference 10 years ago embraced this policy that denial of additional American assistance to family planning programs came at a time when most developing countries had come to understand the importance of voluntary family planning programs to their own countries' development. It is interesting because it took that long for us to convince other countries what they needed to do, and the validity of those programs and the impact it would have in containing the growth in those countries. Now we are attempting to resume our leadership role, and some are asking us to turn our backs.

If we believe in voluntarism and family planning—and we do—and, if we believe that abortion should be avoided as a method of family planning—and we do—then we should maintain our leadership. We have unrivaled influence in setting standards for family planning programs. A great number of other donors and recipient countries adopted our own model in their own program.

And I would hope that we would reject the arguments in that tradition in the position taken by the House of Representatives with respect to this issue because it is taking us a step backward. We talk about UNFPA being a leader, an organization that has been

a leader in international family planning programs, and, in fact, provides a third of all of the assistance in delivering family planning programs around the world.

UNFPA does not support coercive abortions in China. No one does. We put a number of restrictions on our assistance to UNFPA because they still work in China. They are trying to prevent what is happening in China. But we put restrictions in any event so those who say our money is fungible can be transferred to one account to another. The United States did not contribute to UNFPA during the time of the Mexico City policy. We also denied assistance to UNFPA, but in 1993 the U.S. resumed contributions to the UNFPA organizations with four major limitations. One, that no United States funds could go to China; two, United States funds are prohibited from funding coercive abortions and involuntary sterilization; that United States funds to UNFPA must be held in a separate account from all other UNFPA funds so there is no comingling; and, that UNFPA funding for China could not increase for the 5 years once the United States resumes its contributions to UNFPA. In fact, the UNFPA program in China will end at the end of this year.

So we have enormous protection in the event that any money would be transferred indirectly—not indirectly because we have never provided funds in that regard—but even indirectly because of UNFPA's presence in China. So we have put all those protections into law.

But now people are saying we should not provide any assistance to UNFPA. That is the leading organization providing and supporting multilateral family planning programs throughout the developing world. I think that is a truly regrettable. We should be doing everything that we can to assist these countries in controlling their population problems because we know the implications that it has for global and economic instability.

So I think that we as a country should be a leader in that regard as we have been in the past. I hope we will resume that leadership role.

Mr. President, I urge Members of the Senate to adopt the amendment offered by Senator LEAHY and Senator KASSEBAUM. I think that there is no question that these countries need our assistance. They need our help. They need our leadership in international family planning—not only in our country and our own future, but for theirs as well.

I yield the floor.

Mrs. MURRAY addressed the Chair.

The PRESIDING OFFICER. The Senator from Washington.

Mrs. MURRAY. Mr. President, thank you.

Mr. President, I rise in support of the Leahy-Kassebaum amendment on funding for international family planning programs and against the House position to cut and restrict family planning aid.

I want to commend my colleague from Maine, Senator SNOWE, for the excellent statement which she just made on the subject.

The House position, which we should all vote to reject, is a wolf in sheep's clothing. It pretends to be anti-abortion. But in fact, it is anti-family planning and does not affect the question of abortion funding at all.

In addition, the House position pretends to address the horrendous problem of forced abortions in the People's Republic of China—in the guise of trying to solve that terrible problem by denying United States support for the United Nations Population Fund.

Mr. President, the debate surrounding UNFPA began over a decade ago during the Reagan administration. Foes of UNFPA claimed then, as they do today, that the United States should withdraw support for UNFPA because of the fund's presence in China, where there have been persistent reports of government sanctioned forced abortions.

Mr. President, there is no question that the Chinese do many things that I abhor. Forcing women to have abortions or forcing individuals to undergo sterilization is a gross violation of human rights and should be condemned by our Government at the highest level.

Likewise, the killing of female infants in China is widespread and repugnant—and appears to often go unpunished by Chinese officials.

But it would be illogical—and counterproductive—for the United States to pull out of those international agencies that give aid to children in China because the horrific practice of female infanticide plagues that nation.

So why should we ask UNFPA to carry the sins of China on its shoulders when it comes to the question of family planning?

The facts have never supported this approach.

When the question of UNFPA funding was first debated during the Reagan administration, officials under President Reagan investigated the issue and found—and I quote from an AID document from that time—that ''UNFPA is a benevolent factor in China which works to decrease the incidence of coercive abortion'' in China by providing effective family planning services. That same Reagan administration investigation found absolutely ''no evidence'' that UNFPA participated in or supported in any way China's coercive family planning practices.

Sadly, caught up in the pro-life politics of the time, UNFPA was nonetheless defunded by President Reagan. President Clinton has since resumed U.S. support for this agency, and therein lie the roots of today's debate.

Through all of this, however, the facts have been clear—that UNFPA has been part of the solution in China, by helping to reduce the incidence of abortion in that country and others by providing high quality voluntary family planning services.

UNFPA's goal is to eliminate the need for abortions. They do so by providing maternal and child health care and voluntary family planning services. These are the kinds of programs that are unquestionably the most effective means of preventing abortion. And the majority of UNFPA's assistance goes towards projects in these areas.

In addition to targeting UNFPA funding for elimination, the House position seeks to reinstate language similar to what used to be called the Mexico City policy.

The House-adopted language is broad and ambiguous. It will impose a gag rule on foreign nongovernmental family planning organizations—denying those organizations U.S. support if they provide certain services—not limited to abortion—with their non-U.S. funds.

For example, in Russia, where abortion is legal, the United States currently provides humanitarian aid to help local family planning clinics deliver better services to women. Years ago, the United States determined this to be a priority within our Russian aid program because of the tragically high abortion rate for Russian women who, lacking family planning services, often have as many as 10 or 12 abortions over their life time.

If, however, we adopt the House language, we may be prevented from helping Russian family planning clinics simply because those clinics are affiliated with Russian hospitals where abortions are performed.

This would be making a bad situation worse—pulling support from clinics that are doing their best with scarce resources to provide alternatives to abortion for so many desperate Russian women.

So the House language is double trouble—targeting UNFPA, the world's largest source of voluntary family planning services, as well as the hundreds of smaller local family planning providers around the developing world.

Ironically, by denying support for so many organizations that provide quality family planning services, the House language might well have the unintended effect of increasing the incidence of abortion in China and elsewhere.

As has been pointed out by others during this debate, the foreign operations conference report continues the longstanding policy of banning the use of U.S. funds for abortions overseas. That ban, commonly known as the Helms Amendment, has been a part of the permanent foreign aid statute since 1973 and remains unchanged in the committee's bill.

Further, the conference report prohibits the use of U.S. funds for abortion lobbying.

In addition, UNFPA's own position on abortion provides additional safeguards. UNFPA does not, and never has, supported abortions or abortion-related services in any country in which it operates.

According to the UNFPA's governing Council, it is ''the policy of the UNFPA . . . not to provide assistance for abortion, abortion services, or abortion-related equipment and supplies as a method of family planning.''

So the real question facing the Senate today is this: The conference report is already stringently anti-abortion. But if we adopt the House language, thereby disqualifying the most tried and true family planning organizations from receiving U.S. support, do we really want to make this bill anti-family planning as well?

Let me take a minute to review for my colleagues why U.S. support for voluntary family planning is so important.

While childbirth anywhere carries certain risks, in the developing world mothers face grave statistics. In Africa, for example, 1 out of every 21 women will die as a result of pregnancy or childbirth, making the African woman 200 times more likely to die as a result of bearing her children than a European woman.

The kinds of programs provided by UNFPA and other voluntary family planning organizations can prevent many of these maternal deaths.

So when we support family planning aid, we are supporting those women and families across the developing world who seek the means to space their births and avoid high-risk pregnancies.

Equally important, when we support family planning aid, we are increasing the chances that child survival rates will increase across the developing world.

We know that babies born in quick succession, to a mother whose body has not yet recovered from a previous birth, are the least likely to survive. Voluntary family planning programs seek to support child survival efforts, and help women understand the vital link between child survival and family planning.

So as I noted in my earlier remarks, the House language will do nothing to prevent abortions in China or elsewhere. But it will prevent vital health services from being delivered to women and children in the world's poorest nations.

I urge my colleagues to remember what is really at stake here. This is a public health issue, and an extremely serious one.

Family planning saves lives. Experts estimate that the lives of 5.6 million children and 200,000 women could be saved every year if all the women who wanted to limit their families had access to family planning.

I ask my colleagues to really think about those statistics—5.6 million children and 200,000 women each year.

So when we debate this issue of whether to support voluntary family planning programs like UNFPA and others, let us keep this debate focused squarely where it belongs—on the world's young women, who struggle against impossible odds to better their lives, and who desperately need reproductive health care services.

Let us keep this debate squarely focused on the young mothers around the world, who have small children or babies and need family planning assistance to ensure that they do not become pregnant again too quickly—endangering their own lives and that of their babies and young children.

Let us keep this debate squarely focused on the thousands of women in poor nations who, lacking access to reproductive health care, resort to self-induced abortions and, too often, tragically lose their lives. Experts estimate that at least half a million women will die from pregnancy-related causes, roughly 200,000 from illegal abortions which are prevented when women have family planning services.

The issues of refunding UNFPA and the Mexico City policy came before Congress again and again when Presidents Bush and Reagan were in office. Congress repeatedly voted for the United States to resume UNFPA funding, and to reject Mexico City-like restrictions on our family planning program.

So let us move on to the task of ensuring that women in the developing world have access to the kinds of reproductive health services they deserve. Let us adopt the Leahy-Kassebaum amendment.

I yield back the floor.

Mr. LEAHY addressed the Chair.

The PRESIDING OFFICER. The Senator from Vermont.

Mr. LEAHY. Mr. President, a number of Senators have spoken on this issue. And I also know that the Senate bipartisan leadership and the House bipartisan leadership are meeting with the President, so there will not be a roll-call vote immediately.

I urge Senators who wish to speak on this subject to come to the floor and speak. I see the distinguished Senator from California, and I ask the Senator if she wishes to speak.

Mrs. BOXER. About 7 minutes.

Mr. LEAHY. Whatever time the Senator wants.

Mr. President, I yield the floor so the distinguished Senator can, in her own right, have the floor.

Mrs. BOXER addressed the Chair.

The PRESIDING OFFICER. The Senator from California.

Mrs. BOXER. Mr. President, I am very pleased to rise in support of the Leahy amendment. I think the Senate was right on this issue, and I think the Senate should hold its ground. The Senator from Kansas, Senator KASSEBAUM, worked hard to write language that makes sense. Senator LEAHY has worked with her.

We ought to be very clear in this body that we support family planning, certainly we do not want to see abortion, and we are not going to cut the legs out from under agencies that work to prevent abortion, that work to make sure there is family planning all over the globe.

These are nongovernmental entities that work hard to make sure that overpopulation is addressed by prevention. To punish—to punish—these nongovernmental entities in this bill, as the House wants to do, by restricting their funding and holding them to a standard that really has no rationale, to me, makes no sense. Then, of course, we have the attack on the U.N. Population Fund in this House amendment, which the Leahy-Kassebaum amendment would strike.

The United States was instrumental in creating the U.N. Population Fund in 1969 and, until 1985, provided nearly 30 percent of its funding. UNFPA is the largest internationally funded source of population assistance, directly managing one-third of the world's population assistance to developing countries. It is the principal multilateral organization providing worldwide family planning and population assistance to developing countries. It operates in over 140 countries in the poorest and the most remote regions of the world. Nearly half of the UNFPA assistance is used for family planning services and maternal and child health care. Another 18 percent is allocated for related population information, education, and communication.

I say to my friends who call themselves pro-life—and you have every right to call yourself whatever you want. And if that reflects your view on issues, fine. I feel I am for life, but I am pro-choice. And I feel I am for life because I am pro-choice, because I want to make sure that families have what they need to engage in sensible family planning so they are not faced with terrible choices.

Why on earth would the House of Representatives and some Members of the Senate want to punish an organization that helps people with family planning services, that educates them on how to prevent unwanted pregnancy, how to prevent sexually transmitted diseases such as AIDS and others? Why would we want to punish those organizations?

Well, I think it is clear why. Because when you strip it all away, there is punishment at work out here, punishment for organizations that believe it is very important to keep abortion safe and legal. And I do not think it is the job of the U.S. Senate or the House of Representatives to lash out at these people who are working in the most difficult conditions, in the most difficult areas of the world, and punish them for no other reason other than they believe, if abortion is legal, let us make it safe. That is what this amendment would do.

The fund that the House of Representatives and the Republicans over there want to stop provides support for population data collection and analysis, demographic and socioeconomic research, and population policy formulation and evaluation.

What does that mean? It means that we need to know statistically what is

going on in these countries. Is birth control working? Is family planning working? How is the infant mortality rate connected with runaway population growth? In 1993, UNFPA supported 1,560 projects in 141 countries, including 44 countries in sub-Saharan Africa, 33 countries in Latin America and the Caribbean, 39 countries in Asia and the Pacific, 25 countries in the Arab States, and in Europe.

Already we have a prohibition on U.S. dollars; they cannot be used for abortion. That is clear. And that has been in the law for a long time. But this is that long arm reach of big brother and the Contract With America that says, ''We are going to stop them from everything that they are doing, including family planning, even if they use their own funds for abortion-related activities.''

I find it incredible, my friends, that the Republican-led Congress that talks about States' rights and local control wants to take the long arm of Uncle Sam and put it in the middle of these countries, into nongovernmental organizations that are out in the worst circumstances, in the worst poverty, and stop these organizations from doing their good work by forcing them to say, ''You can never be involved, even with your own funds, in abortion-related activities, even if abortion is legal in the country.''

UNFPA programs contribute to improving the quality and safety of contraceptives, to reducing the incidence of abortion, and to improving reproductive health and strengthening the status of women. Well, I think we ought to be applauding the UNFPA. I think we ought to be applauding the work of the U.N. Population Fund, not saying, ''We're going to take away your funding, nongovernmental organizations in other countries, if you use your own funds to ensure that women get safe, legal abortions.''

You know, I was around this country when abortion was illegal, and I want to tell you what it was like because a lot of the younger people do not remember it, and some of the older, older people are beginning to forget.

But what it was like is the following: Abortions were illegal, but women still, in certain dire circumstances, chose to get them. They risked their lives. They had to go down back alleys. They had to beg, borrow, and steal the money. It was risky, and it was dangerous. Hundreds of women died every year. I do not understand how someone can call himself pro-life when they want to go back to those days.

Today we had a vote on the House side, an overwhelming vote, related to late-term abortions. To tell you how radical this group is over there, they did not even make an exception for the life of the mother.

So I say to the men in this country, think about what it would be like if your wife came home, they had found a cancer, she was in the mid-term of her pregnancy, and the doctor said, ''I cannot say that you will not die if you go ahead with this birth,'' and you and your wife and your family had to face a horrible decision, a terrible, terrible choice.

I ask you, why should Members of Congress climb into that living room with you and tell you what to do with your family? I am revolted by it. I am disgusted by it. And I am stunned that a party that says, ''We don't want to get in the middle of your life,'' would get right in the middle of your most personal decision.

What is going on here with the UNFPA is an outgrowth of that mentality. ''Oh, yeah, we want you to make your own decisions''—except if we disagree with it, then we are going to pass a law—''your most private, personal, difficult, agonizing choices that you should make as a family.'' And now we are going to reach in to nongovernmental organizations that operate in Latin America, in Africa, in Europe, and we are going to tell them as Members of Congress, because we are so important and we know so much about everything, that we are going to deny them funding even with their own funds, with their own privately raised funds—not our funds—they help a woman with a safe and legal abortion, rather than force her into some back alley and some butcher's knife.

I hope the Senate stands tall on this amendment. It is very important that we do. It is all interconnected. It is all about what we stand for as a nation. Do we stand for individual rights, or do we stand for Big Brother telling us how to make these private, agonizing, and difficult choices?

Let me tell you what the House did today in their vote. They said if there is a midterm or late abortion, it is illegal and the woman and the doctor can go to jail. Oh, yeah, they can defend themselves. The doctor can use as a defense, ''I thought her life would be threatened,'' but there is no presumption that the doctor can make that ruling, not even an exception for life of the mother.

In my opinion, what the House did today will lead to women dying if this Senate does not stand up against it. I have to tell you, I will stand on this floor as long as it takes—and people know me, they know I will—to stop that kind of legislation from becoming the law of the land, to stop an attack on women.

I have not read on this floor some of these cases and the agony of these cases where women are faced and their husbands are faced with the most difficult decisions of their lives. I, frankly, was not elected to be God, and I was not elected to be a doctor. They even made up a term called ''partial-birth abortions.'' There is no such scientific term. They made it up just to try to incite people's emotions.

Let me tell you, they are going too far. They are radical, and they are going too far. Just like they are radical in their budget when they take $270 billion out of Medicare and give a tax cut to the rich with it. Just like they are radical on their environmental policy where the Republican study group put out a bulletin—I am going to put it in the RECORD—that is a guide to Republicans in the House and says, ''Go home and plant a tree and visit your zoo and then they can never say you are against the environment.'' Go home and plant a tree and visit your zoo and give a report card out to the best environmentals and then, yes, you can vote against the Clean Air Act, the wetlands, forget the Endangered Species Act. Who needs the bald eagle anyway?

Well, it is a radical crowd. They have gone too far, and this is an example, UNFPA, an organization that does so much good out there.

UNFPA helps to promote male participation and responsibility in family planning programs; address adolescent reproductive health; reach isolated rural areas with high demands for family planning services.

They want you to believe in this amendment that it is about China. Let me be very clear. No United States funds made available to the UNFPA shall be made available for any activities in the People's Republic of China. Our funds are not being used for any activities in China. I do not want them to go to China because they have a policy, we know, that we do not agree with: forced abortion, particularly as it relates to females.

So the bottom line is, none of us is for that, but this has nothing to do with this amendment. UNFPA United States funds do not go to China and will never go to China. It is a backdoor way to hurt a very important program. It is about ending the U.S. participation in the U.N. family planning fund where we have been active since the sixties, and we should be proud of our activities there, because we are saving lives, we are giving health care to people who need it desperately, and we are not controlling the way people think. Why should we? It is their right in their country to support safe, legal abortions if they want. We should not try to gag them as a result of our participation in UNFPA.

So I hope the American people follow this debate, because there is a linkage here to what has gone on in the House today, their attack on a woman's right to choose. They basically ended Roe versus Wade today, because Roe versus Wade said, in the late terms of a pregnancy, after the first trimester, the State shall regulate. They stepped in and took over and reached the long arm of Uncle Sam into every doctor's office in America, disrespecting women, disrespecting families, disrespecting individual rights, disrespecting physicians.

They have gone too far, and now in this bill we face this fight. I hope that my colleagues will support the Leahy-Kassebaum language. It is the language we all agree with. We are not saying in

any way in this bill that Federal funds are going to be used in any way for abortion, but what we are saying with this amendment is that nongovernmental organizations—nongovernmental organizations—operating in other countries have a right to do what they will with their own funds.

As far as UNFPA, they are using this China argument and distorting it. They just want to get us to pull out of this family planning, this very important agency. I hope we will support PATRICK LEAHY on this one.

I ask unanimous consent that the think-globally-act-locally House Republican Agenda be printed in the RECORD.

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

THINK GLOBALLY, ACT LOCALLY—A PRO-ACTIVE, PRO-ENVIRONMENT AGENDA FOR HOUSE REPUBLICANS

INTRODUCTION

As we all know, the environmentalist lobby and their extremist friends in the eco-terrorist underworld have been working overtime to define Republicans and their agenda as anti-environment, pro-polluter, and hostile to the survival of every cuddly critter roaming God's green earth.

While we all know that this characterization of Republicans is far from true, it will continue to be the drumbeat message of the left for as long as it helps them a) grab headlines, b) write fundraising letters, and c) energize people who consider themselves pro-environment.

The new Republican Congress is committed to updating environmental legislation written in the 1960s and 1970s to better address the problems of the 1990s and for the century to come. As we move this agenda based on sound science, results and real clean-up, better use of tax dollars, respect for property rights, and less reliance on lawyers, the establishment environmentalist community in Washington has begun its own fear campaign to preserve the status quo they make a living from.

Although Republicans and the vast majority of the American people believe you can't have a strong economy without a strong environment, and you can't have a strong environment without a strong economy, the extremist environmental movement will stop at nothing to distort the facts, lie about our legislative agenda, and paint you and your fellow Republicans as the insensitive extremists in this fight. And while we will never satisfy the most extreme in the environmental movement, to many in our growing Republican majority—especially suburban women and young people—the environment is an important issue.

In addition to the legislative battle the Conference will help you fight, and win, here in Washington to bring common sense reforms to environmental legislation such as the Endangered Species Act, Superfund, and Clean Water legislation, there are very real and very effective steps you can take in your districts to help further insulate yourself from the attacks of the green extremists.

As we are ''thinking globally'' about how to improve our nation's environmental laws here in Congress, the steps listed below will help you to ''act locally'' and get involved in your districts on the side of a cleaner environment.

By taking some time to get involved in a variety of pro-environment projects in your communities, you can go over the heads of the elitist environmental movement and work directly with the people who care most about the environment in your communities—your constituents.

The time to act is now. In order to build credibility you must engage this agenda before your opponents can label your efforts ''craven, election year gimmicks.'' Remember, as a famous frog once said, ''it ain't easy being green,'' your constituents will give you more credit for showing up on a Saturday to help clean up the local park or beach than they will give a press release from some Washington-based special interest group.

Think of it this way, the next time Bruce Babbit comes to your district and canoes down a river as a media stunt to tell the press how anti-environment their congressman is, if reporters have been to your boss' adopt-a-highway clean-up, two of his tree plantings, and his Congressional Task Force on Conservation hearings, they'll just laugh Babbit back to Washington.

ACTION ITEMS

I. Tree planting

Whether sponsoring tree planting programs in your district or participating in ongoing tree planting programs, this exercise provides Members with excellent earned media opportunities. When participating in tree planting programs you should include both children and seniors. In addition, while it is important to discuss the positive environmental aspects of planting trees, don't forget the symbolism that trees represent—i.e. roots in the community, family, and district.

Tree planting can occur at schools, parks, public buildings, and even senior centers. If the Member plans on sponsoring his/her own tree planting program, consider, contacting local nurseries who may donate trees for the cause. (Contact the ethics committee prior to undertaking this activity)

II. Special environmental days—Earth Day & Arbor Day

During the year there are at least two days when the ''environment'' is a major news story.

Earth Day—Usually third week in April.

Arbor Day—Proposed in 1996 for April 26th.

During these special environmental days, chances are good that the media will be writing an Earth Day or an Arbor Day story. In addition, chances are also good that somewhere in your district there will be a group sponsoring an event. Plan on participating in these events, or at a minimum, plan on releasing a statement of support. In your statement of support, make sure to include your positive environmental activities.

III. Adopt a highway, walking trail or bike path

While traveling your district, you will no doubt come across ''Adopt a Highway'' signs. This is an excellent program that embodies the Republican philosophy of volunteerism. To participate in this program you should contact your state, county road commission, or local roadway authorities.

In addition to participating in an ''Adopt a Highway'' program, you may also want to participate or initiate an ''Adopt a Walking Trail'' program or ''Adopt a Bike Path'' program. For these type of programs you should contact your local, county, or state parks authorities.

Once you decide to participate in any of these programs, make sure to announce your participation at the site. Stress community involvement in your remarks and have plenty of supporters on cite at the press conference.

IV. Environmental companies

Environmental high tech ''clean up related'' companies or companies that produce products from recycled materials are among the fastest growing industries in America. Through your local Chamber of Commerce or National Federation of Independent Businesses, do some investigative work to seek out environmental related companies in your district. If you have an environmental company in your district, contact the facility and arrange for a tour.

During the tour be sure to invite the media to participate (make sure you receive permission from the facility). Become briefed on the company's mission and offer your support. Chances are, the company will be happy to participate in this earned media opportunity which offers them positive media coverage.

V. Start a conservation task force

One of the best ways to keep informed regarding local environmental issues is to organize a local conservation task force in your district. In addition to keeping you informed on local environmental issues, this group can also assist you in developing an environmental legislative agenda. To set up such a group invite local environmentalists and sportsmen to join. Groups to contact include: garden club members, 4H representatives, Ducks Unlimited members, Audobon members, and other local or grass-roots organizations that are symphathetic to your common sense environmental agenda.

VI. Local conservation groups and boards

What types of environmental groups are already active in your district? Look for zoo boards, garden clubs, or other community conservation/environmental groups in your district. Become an active board member where possible.

VII. Local school participation

Many school curriculums include environmental issues or offer special environmental programs. Find out which schools offer these programs and become a guest lecturer. In your lecture be prepared to offer congressional environmental action highlights as well as a reaffirmation of your commitment to a clean environment.

VIII. Constituent letter data base

Undoubtedly, your office has received environmental related constituents letters. Hopefully, you have coded these letters in your data base. These are constituents who care enough about the environment to take the time to write you and in many cases will appreciate updates from you concerning your environmental agenda. These are also the same people that you can ask to participate in your conservation task force.

IX. Using recycled materials & initiating a recycling program in office

One of the best ways to show your concern about the environment is to lead by example. One way to show this is to announce an office policy which includes purchasing recycled materials and initiating a recycling program in your office. When announcing this new office policy be sure to include local environmentalists who will praise your actions.

X. Recycling facilities in district

Many municipalities and counties have ongoing recycling programs. Seek out those who have these programs and tour the facility or drop off area. If they don't currently have recycling programs, you might want to head up a task force with local officials to implement a municipal or county wide program.

XI. Teddy Roosevelt conservation award

Through his conservation efforts President Teddy Roosevelt is probably known as the Republican's most famous environmentalist. Using his name, consider establishing a yearly ''Teddy Roosevelt Conservation Award''

for someone in your district whose achievements exemplify President Roosevelt's conservation commitment. You can even recognize several award winners by establishing a youth award, a senior award, or a local business conservation award.

Be sure to contact your local media when you establish the award and when you award the winner. To facilitate the process of identifying potential winners. You can involve your local conservation task force and local schools in the decision process.

XII. Environmental PSAs

Members of Congress are important leaders. As such it is both appropriate and encouraged that you speak out on local environmental issues through the use of public service announcements (PSAs).

Suggested environmental PSAs could include:

Proper battery disposal.

Encouraging recycling at home.

Proper motor oil disposal when changing your car's oil.

Encouraging respect for nature when camping or hunting.

Keeping lakes, rivers, and beaches clean by putting garbage in its place.

These PSAs can air on both radio and cable stations. To produce a PSA first contact your local radio and cable stations to inquire if they will run your PSA. When producing PSAs, you can use studios at the radio and cable station or you can use the House Recording Studio.

XIII. Door to door-handing out tree saplings

If your current plans include door to door, consider passing out tree saplings with your door to door pamphlet. Some Members even design the pamphlet so that it is attached to the tree sapling.

This practice demonstrates your commitment to the environment by encouraging the planting of the trees and it provides you with an opportunity to use appropriate language tying your legislative agenda to the ''roots'' you are establishing or growing in your community.

XIV. River, lake, beach, or park clean ups

Through your conservation task force or through already established organizations, consider participating in local river, lake, beach, or park clean ups. Participating in these events will provide you with an opportunity to gain positive media exposure and further demonstrates your commitment to the environment.

XV. Local zoo

Become active in your local zoo. Go for a visit, participate in fundraising events, become active on its citizens advisory board, or help create enthusiasm for special projects it might be promoting.

CONCLUSION

Remember, the environment must be a proactive issue. Congressional staff in both the Washington office and the district office need to concentrate on seeking out environmental opportunities for their boss. Republicans should not be afraid of the environmental extremists—embrace our record and act to promote it.

Mr. SPECTER addressed the Chair.

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. SPECTER. Mr. President, I support the amendment offered by the distinguished Senator from Kansas, Senator KASSEBAUM, and supported by others, Senator LEAHY and Senator BOXER as well.

It seems to me a fundamental proposition that a private organization ought to be able to use its funds overseas for any purpose which it chooses. The Kassebaum amendment provides that there will be no U.S. dollars used to pay for abortion, and, in my view, that ought to take care of the objection of anybody who does not want to have U.S. taxpayer dollars spent on abortions.

But the factor of not limiting a private organization to a standard which is different than the laws of the host country seems to me to be fundamental. Were these moneys to be spent in another country, let the laws of those countries determine what is appropriate. To try to impose a limitation under the so-called Mexico City policy, the House language, which would prohibit United States dollars to organizations which are bilateral or multilateral, where those organizations use their own funds for whatever purposes, including abortion, seems to me to be a matter which is really within the purview of those private organizations. What concerns me, Mr. President, is that this controversy is part of a broader controversy which has engulfed the U.S. Senate and the House on the confirmation of Dr. Henry Foster, where he was not even given a vote on confirmation in the Senate because he performed medical procedures—abortions—permitted by the U.S. Constitution; a debate on an appropriations bill about whether women in prison would be able to have abortions at public expense, where they were necessary, in the judgment of the doctor, for medical purposes or where that woman might have been a victim of incest; even under the restrictive language of limiting the language of abortion to incest, rape, or the life of the mother. It is not just whether funds ought to be available if a woman in a Federal prison is unable to earn any money or to take care of her own medical needs, and she is denied a medical procedure—an abortion—if she is the victim of incest, or the issue about having medical procedures—abortions—available for women in overseas medical installations.

There is really a broad scale attack on a woman's right to choose, a constitutional right that is recognized by the Constitution of the United States, as interpreted by the Supreme Court of the United States—not going back to Roe versus Wade in 1973, but a decision handed down in Casey versus Planned Parenthood by the Supreme Court in 1992, an opinion written by three Justices appointed by Republican Presidents, Reagan and Bush, an opinion written by Justices Souter, O'Connor, and Anthony Kennedy.

So I hope that we will not further limit the right of a private organization to use their own funds for overseas purposes, even if they include abortion, simply because that U.S. organization may have U.S. funds for totally separate and collateral purposes.

MILITARY ACTION IN BOSNIA

Mr. SPECTER. Mr. President, this is a subject which has been spoken about on our floor and has been the subject of action by the House—that is, the subject of not having military action in Bosnia, which utilizes United States troops without prior consent by the Congress of the United States. This is a very, very important subject, Mr. President, for many reasons.

We have learned from the bitter experience of Vietnam that the United States cannot successfully wage a war which does not have public backing, and the first indicia of public backing is approval by the Congress of the United States.

We have deviated from the constitutional requirement that only the Congress can declare war. In Korea, we had a conflict, a war without a declaration of war and, again, in Vietnam. When a Republican President, President George Bush, wanted to act under Presidential authority to move into the gulf with military action, I was one of many Senators who stood on this floor and objected to that, because it was a matter that ought to have been initiated only with congressional action.

Finally, in January 1991, in a historic debate on this floor, the Congress of the United States authorized the use of force, and I supported that policy for the use of force. But the more important principle involved was that the President could not act unilaterally, could not act on his own.

Similarly, I think that is a mandatory consideration on the Bosnian situation. I have disagreed—many of us have—with the President's policy in Bosnia. On this floor, I have said on a number of occasions, as have others, that the arms embargo against the Bosnian Moslems was bad public policy, that the Bosnian Moslems ought to be able to defend themselves against Serbian atrocities.

After the Senate voted overwhelmingly to lift that embargo, and the House voted overwhelmingly to lift that embargo, only then did the President become involved in the Bosnian situation and effectuated a policy of United States airstrikes. And I, among many others, argued with the administration and the military leaders that we should have undertaken airstrikes to use U.S. military power in a way which did not put large numbers of our troops at risk.

We were told by the administration and by military leaders that air power without ground support would be ineffective. But, finally, when the administration was faced with no alternative, except to face a possible override on their veto of the legislation lifting the arms embargo, then, and only then, was air power employed, and very, very effectively. I believe that the use of U.S. air power is entirely appropriate, but the use of ground forces is not.

We have seen the policy in Somalia, where this administration went beyond

humanitarian purposes to nation building. It was up to the Congress of the United States to withhold funding. That might be necessary again, in a very unsatisfactory way, to have the constitutional mandate that only the Congress can declare war, enforced through the congressional power of the appropriations process. It is most unsatisfactory to have a Presidential commitment and to have U.S. troops involved and then to have it terminated only by the withholding of funds.

So it is my hope, Mr. President, that President Clinton will not act unilaterally, as he did in Haiti, against the overwhelming sense of the Senate and sense of the House that there not be an invasion of Haiti. Fortunately, it was done without bloodshed. But this is a constitutional issue of the highest import. If the President wishes to exercise the use of force in Bosnia, he ought to follow the constitutional doctrine, the precedent of the gulf war, and he ought to come to Congress for authorization. Then, and only then, will there be an appropriate opportunity to debate the matter and for Congress to exercise its will under the Constitution.

On the state of the record, my view is that there ought not to be an American commitment of troops. But, certainly, that ought not to be done by the President unilaterally. The matter ought to come before the Congress, and it ought to be a congressional decision one way or another, under the constitutional provision that only the Congress has the authority to declare war.

I yield the floor.

FOREIGN OPERATIONS, EXPORT FINANCING, AND RELATED PROGRAMS APPROPRIATIONS ACT—CONFERENCE REPORT

The Senate continued with the consideration of the conference report.

Mr. SIMPSON addressed the Chair.

The PRESIDING OFFICER. The Senator from Wyoming is recognized.

AMENDMENT NO. 3041

Mr. SIMPSON. Mr. President, I ask that I be added as a cosponsor of the Leahy-Kassebaum amendment.

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

Mr. SIMPSON. Mr. President, I want to show my support for this amendment, which, of course, includes U.S. funding for the U.N. Population Fund, UNFPA, as it is known. President Clinton had to resume funding for the population fund 2 years ago after a 7-year suspension during the Reagan and Bush administrations. I did not ascribe to that. I did not agree with the fine Presidents of my own party on that issue—either the wonderful Ronald Reagan or my fine, loyal friend, George Bush.

Last year, the Congress appropriated $40 million for the fund, and $50 million was appropriated for 1995. This year, we are looking at funding levels of $35 million.

I do understand that funding for all programs across the board needs to be reduced if we are to incur savings in this year's budget bill. However, I do not want to see population programs unfairly targeted for larger reductions than other foreign assistance programs.

The United States needs to keep its funding at an adequate level, or we will surely send exactly the wrong message to the rest of the developed nations across the world. Last year, the United States was seen as a world's leader of population and development assistance at the International Conference on Population and Development in Cairo. I was a congressional delegate at the conference, as was my friend, Senator John KERRY. There were not a lot of colleagues eager or seeking to go to that particular conference. I came away very impressed with the leadership and direction displayed there by Vice President GORE, and the assistance given him by the now Under Secretary of State, former Senator, Tim Wirth in guiding the conference and its delegates in developing a ''consensus document,'' on a broad range of short- and long-term recommendations concerning maternal and child health care, strengthening family planning programs, the promotion of educational opportunities for girls and women, and improving status and rights of women across the world.

We surely do not want to lose our moral leadership role and relinquish any momentum by abandoning or severely weakening our financial commitment to population and development assistance. The United States needs to continue its global efforts to achieve responsible and sustainable population levels, and to back that up with leadership with specific commitments to population planning activities.

In my mind, of all of the challenges facing this country—and there are surely plenty of them—and around the world—none compares to that of the increasing of the population growth of the world. All of our efforts to protect the environment, all the things we hear about what is going to happen, what will happen to this forest system, or this ecosystem, promoting economic development, jobs for those around the world, are compromised and severely injured by the staggering growth in the world's population.

I hope my colleagues realize, of course, that there are currently 5.7 billion people on the Earth. In 1950, when I was a freshman at the University of Wyoming—not that long ago, surely—there were 2.5 billion people on the face of the Earth. Mr. President, 2.5 billion people using the Earth's surface for sustenance and procreation in 1950. Today, 5.7 billion—double—more than double.

Since 1950 to today, the figure has doubled and it will double again if birth and death rates continue. The world's population will double again in 40 years. These are huge figures.

If you want to talk about food supply, want to talk about the environment, pollution, fish, timber, coal, resources, there is your figure. Nobody pays much attention to that because we allow this debate to slip over to abortion. It does not have anything to do with abortion or coercive practices.

That is why it is so important we show our support by funding this particular fund. It is supported entirely by voluntary contributions, not by the U.N. regular budget.

You do not have to get into this one because you hate the United Nations either. This is not about whether you like the United Nations or not. Many of us have great problems with the United Nations, and they have certainly failed in many endeavors, but this is not a ''U.N. caper.''

There were 88 donors to the fund in 1994, most of which were developing nations. Japan and the United States were the leading contributors to the fund with the Nordic countries not lagging far behind.

UNFPA assistance goes to support 150 countries and territories across the world. UNFPA total income in 1994 was $265.3 million, and it provides about one-fourth of the world's population assistance to all developing countries.

I think it would be a real shame if the United States were to back away from its commitment to the world's largest source of multilateral assistance for population programs.

I want to reiterate again what has been said already about U.S. participation in this fund. The U.S. contribution would be subject to all the restrictions which have been in place for many years. These restrictions are in place to address concerns specifically about U.S. funds being spent in China. I hear those concerns.

Under current appropriations law, foreign aid funding is denied to any organization or program that ''supports or participates in the management of a program of coerced abortion or involuntary sterilization'' in any country. That is pretty clear. I agree with that.

Furthermore, current appropriations law ensures that none of the United States contribution to UNFPA may be used in China—none. Listen carefully: The United States is not funding any of the population activities in China.

Furthermore, the U.N. Population Fund does not fund abortions or support coercive activities in any country including China. The UNFPA assistance goes toward family planning services and maternal and child health care across the developing world.

Finally, no U.S. funds may be commingled with other UNFPA funds and numerous penalties exist in law for any violation of this requirement.

I also have deep and serious concerns about China's coerced abortion policy, but forcing the U.N. Population Fund to withdraw from China will not affect that policy one whit. In fact, without

the careful monitoring that the fund performs, conditions in China would get very much worse. That is an important consideration. The world and the United States cannot turn its back on what is currently going on in China. Remove the funding and that great door will close ever further. No one will be able to participate or to change those policies.

Finally, this amendment would strike the House Mexico City language that denies United States population assistance to groups that are involved in dialog with foreign governments about abortion policy or even distribute literature on preventing unsafe abortions. This House amendment would ultimately deny family planning activities overseas. Since the House language applies to nongovernment organizations [NGO's] it would cut off funds to the most effective and dedicated providers of services, groups that best understand the needs of the people in the country they serve.

I urge my colleagues to vote for the Leahy-Kassebaum amendment so that the United States might continue its leadership role in addressing the global population issues which are wholly significant in the range of other issues that we confront from day-to-day, because all of it comes back to the simple fact, how many footprints will fit on the face of the Earth?

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

The PRESIDING OFFICER (Mr. THOMPSON). The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

Mr. MCCONNELL. Mr. President, for the information of all Senators, Senator NICKLES is going to speak for a few moments and then we are prepared to vote. It is my understanding that if the Leahy amendment is agreed to, that will be the last vote of the evening.

I yield the floor.

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

The PRESIDING OFFICER. The clerk will call the roll.

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

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

Mr. NICKLES. Mr. President, I rise in opposition to Senator LEAHY's amendment. I will read it for my colleagues' information:

Provided, That in determining eligibility for assistance from funds appropriated to carry out section 104 of the Foreign Assistance Act of 1961, nongovernmental and multilateral organizations shall not be subjected to requirements more restrictive than requirements applicable to foreign governments for such assistance: *Provided further*, That none of the funds made available under this Act may be used to lobby for or against abortion.

It sounds kind of reasonable, until you realize we do not have restrictions on governments dealing with the prohibition of abortion. So this language is meaningless. It has no restriction whatsoever. That means that we would be funding international family planning groups that use abortion as a method of family planning. A lot of us really do not want to do that. It is troublesome to think that international groups, some of which support abortion as a method of family planning, would be receiving tax dollars to be used in that fashion. Maybe this amendment is a nice attempt to cover that up, as a substitute for the House language. I just hope that our colleagues will not agree to it, for a lot of different reasons.

One, I do not think we want to fund international groups that promote or support or fund abortions. I do not think U.S. taxpayers' dollars should be used for that purpose. We have restrictions in this country. We have restrictions in this country that prohibit the use of taxpayers' dollars to be used to fund abortions, except in necessary cases—to save the life of the mother, or in cases of rape or incest. That is really what the House language is trying to do.

The House language reinstates the so-called Mexico City policy, and it goes back to 1984 through January 1993, which includes the Reagan and Bush era. It says we do not want to fund international groups that support or fund abortion. That was the policy of this country for that period of time.

The Clinton administration, through an Executive order in January 1993, reversed that policy. So now we have a policy, and Tim Wirth who served in this body has been actively promoting it, where we actually have been involved in encouraging countries to change their laws on abortion. I think 95 countries have significant restrictions in their laws against abortion.

I think using U.S. taxpayers' funds to be telling other countries to change their laws is very offensive. Certainly to be contributing to organizations that use part of their money or some of their moneys for abortions is also offensive.

Again, our stated policy in this country is we do not want to support abortion. We do not want taxpayers' moneys used to subsidize abortion unless it is necessary to save the life of mother or in cases of rape or incest. To be giving money to international organizations that either support or use abortions as a method of family planning or to try to change Government laws for abortion, in my opinion, is wrong.

I looked at the House language and it basically says that money will not be used for organizations, nongovernmental or multilateral organizations, until the organization certifies it will not, during the period for which the funds are made available, perform abortions in any foreign country except if the life of the mother were in danger if the fetus were carried to term, or in cases of forcible rape or incest.

I think that is good language. I think that language mirrors the language that we have agreed to on this floor dealing with Labor-HHS, the so-called Hyde language. Why in the world would we be supporting and giving money to foreign organizations that do the opposite? I think that is a serious, serious mistake.

Also, I might mention this House language says that we do not want any money to be used to violate the laws of any foreign country concerning circumstances under which abortion is permitted, regulated or prohibited. We do not want U.S. taxpayers' dollars used to go into other countries to lobby, to encourage, to change laws that they may have dealing with abortion. Why in the world should we have the idea that we know best, and so we want to manipulate and make those laws basically more pro-abortion.

I want to touch for a second on the issue of the People's Republic of China. There had been restrictions under the Reagan and Bush eras that we did not give money to the UNFPA organization if they were giving money to the People's Republic of China, because they had a coercive abortion policy. The House language, likewise, says we would not give money to the U.N. family planning organization if they were still supporting the coercive policies or contributing to the policies in the People's Republic of China.

Mr. President, I remember when Mrs. Clinton addressed a large conference in Beijing earlier this year and she condemned forced abortion. Unfortunately, that happens to be the policy in the People's Republic of China today—a one-child policy, enforced by, in some cases, coercive abortion. That is unbelievable. It is also undeniable. Yet UNFPA has actually made supportive comments about some of the things that are going on in the PRC today concerning their family planning efforts.

It is reprehensible to think that we might be contributing to an organization that might be assisting in coercive abortion. That should not happen.

Mr. President, I look at the language that we have before the Senate in the so-called Leahy language. I do not find it acceptable. I find no restriction whatever on U.S. funds to international organizations, no restriction whatever. If it passes and if it became law, we will be giving money to international groups that use abortion as a method of family planning.

That is offensive to me as a taxpayer. It is offensive to me to think that the result of that is that U.S. tax dollars will be used in some way or another to subsidize the destruction of innocent, unborn human beings.

I look at the House language. The House language is basically reinstating the policy that we had from 1984 to January 1993. That policy saved

lives. Did it restrict use of family planning? No. Did family planning continue? Yes. Did family planning continue with funding from the United States? Yes.

Over 350 organizations signed up and said, ''We will take your money and use it for family planning, but we will not use abortion as a method of family planning.'' That means organizations all across the world. It worked. Some people said they would not sign up, but they did.

So we had family planning efforts, but we had family planning efforts separate from abortion. That is what we are trying to do with this House language.

I urge our colleagues to reject the Leahy amendment and support the House language.

I might mention, also, I think that the House language, which passed overwhelmingly, passed by a vote of 232–187. My guess is that if we do not have language similar to that, we will not have a bill. We will be looking at the foreign operations bill in a continuing resolution, in all likelihood, throughout the year.

Mr. President, I urge my colleagues to vote ''no'' on the Leahy amendment. I yield the floor.

Mr. LEAHY. Mr. President, very briefly, with all due respect to my friend from Oklahoma, his description of the Leahy-Kassebaum amendment is not accurate.

Mr. President, we debated the basic aspects of the Leahy-Kassebaum amendment less than a month ago. Mr. President, 57 Senators voted against what is in the House position, voted against the position we seek to replace. Nothing has changed since then.

The Leahy-Kassebaum amendment simply says that private family planning organizations like the foreign organizations supported by the International Planned Parenthood Federation should not be restricted to require more subjective requirements, more restrictive than those applicable to Government.

In other words, it permits us to support private organizations, provided U.S. Government funds are not used, are not used for abortion activities as we made funds available for family planning to governments in countries where abortion is legal, as it is in this country, just as we give foreign aid to countries where abortion is legal, as it is in this country.

This bill contains the same explicit prohibition of funding for abortion that has been the law for years. Not one dime in this bill could be spent on abortion or anything related to abortion. The bill already contains a prohibition against using any United States funds in China.

The House amendment would, nevertheless, prohibit a U.S. contribution to the U.N. population fund. I think that would be foolhardy. The question is whether we should accept the House position so that the bill might go forward.

I ask unanimous consent that a statement of administration policy from OMB be printed in the RECORD.

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

OFFICE OF THE PRESIDENT,
OFFICE OF MANAGEMENT AND BUDGET,
Washington, DC, October 31, 1995.

Re H.R. 1868—Foreign operations, export financing and related programs appropriations bill, FY 1996 (Sponsors: Livingston, Louisiana; Callahan, Alabama).

STATEMENT OF ADMINISTRATION POLICY

[This statement has been coordinated by OMB with the concerned agencies]

This Statement of Administration Policy provides the Administration's views on the item reported in disagreement by the conference on H.R. 1868, the Foreign Operations, Export Financing, and Related Programs Appropriations Bill, FY 1996. Your consideration of the Administration's views would be appreciated.

The conferees have reported in disagreement provisions related to population assistance to non-governmental organizations. This is an issue of the highest importance to the Administration.

The Administration opposes coercion in family planning practices, and no U.S. assistance is used to pay for abortion as a method of family planning. The House provision, however, would prohibit any assistance from being provided to entities that fund abortions or lobby for abortions with private funds, thus ending U.S. support for many qualified and experienced non-governmental organizations providing vital voluntary family planning information and services. The provision would also end U.S. support for the United Nations Population Fund (UNFPA). This would sharply limit the availability of effective voluntary family planning programs abroad that are designed to reduce the incidence of unwanted pregnancy and thereby decrease the need for abortion. The Administration also has serious concerns about the constitutionality of the House provision. If the House language were included in the bill presented to the President, the Secretary of State would recommend to the President that he veto the bill.

Mr. LEAHY. I read the last sentence: ''If the House language were included in the bill presented to the President, the Secretary of State would recommend to the President he veto the bill.''

I think, Mr. President, we have heard debate for and against the Leahy-Kassebaum amendment. I know Senators are concerned about their schedule, and I am happy to go forward with a vote.

Mr. COVERDELL. I would like to thank the chairman for his leadership in crafting this foreign operation conference report. In light of the budgetary restriction placed upon all of these projects, I think the chairman has done a skillful job of handling many divergent interests.

Mr. MCCONNELL. I thank the Senator.

Mr. COVERDELL. I would also like to thank the Senator for his assistance in attempting to remedy funding difficulties we have experienced for International Narcotics Control. As the chairman knows, I am extremely concerned that funding for U.S. drug interdiction efforts has been drastically declining since 1992. During this time we have witnessed a proportionate increase in the use of drugs in America. For example:

After a steep drop in monthly cocaine use between 1988 and 1991 from 2.9 to 1.3 million users, and a similar drop in overall drug use between 1991 and 1992, from 14.5 to 11.4 million users, numbers released earlier this year revealed that youth drug use increased in 1994, for all surveyed grades for crack, cocaine, heroin, LSD, non-LSD hallucinogens, inhalants, and marijuana.

According to the Department of Health and Human Services, illegal drug use among the Nation's high school seniors has risen 44.6 percent in the last 2 years.

The resurgence of heroin in the United States borders on epidemic proportions. DEA Administrator Thomas Constantine recently noted that heroin is now available in more cities at lower prices and higher purities than ever before in our history. In addition, Administrator Constantine says: ''For the first time in our history, America's crime problem is being controlled by worldwide drug syndicates who operate their networks from places like Cali, Colombia * * *.''

Mr. MCCONNELL. I am in complete agreement with my colleague from Georgia, that we are at a crucial point in our war on drugs. Without the immediate commitment of resources to stop the flow of illegal narcotics across our borders, the United States will be facing the largest expansion of illicit drug supplies and the greatest increase in drug use in modern American history.

Mr. COVERDELL. The chairman has clearly summarized the problem that the Senate attempted to address by increasing funding for international drug control in the foreign operations appropriations bill. I know the chairman shares my concern that the conference report before us today severely undermines the Senate's commitment to drug interdiction by decreasing the direct funding from $150 to $115 million and replacing the $20 million mandatory transfer of funds with language merely allowing the transfer of funds from ''Development Assistance'' and/or the ''Economic Support Fund'' to ''International Narcotics Control.''

Mr. MCCONNELL. The Senator from Georgia is correct. It is my understanding, however, that the conference committee fully intended that the identified $20 million be transferred to International Narcotics Control.

Mr. COVERDELL. I appreciate the chairman's clarification and would ask if the chairman would be willing to assist the Senator from Georgia in securing these resources.

Mr. MCCONNELL. I would say to my colleague, that I strongly support the transfer of the funds, identified in the conference report, to International Narcotics Control for drug interdiction

activities and will work side-by-side with the Senator from Georgia to ensure these resources are committed to our war on drugs.

Mr. COVERDELL. I thank the chairman for his efforts to stop the flow of illegal narcotics into the United States.

Mr. LEAHY. Mr. President, I ask for the yeas and nays on the motion to concur in the House amendment with the Leahy-Kassebaum amendment.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

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

The yeas and nays have been ordered.

The clerk will call the roll.

The legislative clerk called the roll.

Mr. LOTT. I announce that the Senator from Oregon [Mr. HATFIELD] is necessarily absent.

I further announce that, if present and voting, the Senator from Oregon [Mr. HATFIELD] would vote ''yea.''

Mr. FORD. I announce that the Senator from New Jersey [Mr. BRADLEY] is absent because of illness in the family.

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

The result was announced—yeas 53, nays 44, as follows:

[Rollcall Vote No. 561 Leg.]

YEAS—53

Akaka	Feinstein	Moynihan
Baucus	Glenn	Murray
Biden	Graham	Nunn
Bingaman	Harkin	Pell
Boxer	Hollings	Pryor
Brown	Inouye	Reid
Bryan	Jeffords	Robb
Bumpers	Kassebaum	Rockefeller
Byrd	Kennedy	Roth
Campbell	Kerrey	Sarbanes
Chafee	Kerry	Simon
Cohen	Kohl	Simpson
Conrad	Lautenberg	Snowe
Daschle	Leahy	Specter
Dodd	Levin	Stevens
Dorgan	Lieberman	Thomas
Exon	Mikulski	Wellstone
Feingold	Moseley-Braun	

NAYS—44

Abraham	Ford	Lott
Ashcroft	Frist	Lugar
Bennett	Gorton	Mack
Bond	Gramm	McCain
Breaux	Grams	McConnell
Burns	Grassley	Murkowski
Coats	Gregg	Nickles
Cochran	Hatch	Pressler
Coverdell	Heflin	Santorum
Craig	Helms	Shelby
D'Amato	Hutchison	Smith
DeWine	Inhofe	Thompson
Dole	Johnston	Thurmond
Domenici	Kempthorne	Warner
Faircloth	Kyl	

NOT VOTING—2

Bradley	Hatfield

So the motion was agreed to.

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

Mrs. MURRAY. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. LEAHY. Mr. President, I see the distinguished leader in the Chamber. And I just mention first that we have, so my colleagues will know——

The PRESIDING OFFICER. The Senator will suspend. The Senate will come to order, please.

Mr. LEAHY. So colleagues would know, we have passed the conference and sent one amendment back in disagreement.

Mr. DOLE. Let me thank the managers of the bill.

MORNING BUSINESS

Mr. DOLE. Mr. President, I now ask unanimous consent that there be a period for the transaction of morning business until 6:30 p.m. with Senators permitted to speak therein for not more than 5 minutes each.

The PRESIDING OFFICER. Is there objection? The Chair hears none, and it is so ordered.

MESSAGES FROM THE HOUSE

At 12 p.m., a message from the House of Representatives, delivered by Mr. Hays, one of its reading clerks, announced that the House has passed the following bill, in which it requests the concurrence of the Senate:

H.R. 2492. An act making appropriations for the legislative branch for the fiscal year ending September 30, 1996, and for other purposes.

The message also announced that the Speaker appoints the following Member as an additional conferee in the conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 2491) to provide for reconciliation pursuant to section 105 of the concurrent resolution on the budget for fiscal year 1996:

From the Committee on Agriculture, for consideration of title I of the House bill, and subtitles A–C of title of the Senate amendment, and modifications committed to conference: Mr. BROWN of California.

The message further announced that the House agrees to the report of the committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H.R. 1868) making appropriations for foreign operations, export financing, and related programs for fiscal year ending September 30, 1996, and for other purposes; that the House recedes from its disagreement to an amendment of the Senate and concurs therein with an amendment in which it requests the concurrence of the Senate.

MEASURES REFERRED

The following bill, previously received from the House for the concurrence of the Senate, was read the first and second times by unanimous consent and referred as indicated:

H.R. 1114. An act to authorize minors who are under the child labor provisions of the Fair Labor Standards Act of 1938 and who are under 18 years of age to load materials into balers and compacters that meet appropriate American National Standards Institute design safety standards; to the Committee on Labor and Human Resources.

H.R. 436. An act to require the head of any Federal agency to differentiate between fats, oils, and greases of animal, marine, or vegetable origin, and other oils and greases, in issuing certain regulations, and for other purposes; to the Committee on Environment and Public Works.

MEASURES PLACED ON THE CALENDAR

The following measure was read the second time and placed on the calendar:

S. 1372. A bill to amend the Social Security Act to increase the earnings limit, and for other purposes.

The following bill was ordered placed on the calendar:

H.R. 2492. An act making appropriations for the legislative branch for the fiscal year ending September 30, 1996, and for other purposes.

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second time by unanimous consent, and referred as indicated:

By Mr. DOLE (for himself, Mr. LUGAR, Mr. CRAIG, and Mr. GRASSLEY):

S. 1373. A bill to amend the Food Security Act of 1985 to minimize the regulatory burden on agricultural producers in the conservation of highly erodible land, wetland, and retired cropland, and for other purposes; to the Committee on Agriculture, Nutrition, and Forestry.

By Mr. CRAIG (for himself and Mr. KEMPTHORNE):

S. 1374. A bill to require adoption of a management plan for the Hells Canyon National Recreation Area that allows appropriate use of motorized and nonmotorized river craft in the recreation area, and for other purposes; to the Committee on Energy and Natural Resources.

By Mr. BURNS (for himself, Mr. CRAIG, Mr. GORTON, Mr. GRASSLEY, Mr. MCCONNELL, Mr. DASCHLE, Mr. HARKIN, Mr. KERREY, and Mr. KEMPTHORNE):

S. 1375. A bill to preserve and strengthen the foreign market development cooperator program of the Department of Agriculture, and for other purposes; to the Committee on Agriculture, Nutrition, and Forestry.

By Mr. MCCAIN (for himself, Mr. THOMPSON, Mr. KERRY, Mr. FEINGOLD, Mr. KENNEDY, and Mr. COATS):

S. 1376. A bill to terminate unnecessary and inequitable Federal corporate subsidies; to the Committee on Governmental Affairs.

By Mr. LUGAR:

S. 1377. A bill to provide authority for the assessment of cane sugar produced in the Everglades Agricultural Area of Florida, and for other purposes; to the Committee on Agriculture, Nutrition, and Forestry.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

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

By Mr. MCCAIN (for himself, Mr. BAUCUS, Mr. BENNETT, Mr. BINGAMAN, Mr. BRADLEY, Mr. BREAUX, Mr. BROWN, Mr. BRYAN, Mr. BURNS, Mr. CAMPBELL, Mr. CHAFEE, Mr. COCHRAN, Mr.

COHEN, Mr. CONRAD, Mr. CRAIG, Mr. D'AMATO, Mr. DASCHLE, Mr. DODD, Mr. DOMENICI, Mr. DORGAN, Mr. EXON, Mr. FAIRCLOTH, Mr. FEINGOLD, Mrs. FEINSTEIN, Mr. GORTON, Mr. GRAHAM, Mr. HATCH, Mr. INHOFE, Mr. INOUYE, Mr. JEFFORDS, Mrs. KASSEBAUM, Mr. KEMPTHORNE, Mr. KENNEDY, Mr. KERRY, Mr. LAUTENBERG, Mr. LEVIN, Mr. LIEBERMAN, Ms. MIKULSKI, Ms. MOSELEY-BRAUN, Mrs. MURRAY, Mr. NICKLES, Mr. PELL, Mr. PRESSLER, Mr. REID, Mr. SARBANES, Mr. SIMON, Mr. SIMPSON, Mr. SPECTER, Mr. STEVENS, Mr. THOMAS, Mr. THURMOND, and Mr. WELLSTONE):

S. Res. 191. A resolution designating the month of November 1995 as ''National American Indian Heritage Month,'' and for other purposes; considered and agreed to.

STATEMENT ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. DOLE (for himself, Mr. LUGAR, Mr. CRAIG, and Mr. GRASSLEY):

S. 1373. A bill to amend the Food Security Act of 1985 to minimize the regulatory burden on agricultural producers in the conservation of highly erodible land, wetland, and retired cropland, and for other purposes; to the Committee on Agriculture, Nutrition, and Forestry.

THE AGRICULTURAL RESOURCES ENHANCEMENT ACT OF 1995

Mr. LUGAR. Mr. President, I am very pleased to join Senators DOLE, GRASSLEY, and CRAIG today in introducing the Agricultural Resources Enhancement Act of 1995, which is our blueprint for the conservation title of the new farm bill. This legislation builds on agriculture's environmental successes over the past decade while also adding new flexibility for our farmers and ranchers as they enter the 21st century.

In May I advanced several concepts to improve the Conservation Reserve Program, our conservation land retirement initiative. I also introduced the new Environmental Quality Incentives Program, which I am proud to note was included in the budget reconciliation bill approved by the Senate last week. Meanwhile, Senators DOLE, GRASSLEY, and CRAIG developed several concepts for the CRP and for the conservation compliance and swampbuster programs. The bill we are introducing today combines the best of our recommendations into a single strategy that will protect both the environment and the property rights of our Nation's agricultural producers.

Our proposal improves the CRP by adding a new water quality emphasis and by targeting the program to the highly erodible land most in need of protection. There is land now in the CRP that can be brought back into production without harming the environment. At the same time, there is also valuable acreage not now in the reserve that deserves long-term protection. This legislation accomplishes both goals.

This bill also makes much needed changes to the swampbuster compliance program, including an exemption for frequently cropped farmland. In the conservation compliance program, farmers would gain significant new flexibility to adopt soil-saving techniques. Our goal is to make both programs effective in preserving valuable resources and workable in the field.

Finally, our legislation includes unprecedented provisions to improve wildlife habitat on agricultural lands. Frequently cropped wetlands would be eligible for the CRP. Habitat potential will be considered in evaluating offers to enroll land in the CRP and the Wetlands Reserve Program. Expiring water bank acres would be eligible for the WRP. And the Secretary is encouraged to maximize wildlife habitat benefits from all our conservation programs.

My cosponsors and I represent a broad range of agricultural interests and have diverse regional backgrounds. As such, I am optimistic the provisions we have included in our bill will be embraced by a majority in the the Agriculture Committee and in the Senate as a whole. I look forward to working with all my colleagues in developing a new farm bill with provisions as meaningful for the environment as those in the landmark farm bill we passed a decade ago.

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

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

S. 1373

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

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Agricultural Resources Enhancement Act of 1995''.

SEC. 2. PURPOSES.

The purposes of this Act are to—

(1) restore respect for private property rights and the productive capacity of the agricultural sector;

(2) reduce unnecessary regulatory burdens on farmers while maintaining basic environmental objectives; and

(3) recognize that conservation and environmental objectives are best met with voluntary efforts.

SEC. 3. DEFINITIONS.

(a) IN GENERAL.—Section 1201(a) of the Food Security Act of 1985 (16 U.S.C. 3801(a)) is amended—

(1) by redesignating paragraphs (2), (3), (4), (5), and (6) through (16) as paragraphs (3), (5), (6), (7), and (9) through (19), respectively;

(2) by inserting after paragraph (1) the following:

''(2) ALTERNATIVE CONSERVATION SYSTEM.—The term 'alternative conservation system' means a conservation system that achieves a substantial reduction in soil erosion from the level of erosion that existed prior to the application of the conservation measures and practices provided for under the system.'';

(3) by inserting after paragraph (3) (as so redesignated) the following:

''(4) CONSERVATION SYSTEM.—The term 'conservation system' means the conservation measures and practices that are approved for application by a producer to a highly erodible field and that provide for cost effective and practical erosion reduction on the field based on local resource conditions and standards contained in the Natural Resources Conservation Service field office technical guide.'';

(4) by inserting after paragraph (7) (as so redesignated) the following:

''(8) FREQUENTLY CROPPED AGRICULTURAL LAND.—The term 'frequently cropped agricultural land' means agricultural land that—

''(A) exhibits wetland characteristics, as determined by the Secretary; and

''(B) has been used for 6 of the 10 years prior to January 1, 1996, for agricultural production on the field, as determined by the Secretary, or production of an annual or perennial agricultural crop (including forage production or hay), an aquaculture product, a nursery product, or a wetland crop.''; and

(5) in paragraph (10) (as so redesignated), by adding at the end the following:

''(C) PRODUCER-INITIATED REVIEW OF HIGHLY ERODIBLE LAND DESIGNATION.—A designation of highly erodible land on agricultural land made under this title shall be valid until an owner or operator requests a new designation. The Secretary shall provide the designation on the request of the owner or operator.

''(D) SCIENCE AND TECHNOLOGY.—A designation of highly erodible land under this title may be based on the most contemporary science, method, or technology, as determined by the Secretary, for determining soil erodibility that accurately reflects the potential for soil loss.''.

(b) CONFORMING AMENDMENTS.—

(1) Section 363 of the Consolidated Farm and Rural Development Act (7 U.S.C. 2006e) is amended by striking ''section 1201(a)(16) of the Food Security Act of 1985 (16 U.S.C. 3801(a)(16))'' and inserting ''section 1201(a) of the Food Security Act of 1985 (16 U.S.C. 3801(a))''.

(2) Section 1257(c) of the Internal Revenue Code of 1986 is amended—

(A) in paragraph (1), by striking ''section 1201(4) of the Food Security Act of 1985 (16 U.S.C. 3801(4))'' and inserting ''section 1201(a) of the Food Security Act of 1985 (16 U.S.C. 3801(a))''; and

(B) in paragraph (2), by striking ''section 1201(6) of the Food Security Act of 1985 (16 U.S.C. 3801(6))'' and inserting ''section 1201(a) of the Food Security Act of 1985 (16 U.S.C. 3801(a))''.

SEC. 4. HIGHLY ERODIBLE LAND CONSERVATION.

(a) PROGRAM INELIGIBILITY.—Section 1211 of the Food Security Act of 1985 (16 U.S.C. 3811) is amended to read as follows:

''SEC. 1211. PROGRAM INELIGIBILITY.

''(a) IN GENERAL.—Except as provided in section 1212 and notwithstanding any other provision of law, any person who participates in an annual program under the Agricultural Act of 1949 (7 U.S.C. 1421 et seq.) after January 1, 1996, and who in any crop year after that date produces an agricultural commodity on a field on which highly erodible land is predominate, as determined by the Secretary, shall be—

''(1) in violation of this section; and

''(2) ineligible for loans or payments in an amount determined by the Secretary to be proportionate to the severity of the violation, taking into account the intent of the person and the frequency of the violations.

''(b) LOANS AND PAYMENTS.—If a person has been determined to have committed a violation during a crop year under subsection (a), the Secretary shall determine which, and the amount, of the following loans and payments for which the person shall be ineligible:

''(1) Any type of price support or payment made available under the Agricultural Act of 1949 (7 U.S.C. 1421 et seq.), the Commodity Credit Corporation Charter Act (15 U.S.C. 714 et seq.), or any other Act.

''(2) A farm storage facility loan made under section 4(h) of the Commodity Credit Corporation Charter Act (15 U.S.C. 714b(h)).

''(3) A loan made, insured, or guaranteed under the Consolidated Farm and Rural Development Act (7 U.S.C. 1921 et seq.) or any other provision of law administered by the Consolidated Farm Service Agency, if the Secretary determines that the proceeds of the loan will be used for a purpose that will contribute to excessive erosion of highly erodible land.

''(4) A payment under section 4 or 5 of the Commodity Credit Corporation Charter Act (15 U.S.C. 714b and 714c) during the crop year for the storage of an agricultural commodity acquired by the Commodity Credit Corporation.

''(5) During the crop year:

''(A) A payment under section 8, 12, or 16(b) of the Soil Conservation and Domestic Allotment Act (16 U.S.C. 590h, 590*l*, and 590p(b)).

''(B) A payment under section 401 or 402 of the Agricultural Credit Act of 1978 (16 U.S.C. 2201 and 2202).

''(C) A payment under subchapter B or C of chapter 1 of subtitle D.

''(D) A payment under chapter 2 of subtitle D.

''(E) A payment under chapter 3 of subtitle D.

''(F) A payment, loan, or other assistance under section 3 or 8 of the Watershed Protection and Flood Prevention Act (16 U.S.C. 1003 and 1006a).''.

(b) EXEMPTIONS.—Section 1212 of the Act (16 U.S.C. 3812) is amended—

(1) in subsection (a)(3), by striking ''shall, if'' and inserting ''shall—

''(A) be required to apply a conservation plan that is—

''(i)(I) based on and conforms to practices, technologies, and schedules contained in a local Natural Resources Conservation Service field office technical guide; or

''(II) based on an alternative conservation system that is not described in the technical guide but is determined by the Secretary to be an acceptable alternative;

''(ii) consistent with section 1214; and

''(iii) not based on a higher erodibility standard than other highly erodible land located within the same area, as determined by the Secretary; and

''(B) if'';

(2) by redesignating subsections (f) through (h) as subsections (g) through (i), respectively;

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

''(f) EFFECT ON LANDLORDS.—Ineligibility of a tenant or sharecropper for benefits under section 1211 shall not cause a landlord to be ineligible for the benefits for which the landlord would otherwise be eligible with respect to a commodity produced on land other than the land operated by the tenant or sharecropper.''; and

(4) in subsection (g) (as so redesignated)—

(A) by striking ''(g)(1) Except to the extent provided in paragraph (2), no'' and inserting the following:

''(g) GOOD FAITH EXEMPTION.—

''(1) CONTINUED ELIGIBILITY.—No'';

(B) by striking ''has—'' and all that follows through ''(B) acted'' and inserting ''has acted'';

(C) in paragraph (2)—

(i) by striking ''Secretary shall, in lieu'' and all that follows through ''crop year'' and inserting ''person shall not be ineligible for loans or payments under section 1211''; and

(ii) by adding at the end the following: ''A person who the Secretary determines has acted in good faith and without intent to violate this subtitle shall be allowed a period of 1 year during which to implement the measures and practices necessary to be considered to be actively applying a conservation plan.'';

(D) by striking paragraph (3);

(E) by redesignating paragraph (4) as paragraph (3); and

(F) by adding at the end the following:

''(4) FAILURE TO APPLY CONSERVATION PLAN.—If a person fails to actively apply a conservation plan that documents the decisions of the person with respect to location, land use, tillage systems, and conservation treatment measures and schedules of the conservation plan by the date that is 1 year after the good faith violation, the Secretary shall make a determination concerning the ineligibility of the person under section 1211.''.

(c) DEVELOPMENT AND IMPLEMENTATION OF CONSERVATION PLANS AND SYSTEMS.—Subtitle B of title XII of the Act (16 U.S.C. 3811 et seq.) is amended by adding at the end the following:

''SEC. 1214. DEVELOPMENT AND IMPLEMENTATION OF CONSERVATION PLANS AND SYSTEMS.

''(a) TECHNICAL REQUIREMENTS.—The Secretary shall ensure that the standards and guidelines contained in a local Natural Resources Conservation Service field office technical guide applicable to a conservation plan required under this subtitle—

''(1) allow a person to use an alternative conservation system as a means of meeting the requirements, and achieving the goals, of this subtitle with respect to a highly erodible field that has been used in the production of an agricultural commodity after December 23, 1985; and

''(2) provide for conservation measures and practices that—

''(A) are technically and economically feasible;

''(B) are based on local resource conditions and available conservation technology;

''(C) are cost-effective; and

''(D) do not cause undue economic hardship to the person applying the plan or system.

''(b) EROSION MEASUREMENT.—For the purpose of determining compliance with this subtitle, the measurement of erosion reduction achieved through a conservation plan shall be based on the level of erosion at the time of the measurement compared to the level of erosion that was present prior to the implementation of the conservation measures and practices provided for in the conservation plan.

''(c) CROP RESIDUE MEASUREMENTS.—

''(1) CERTIFICATION OF COMPLIANCE.—

''(A) IN GENERAL.—For the purpose of determining the compliance of a person with the conservation plan on a farm, a third party approved by the Secretary may certify that the person is in compliance if the person is actively applying an approved conservation system or alternative conservation system at the time application for the loans or payments specified in section 1211 is made.

''(B) STATUS REVIEWS.—If a person obtains a variance, the Secretary shall not be required to carry out a review of the status of compliance of the person with the conservation plan under which the conservation system is being applied if the sole reason for the review is the fact that the person received the variance.

''(2) RESIDUE MEASUREMENTS PROVIDED BY PERSONS.—If a status review is carried out, annual crop residue measurements supplied by a person and certified by a third party approved by the Secretary shall be taken into consideration by the Secretary for the purpose of determining compliance if the measurements demonstrate that, on the basis of a 5-year average of the residue level on the field (as determined by the Secretary), the crop residue level for a field meets the level required under the conservation plan.

''(d) REVISIONS.—

''(1) CONSERVATION PLANS.—

''(A) REVISIONS BY PERSON OBTAINING CERTIFICATION.—A person that obtains a conservation plan under section 1212(a)(2) may revise the plan by substituting practices described in the local Natural Resources Conservation Service technical guide, if the revised plan achieves an equivalent amount of soil erosion reduction as the original plan, as determined by the Secretary.

''(B) NO REVISION BY THE SECRETARY.—The conservation plan of a person who obtains a certification under subsection (c) shall not be subject to revision by the Secretary, unless—

''(i) the person concurs with the revision; or

''(ii) the person has been determined by the Secretary, within the most recent 1-year period, to be ineligible under section 1211 for program loans and payments.

''(C) APPROVAL OF ALTERNATIVE CONSERVATION SYSTEM.—The Secretary shall approve or disapprove an alternative conservation system proposed by a producer not later than 30 days after the date the system is proposed.

''(D) LOCAL FIELD OFFICE TECHNICAL GUIDE.—If the alternative conservation system is approved by the Secretary and is appropriate to an area, the Secretary shall add the approved alternative conservation system to the local Natural Resources Conservation Service field office technical guide for the area.

''(2) CONSERVATION SYSTEMS.—The Secretary may revise under paragraph (1) the conservation system of a person who obtains a certification, subject to subsection (a), if there is substantial evidence as determined by the Secretary that a revision is necessary to carry out this subtitle.

''(3) UPDATING LOCAL FIELD OFFICE TECHNICAL GUIDES.—The Secretary shall regularly revise local Natural Resources Conservation Service field office technical guides to include new conservation systems that the Secretary determines will reduce soil erosion in a cost-effective manner.

''(e) TECHNICAL ASSISTANCE.—The Secretary shall provide technical assistance to a person throughout the development, revision, and application of a conservation plan or conservation system.

''(f) VIOLATIONS.—

''(1) NOTIFICATION.—An employee of the Natural Resources Conservation Service who observes a possible compliance deficiency or other violation of this subtitle while providing on-site technical assistance to a person shall—

''(A) not later than 45 days after making the observation, notify the person of any actions that are necessary to correct the deficiency or violation; and

''(B) permit the person to correct the deficiency or violation within the 1-year period beginning on the date of the notification.

''(2) CORRECTION OF COMPLIANCE DEFICIENCIES.—A person that receives a notification under paragraph (1) shall attempt to correct the deficiency as soon as practicable.

''(3) STATUS REVIEW.—Not later than 1 year after the date of a notification under paragraph (1), the Secretary shall carry out a review of the status of compliance of the person with the conservation plan under which the conservation system is being applied.

''(4) FAILURE TO CORRECT COMPLIANCE DEFICIENCY.—If a person fails to correct a deficiency or violation by the date that is 1 year after the date of a notification under paragraph (1), the Secretary shall make a determination concerning the ineligibility of the person under section 1211.

''(g) EXPEDITED VARIANCES.—

''(1) PROCEDURES.—The Secretary shall establish expedited procedures, in consultation with local conservation districts, for the consideration and granting of temporary variances to allow for the use of practices and measures to address problems related to pests, disease, nutrient management, and weather conditions (including drought, hail, and excessive moisture) or for such other purposes as the Secretary considers appropriate.

''(2) RESPONSE WITHIN 15 DAYS.—The Secretary shall grant or deny a request for a variance described in paragraph (1) not later than 15 days after receiving the request.''.

(d) AFFILIATED PERSONS.—Subtitle B of title XII of the Act (16 U.S.C. 3811 et seq.) (as amended by subsection (c)) is further amended by adding at the end the following:

''SEC. 1215. AFFILIATED PERSONS.

''If a person is affected by a reduction in benefits under section 1211 and the affected person is affiliated with other persons for the purpose of receiving the benefits, the benefits of each affiliated person shall be reduced under section 1211 in proportion to the interest held by the affiliated person.''.

(e) APPLICABILITY.—Subtitle B of title XII of the Act (16 U.S.C. 3811 et seq.) (as amended by subsection (d)) is further amended by adding at the end the following:

''SEC. 1216. APPLICABILITY.

''This subtitle shall be effective during the period beginning January 1, 1996, and ending December 31, 2002.''.

SEC. 5. WETLANDS REFORM.

(a) PROGRAM INELIGIBILITY.—Section 1221 of the Food Security Act of 1985 (16 U.S.C. 3821) is amended—

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

(2) by striking the section heading and all that follows through the end of subsection (a) and inserting the following:

''SEC. 1221. PROGRAM INELIGIBILITY.

''(a) IN GENERAL.—Except as provided in section 1222 and notwithstanding any other provision of law, any person who participates in an annual program under the Agricultural Act of 1949 (7 U.S.C. 1421 et seq.) after January 1, 1996, and who in any crop year after that date produces an agricultural commodity on converted wetland, as determined by the Secretary, shall be—

''(1) in violation of this section; and

''(2) ineligible for loans or payments in an amount determined by the Secretary to be proportionate to the severity of the violation.

''(b) LOANS AND PAYMENTS.—If a person has been determined to have committed a violation during a crop year under subsection (a), the Secretary shall determine which, and the amount, of the following loans and payments for which the person shall be ineligible:

''(1) Any type of price support or payment made available under the Agricultural Act of 1949 (7 U.S.C. 1421 et seq.), the Commodity Credit Corporation Charter Act (15 U.S.C. 714 et seq.), or any other Act.

''(2) A farm storage facility loan made under section 4(h) of the Commodity Credit Corporation Charter Act (15 U.S.C. 714b(h)).

''(3) A loan made, insured, or guaranteed under the Consolidated Farm and Rural Development Act (7 U.S.C. 1921 et seq.) or any other provision of law administered by the Consolidated Farm Service Agency, if the Secretary determines that the proceeds of the loan will be used for a purpose that will contribute to conversion of a wetland (other than as provided in this subtitle) to produce an agricultural commodity.

''(4) A payment under section 4 or 5 of the Commodity Credit Corporation Charter Act (15 U.S.C. 714b and 714c) during the crop year for the storage of an agricultural commodity acquired by the Commodity Credit Corporation.

''(5) During the crop year:

''(A) A payment under section 8, 12, or 16(b) of the Soil Conservation and Domestic Allotment Act (16 U.S.C. 590h, 590*l*, and 590p(b)).

''(B) A payment under section 401 or 402 of the Agricultural Credit Act of 1978 (16 U.S.C. 2201 and 2202).

''(C) A payment under subchapter B or C of chapter 1 of subtitle D.

''(D) A payment under chapter 2 of subtitle D.

''(E) A payment under chapter 3 of subtitle D.

''(F) A payment, loan, or other assistance under section 3 or 8 of the Watershed Protection and Flood Prevention Act (16 U.S.C. 1003 and 1006a).''; and

(3) in subsection (c) (as so redesignated)—

(A) by striking ''Except'' and inserting ''WETLAND CONVERSION.—Except''; and

(B) by striking ''subsections (a) (1) through (3)'' and inserting ''subsection (b)''.

(b) DELINEATION OF WETLAND; EXEMPTIONS.—Section 1222 of the Act (16 U.S.C. 3822) is amended—

(1) by striking subsection (a) and inserting the following:

''(a) DELINEATION BY THE SECRETARY.—

''(1) IN GENERAL.—The Secretary shall, subject to subsection (b), delineate, determine, and certify all wetlands located on subject land on a farm.

''(2) WETLAND DELINEATION MAPS.—The Secretary shall delineate wetlands on wetland delineation maps. On the request of an owner or operator, the Secretary shall make a reasonable effort to make an on-site wetland determination prior to delineation.

''(3) CERTIFICATION.—

''(A) IN GENERAL.—On providing notice to affected owners or operators, the Secretary shall—

''(i) certify whether a map is sufficient for the purpose of making a determination of ineligibility for program benefits under section 1221; and

''(ii) provide an opportunity to appeal the certification prior to the certification becoming final.

''(B) REVIEW OF MAPPING.—In the case of an appeal, the Secretary shall review and certify the accuracy of the mapping of all land subject to the appeal to ensure that the subject land has been accurately delineated.

''(C) INSPECTION OF LAND.—Prior to rendering a decision on the appeal, the Secretary shall conduct an on-site inspection of the subject land on a farm.'';

(2) by redesignating subsections (b) through (j) as subsections (c) through (k), respectively;

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

''(b) REQUESTS FOR DELINEATION.—

''(1) IN GENERAL.—Any delineation or determination of the presence of wetland on subject land on a farm made under this subtitle shall be valid until such time as the owner or operator of the land requests a new delineation or determination.

''(2) CHANGE IN DELINEATION.—In the case of a change in a delineation or determination, the Secretary shall promptly notify the owner or operator of the subject land on a farm that is affected by the change.

''(3) RELIANCE ON PRIOR DELINEATION.—Any action taken with respect to subject land on a farm by an owner or operator in reliance on a prior wetland delineation or determination by the Secretary shall not be subject to a subsequent wetland delineation or determination by the Secretary.'';

(4) by striking subsection (c) (as so redesignated) and inserting the following:

''(c) EXEMPTIONS.—No person shall become ineligible under section 1221 for program loans or payments—

''(1) as the result of the production of an agricultural commodity on land that—

''(A) was manipulated prior to December 23, 1985;

''(B) is a wetland that is less than 1 acre in size;

''(C) is a nontidal drainage or irrigation ditch excavated in upland;

''(D) is an artificially irrigated area that would revert to upland if the irrigation ceased;

''(E) is land in Alaska identified as having a high potential for agricultural development and with a predominance of permafrost soils;

''(F) is an artificial lake or pond created by excavating or diking land that is not a wetland to collect and retain water and is used primarily for livestock watering, fish production, irrigation, wildlife, fire control, flood control, cranberry growing, or rice production, or as a settling pond;

''(G) is a wetland that is temporarily or incidentally created as a result of adjacent development activity; or

''(H) is frequently cropped agricultural land; or

''(2) for the conversion of—

''(A) an artificial lake or pond created by excavating or diking land that is not a wetland to collect and retain water and that is used primarily for livestock watering, fish production, irrigation, wildlife, fire control, flood control, cranberry growing, rice production, or as a settling pond; or

''(B) a wetland that is temporarily or incidentally created as a result of adjacent development activity.'';

(5) in subsection (g)(2) (as so redesignated)—

(A) by striking ''where such restoration'' and inserting ''through the enhancement of an existing wetland or through the creation of a new wetland, and the restoration, enhancement, or creation'';

(B) in subparagraph (A), by inserting '', enhancement, or creation'' after ''restoration'';

(C) in subparagraph (D), by inserting ''in the case of enhancement and restoration of wetlands,'' after ''(D)'';

(D) by redesignating subparagraphs (E) and (F) as subparagraphs (F) and (G), respectively;

(E) by inserting after subparagraph (D) the following:

''(E) in the case of creation of wetlands, on greater than a 1-for-1 acreage basis if more acreage is needed to provide equivalent functions and values that will be lost as a result of the wetland conversion that is mitigated;''; and

(F) in subparagraph (F)—

(i) by striking ''restored'' each place it appears and inserting ''restored, enhanced, or created''; and

(ii) by striking ''restoration'' and inserting ''restoration, enhancement, or creation'';

(6) in subsection (i) (as so redesignated)—

(A) in paragraph (1), by striking ''December 23, 1985,'' and all that follows through the period at the end of the paragraph and inserting ''January 1, 1996, shall be waived by the Secretary if the Secretary determines that the person has acted in good faith and without intent to violate this subtitle.''; and

(B) by striking paragraphs (2) and (3) and inserting the following:

''(2) PERIOD FOR COMPLIANCE.—A person who the Secretary determines has acted in good faith and without intent to violate this subtitle shall be allowed a period of 1 year during which to implement the measures and practices necessary to be considered to actively restoring the subject wetland.'';

(7) in subsection (k) (as so redesignated)—

(A) in paragraph (1)—

(i) in the first sentence, by striking ''and a representative of the Fish and Wildlife Service''; and

(ii) in the second sentence, by striking '', who in'' and all that follows through ''Service''; and

(B) in paragraph (2), by striking ''and a representative'' and all that follows through ''national offices'' and inserting ''shall report to the Natural Resources Conservation Service''; and

(8) by adding at the end the following:

''(l) MITIGATION BANKING.—

''(1) IN GENERAL.—The Secretary shall establish a pilot program (to be carried out during a 1-year period) for mitigation banking of wetlands to assist owners and operators in complying with the wetland conservation requirements of this subtitle.

''(2) REPORT.—Not later than 1 year after the effective date of this paragraph, the Secretary shall report to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate on the progress in carrying out the pilot program established under paragraph (1).''.

(c) CONSULTATION WITH THE SECRETARY OF THE INTERIOR.—Subtitle C of title XII of the Act is amended—

(1) by striking section 1223 (16 U.S.C. 3823); and

(2) by redesignating section 1224 (16 U.S.C. 3824) as section 1223.

(d) AFFILIATED PERSONS.—Subtitle C of title XII of the Act (as amended by subsection (c)) is further amended by adding at the end the following:

''SEC. 1224. AFFILIATED PERSONS.

''If a person is affected by a reduction in benefits under section 1221 and the affected person is affiliated with other persons for the purpose of receiving the benefits, the benefits of each affiliated person shall be reduced under section 1221 in proportion to the interest held by the affiliated person.''.

(e) APPLICABILITY.—Subtitle C of title XII of the Act (as amended by subsection (d)) is further amended by adding at the end the following:

''SEC. 1225. APPLICABILITY.

''This subtitle shall be effective during the period beginning January 1, 1996, and ending December 31, 2002.''.

(f) EASEMENTS ON INVENTORY PROPERTY.—Section 335 of the Consolidated Farm and Rural Development Act (7 U.S.C. 1985) is amended by striking subsection (g) and inserting the following:

''(g) EASEMENTS ON INVENTORY PROPERTY.—The Secretary may not place a permanent wetland conservation or floodplain easement on any farm property after January 1, 1996.''.

(g) AGRICULTURAL LAND.—Section 404 of the Federal Water Pollution Control Act (33 U.S.C. 1344) is amended—

(1) in subsection (d), by striking ''The term'' and inserting ''Except as otherwise provided in this section, the term''; and

(2) by adding at the end the following:

''(u) AGRICULTURAL LAND.—

''(1) DEFINITION OF AGRICULTURAL LAND.—In this subsection, the term 'agricultural land' means cropland, pastureland, native pasture, rangeland, an orchard, a vineyard, an area that supports a wetland crop (including cranberries, taro, watercress, or rice), and any other land that is used to produce or support the production of an annual or perennial agricultural crop (including forage production or hay), an aquaculture product, a nursery product, or a wetland crop.

''(2) DETERMINATIONS ON AGRICULTURAL LAND.—The Secretary of Agriculture shall make all determinations concerning the presence of a wetland on agricultural land under this section and determinations regarding the discharge or dredge of fill material from normal farming and ranching activities, as provided in subsection (f)(1)(A). Determinations concerning the presence of a wetland, and normal farming and ranching practices, on agricultural land shall be made pursuant to this section.''.

SEC. 6. ENVIRONMENTAL CONSERVATION ACREAGE RESERVE PROGRAM.

Section 1230 of the Food Security Act of 1985 (16 U.S.C. 3830) is amended to read as follows:

''SEC. 1230. ENVIRONMENTAL CONSERVATION ACREAGE RESERVE PROGRAM.

''(a) ESTABLISHMENT.—

''(1) IN GENERAL.—During the 1996 through 2002 calendar years, the Secretary shall establish an environmental conservation acreage reserve program (referred to in this section as 'ECARP') to be implemented through contracts and the acquisition of easements to assist owners and operators of farms and ranches to conserve and enhance soil, water, and related natural resources, including grazing land, wetland, and wildlife habitat.

''(2) MEANS.—The Secretary shall carry out the ECARP by—

''(A) providing for the long-term protection of environmentally sensitive land; and

''(B) providing technical and financial assistance to farmers and ranchers to—

''(i) improve the management and operation of the farms and ranches; and

''(ii) reconcile productivity and profitability with protection and enhancement of the environment.

''(3) PROGRAMS.—The ECARP shall consist of—

''(A) the conservation reserve program established under subchapter B;

''(B) the wetlands reserve program established under subchapter C; and

''(C) the environmental quality incentive program established under chapter 2.

''(b) ADMINISTRATION.—

''(1) IN GENERAL.—In carrying out the ECARP, the Secretary shall enter into contracts with owners and operators and acquire interests in land through easements from owners, as provided in this chapter and chapter 2.

''(2) PRIOR ENROLLMENTS.—Acreage enrolled in the conservation reserve or wetlands reserve program prior to the effective date of this paragraph shall be considered to be placed into the ECARP.

''(c) CONSERVATION PRIORITY AREAS.—

''(1) DESIGNATION.—

''(A) IN GENERAL.—The Secretary shall designate watersheds or regions of special environmental sensitivity, including the Chesapeake Bay Region (consisting of Pennsylvania, Maryland, and Virginia), the Great Lakes Region, and the Long Island Sound Region, as conservation priority areas that are eligible for enhanced assistance through the programs established under this chapter and chapter 2.

''(B) APPLICATION.—A designation shall be made under this paragraph if agricultural practices on land within the watershed or region pose a significant threat to soil, water, and related natural resources, as determined by the Secretary, and an application is made by—

''(i) a State agency in consultation with the State technical committee established under section 1261; or

''(ii) State agencies from several States that agree to form an interstate conservation priority area.

''(C) ASSISTANCE.—The Secretary shall designate a watershed or region of special environmental sensitivity as a conservation priority area to assist, to the maximum extent practicable, agricultural producers within the watershed or region to comply with nonpoint source pollution requirements under the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.) and other Federal and State environmental laws.

''(2) APPLICABILITY.—The Secretary shall designate a watershed or region of special environmental sensitivity as a conservation priority area in a manner that conforms, to the maximum extent practicable, to the functions and purposes of the conservation reserve, wetlands reserve, and environmental quality incentives programs, as applicable, if participation in the program or programs is likely to result in the resolution or amelioration of significant soil, water, and related natural resource problems related to agricultural production activities within the watershed or region.

''(3) TERMINATION.—A conservation priority area designation shall terminate on the date that is 5 years after the date of the designation, except that the Secretary may—

''(A) redesignate the area as a conservation priority area; or

''(B) withdraw the designation of a watershed or region if the Secretary determines the area is no longer affected by significant soil, water, and related natural resource impacts related to agricultural production activities.''.

SEC. 7. CONSERVATION RESERVE PROGRAM.

(a) PURPOSE AND GOALS.—Section 1231(a) of the Food Security Act of 1985 (16 U.S.C. 3831(a)) is amended—

(1) by striking ''(a) IN GENERAL.—Through'' and inserting the following:

''(a) IN GENERAL.—

''(1) PURPOSE.—Through'';

(2) by striking ''1995'' and inserting ''2002''; and

(3) by adding at the end the following:

''(2) GOALS.—The goals of the conservation reserve program shall be to—

''(A) idle land only on a voluntary basis;

''(B) conserve the environment, including soil, water, and air;

''(C) ensure respect for private property rights; and

''(D) enhance wildlife and wildlife habitat.''.

(b) ELIGIBLE LANDS.—Section 1231 of the Act (16 U.S.C. 3831) is amended by striking subsection (b) and inserting the following:

''(b) ELIGIBLE LANDS.—The Secretary may include in the program established under this subchapter—

''(1) highly erodible cropland that—

''(A) if permitted to remain untreated could substantially impair soil, water, or related natural resources;

''(B) cannot be farmed in accordance with a conservation plan established under section 1212; and

''(C) meets or exceeds an erodibility index of 8;

''(2) marginal pasture land converted to wetland;

''(3) cropland or pasture land in or near riparian areas that could enhance water quality;

''(4) frequently cropped agricultural land; and

''(5) cropland or pasture land to be devoted to windbreaks, shelterbelts, or wildlife corridors.''.

(c) ENROLLMENT PRIORITIES.—Section 1231 of the Act (16 U.S.C. 3831) is amended by striking subsection (d) and inserting the following:

''(d) ENROLLMENT.—

''(1) LIMITATIONS.—Enrollments in the conservation reserve (including acreage subject to contracts extended by the Secretary pursuant to section 1437 of the Food, Agriculture, Conservation, and Trade Act of 1990

(Public Law 101–624; 16 U.S.C. 3831 note)) during the 1986 through 2002 calendar years may not exceed 36,400,000 acres.

''(2) SPENDING LIMITATION.—Total spending for enrollments under paragraph (1) may not exceed the spending limitations established under section 1241(e).

''(3) PRIORITIES.—The Secretary shall, to the maximum extent practicable, with each periodic enrollment (including acreage subject to contracts extended by the Secretary pursuant to section 1437 of the Food, Agriculture, Conservation, and Trade Act of 1990), enroll acreage in the conservation reserve that meets the priority criteria for water quality, wetland, soil erosion, and wildlife habitat as provided in subsection (e) and, to the maximum extent practicable, maximize multiple environmental benefits.''.

(d) PRIORITY FUNCTIONS.—Section 1231 of the Act (7 U.S.C. 3831) is amended—

(1) by redesignating subsections (e) through (g) as subsections (f) through (h); respectively; and

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

''(e) PRIORITY FUNCTIONS.—

''(1) IN GENERAL.—During all periodic enrollments of acreage (including acreage subject to contracts extended by the Secretary pursuant to section 1437 of the Food, Agriculture, Conservation, and Trade Act of 1990 (Public Law 101–624; 16 U.S.C. 3831 note)), the Secretary shall evaluate all offers to enter into contracts under this subchapter in light of the priority criteria specified in paragraphs (2), (3), (4), and (5), and accept only the offers that meet the criteria specified in paragraph (2), (3), or (4), maximize the benefits specified in paragraph (5), and maximize environmental benefits per dollar expended. If an offer meets the criteria specified in paragraph (5) and paragraph (2), (3), or (4), the offer shall receive higher priority, as determined by the Secretary.

''(2) WATER QUALITY.—

''(A) TARGETED LAND.—Not later than December 31, 2000, the Secretary shall enroll in the conservation reserve program at least 1,500,000 acres of cropland or pasture land that are contiguous or proximate to—

''(i) permanent bodies of water;

''(ii) tributaries or smaller streams; or

''(iii) intermittent streams that the Secretary determines significantly contribute to downstream water quality degradation.

''(B) PURPOSES.—The land may be enrolled by the Secretary in the conservation reserve to establish—

''(i) filterstrips;

''(ii) contour grass strips;

''(iii) grassed waterways; and

''(iv) other equivalent conservation measures that have a high potential to ameliorate pollution from crop and livestock production.

''(C) PARTIAL AND WHOLE FIELDS.—Enrollments under this paragraph may include partial and whole fields, except that the Secretary shall provide a higher priority to partial field enrollments.

''(3) WETLANDS.—

''(A) IN GENERAL.—The Secretary shall accept offers to enroll up to 1,500,000 acres of frequently cropped agricultural land, including such land enrolled (as of the effective date of this subparagraph) in the conservation reserve and subsequently subject to a contract extension under section 1437 of the Food, Agriculture, Conservation, and Trade Act of 1990 (Public Law 101–624; 16 U.S.C. 3831 note), as determined by the Secretary.

''(B) FUNCTIONS AND VALUES.—In enrolling land under subparagraph (A), the Secretary shall give a priority to enrolling frequently cropped agricultural land that the Secretary determines maximizes preservation of wetland functions and values.

''(4) SOIL EROSION.—

''(A) IN GENERAL.—The Secretary shall accept offers to enroll a field containing highly erodible land if—

''(i) a predominance of land on the field is qualifying highly erodible land that has an erodiblity index of at least 8;

''(ii) a predominance of at least 80 percent of the field consists of qualifying highly erodible land; and

''(iii) the part of the field that does not have an erodibility index of at least 8 cannot be cultivated in a cost-effective manner if separated from the qualifying highly erodible land, as determined by the Secretary.

''(B) PARTIAL FIELD ENROLLMENTS.—A portion of a field containing qualifying highly erodible land under this paragraph shall be eligible for enrollment if the partial field segment would provide a significant reduction in soil erosion.

''(5) WILDLIFE HABITAT BENEFITS.—

''(A) IN GENERAL.—The Secretary shall, to the maximum extent practicable, ensure that offers to enroll acreage under paragraph (2), (3), or (4) are accepted so as to maximize wildlife habitat benefits.

''(B) MAXIMIZING BENEFITS.—For purposes of this paragraph, the Secretary shall, to the maximum extent practicable, maximize wildlife habitat benefits by—

''(i) consulting with State technical committees established under section 1261 as to the relative habitat benefits of each offer, and accepting offers that maximize benefits; and

''(ii) providing higher priority to offers that would be contiguous to—

''(I) other enrolled acreage;

''(II) designated wildlife habitat; or

''(III) a wetland.

''(C) COVER CROP INFORMATION.—The Secretary shall provide information to owners or operators about cover crops that are best suited for area wildlife.''.

(e) DURATION OF CONTRACT.—Section 1231(f) of the Act (as so redesignated) is amended—

(1) in paragraph (1)—

(A) by inserting before the period at the end the following: '', as determined by the owner or operator of the land''; and

(B) by adding at the end the following: ''A contract extended by the Secretary pursuant to section 1437 of the Food, Agriculture, Conservation, and Trade Act of 1990 (Public Law 101–624; 16 U.S.C. 3831 note) may have a term of 5, 10, or 15 years, as determined by the owner or operator of the land.''; and

(2) by adding at the end the following:

''(3) EARLY OUT.—The Secretary shall allow an owner or operator who (on the effective date of this paragraph) is covered by a contract entered into under this subchapter to terminate the contract not later than April 15, 1996. Land subject to an early termination of a contract under this paragraph may not include filterstrips, waterways, strips adjacent to riparian areas, windbreaks, shelterbelts, and other areas of high environmental value as determined by the Secretary.''.

(f) CONFORMING AMENDMENTS.—Section 1231 of the Act (as amended by subsection (d)(1)) is further amended—

(1) by striking subsection (g); and

(2) by redesignating subsection (h) as subsection (g).

(g) INCIDENTAL GRAZING.—Section 1232(a)(7) of the Act (16 U.S.C. 3832(a)(7)) is amended—

(1) by striking ''except that the Secretary may'' and inserting ''except that the Secretary—

''(A) may'';

(2) by striking ''emergency, and the Secretary may'' and inserting the following: ''emergency;

''(B) may'';

(3) by adding ''and'' after the semicolon at the end; and

(4) by adding at the end the following:

''(C) shall allow incidental grazing during the nongrowing season on filter strips and other partial field enrollments within the borders of an active field;''.

(h) ANNUAL RENTAL PAYMENTS.—Section 1234 of the Act (16 U.S.C. 3834) is amended by striking subsection (c) and inserting the following:

''(c) ANNUAL RENTAL PAYMENTS.—

''(1) IN GENERAL.—In determining the amount of annual rental payments to be paid to owners and operators for converting eligible cropland normally devoted to the production of an agricultural commodity to a less intensive use, the Secretary may consider, among other factors, the amount necessary to encourage owners or operators of eligible cropland to participate in the program established by this subchapter.

''(2) AMOUNT.—

''(A) IN GENERAL.—The amounts payable to owners or operators as rental payments under contracts entered into under this subchapter shall be determined by the Secretary through—

''(i) the submission of offers for the contracts by owners and operators in such manner as the Secretary may prescribe; and

''(ii) determination of the rental value for the land through a productivity adjustment formula established by the Secretary.

''(B) MAXIMUM RENTAL RATES.—

''(i) IN GENERAL.—Except as provided in clauses (ii) and (iii), rental rates may not exceed the productivity adjusted rental rate, as determined by the Secretary.

''(ii) PARTIAL FIELD ENROLLMENTS.—Rental rates for partial field enrollments for water quality, soil erosion, or wetland priority functions under section 1231(e) may not exceed 125 percent of the rental rate for the land, as determined by the Secretary based on a productivity adjustment formula.

''(iii) CONSERVATION PRIORITY AREAS.—Rental rates for partial field enrollments in conservation priority areas under section 1230(c) may not exceed 150 percent of the rental rate for the land, as determined by the Secretary based on a productivity adjustment formula.

''(C) MINIMUM RENTAL RATES.—Rental rates for land subject to a contract extended by the Secretary pursuant to section 1437 of the Food, Agriculture, Conservation, and Trade Act of 1990 (Public Law 101–624; 16 U.S.C. 3831 note) may not be less than 80 percent of the average rental rate for all contracts in force in the county at the time of the extension.

''(3) TREES.—In the case of acreage enrolled in the conservation reserve that is to be devoted to trees, the Secretary may consider offers for contracts under this subsection on a continuous basis.''.

(i) OWNERSHIP AND OPERATION REQUIREMENTS.—Section 1235(a) of the Act (16 U.S.C. 3835(a)) is amended—

(1) in paragraph (1)(B), by striking ''1985'' and inserting ''1996''; and

(2) in paragraph (2)(B)(i), by striking ''1985'' and inserting ''1996''.

(j) CONFORMING AMENDMENT.—Section 1235A(b)(2) of the Act (16 U.S.C. 3835a(b)(2)) is amended by striking ''or permanent''.

SEC. 8. WETLANDS RESERVE PROGRAM.

(a) PURPOSES.—Section 1237(a) of the Food Security Act of 1985 (16 U.S.C. 3837(a)) is amended by striking ''to assist owners of eligible lands in restoring and protecting wetlands'' and inserting ''to protect wetlands for purposes of enhancing water quality and providing wildlife benefits while recognizing landowner rights''.

(b) MINIMUM ENROLLMENT.—Section 1237(b) of the Act (16 U.S.C. 3837(b)) is amended by

striking ''program'' and all that follows through ''2000'' and inserting ''program a total of not more than 975,000 acres during the 1991 through 2002''.

(c) ELIGIBILITY.—Section 1237(c) of the Act (16 U.S.C. 3837(c)) is amended—

(1) by striking ''2000'' and inserting ''2002'';

(2) by striking ''Secretary of the Interior at the local level'' and inserting ''State technical committee'';

(3) by inserting ''the land maximizes wildlife benefits and wetland values and functions and'' after ''determines that'';

(4) in paragraph (1)—

(A) by striking ''December 23, 1985'' and inserting ''January 1, 1996''; and

(B) by striking ''and'' at the end;

(5) by redesignating paragraph (2) as paragraph (3);

(6) by inserting after paragraph (1) the following:

''(2) enrollment of the land meets water quality goals through—

''(A) creation of tailwater pits or settlement ponds; or

''(B) enrollment of land that was enrolled (on the day before the effective date of this subparagraph) in the water bank program established under the Water Bank Act (16 U.S.C. 1301 et seq.) at a rate not to exceed the rates in effect under the program;'';

(7) in paragraph (3) (as so redesignated), by striking the period at the end and inserting ''; and''; and

(8) by adding at the end the following:

''(4) enrollment of the land maintains or improves wildlife habitat.''.

(d) OTHER ELIGIBLE LANDS.—Section 1237(d) (16 U.S.C. 3837(d)) is amended by inserting after ''subsection (c)'' the following '', land that maximizes wildlife benefits and that is''.

(e) EASEMENTS.—Section 1237A of the Act (16 U.S.C. 3837a) is amended—

(1) by striking subsection (c) and inserting the following:

''(c) RESTORATION PLANS.—The development of a restoration plan, including any compatible use, under this section shall be made through the local Natural Resources Conservation Service representative, in consultation with the State technical committee.'';

(2) by striking subsection (e) and inserting the following:

''(e) TYPE AND LENGTH OF EASEMENT.—A conservation easement granted under this section—

''(1) shall be in a recordable form;

''(2) shall be for 20 or 30 years; and

''(3) shall not exceed the maximum duration allowed under applicable State law.''; and

(3) in subsection (f), by striking the third sentence and inserting the following: ''Compensation may be provided in not less than 5, nor more than 30, annual payments of equal or unequal size, as agreed to by the owner and the Secretary.''.

(f) DUTIES OF THE SECRETARY.—Section 1237C(d) of the Act (16 U.S.C. 3837c(d)) is amended by striking '', in consultation'' and all that follows through ''Interior,''.

SEC. 9. CONSERVATION FUNDING.

(a) IN GENERAL.—Subtitle E of title XII of the Food Security Act of 1985 (16 U.S.C. 3841 et seq.) is amended to read as follows:

''Subtitle E—Funding

''SEC. 1241. FUNDING.

''(a) MANDATORY EXPENSES.—For each of fiscal years 1996 through 2002, the Secretary shall use the funds of the Commodity Credit Corporation to carry out the programs authorized by—

''(1) subchapter B of chapter 1 of subtitle D (including contracts extended by the Secretary pursuant to section 1437 of the Food, Agriculture, Conservation, and Trade Act of 1990 (Public Law 101–624; 16 U.S.C. 3831 note));

''(2) subchapter C of chapter 1 of subtitle D; and

''(3) chapter 2 of subtitle D for practices related to livestock production.

''(b) ADVANCE APPROPRIATIONS TO CCC.—The Secretary may use the funds of the Commodity Credit Corporation to carry out chapter 3 of subtitle D, except that the Secretary may not use the funds of the Corporation unless the Corporation has received funds to cover the expenditures from appropriations made available to carry out chapter 3 of subtitle D.

''(c) ENVIRONMENTAL QUALITY INCENTIVES PROGRAM.—For each of fiscal years 1996 through 2002, $100,000,000 of the funds of the Commodity Credit Corporation shall be available for providing technical assistance, cost-sharing payments, and incentive payments for practices relating to livestock production under the environmental quality incentives program.

''(d) WETLANDS RESERVE PROGRAM.—Spending to carry out the wetlands reserve program under subchapter C of chapter 1 of subtitle D shall be not greater than $614,000,000 for fiscal years 1996 through 2002.

''(e) CONSERVATION RESERVE PROGRAM.—Spending for the conservation reserve program (including contracts extended by the Secretary pursuant to section 1437 of the Food, Agriculture, Conservation, and Trade Act of 1990 (Public Law 101–624; 16 U.S.C. 3831 note)) shall be not greater than—

''(1) $1,787,000,000 for fiscal year 1996;

''(2) $1,784,000,000 for fiscal year 1997;

''(3) $1,445,000,000 for fiscal year 1998;

''(4) $1,246,000,000 for fiscal year 1999;

''(5) $1,101,000,000 for fiscal year 2000;

''(6) $999,000,000 for fiscal year 2001; and

''(7) $974,000,000 for fiscal year 2002.

''SEC. 1242. ADMINISTRATION.

''(a) PLANS.—The Secretary shall, to the extent practicable, avoid duplication in—

''(1) the conservation plans required for—

''(A) highly erodible land conservation under subtitle B;

''(B) the conservation reserve program established under subchapter B of chapter 1 of subtitle D; and

''(C) the wetlands reserve program established under subchapter C of chapter 1 of subtitle D; and

''(2) the environmental quality incentives program plan established under chapter 2 of subtitle D.

''(b) ACREAGE LIMITATION.—

''(1) IN GENERAL.—The Secretary shall not enroll more than 25 percent of the cropland in any county in the programs administered under the conservation reserve and wetlands reserve programs established under subchapters B and C, respectively, of chapter 1 of subtitle D. Not more than 10 percent of the cropland in a county may be subject to an easement acquired under the subchapters.

''(2) EXCEPTION.—The Secretary may exceed the limitations in paragraph (1) if the Secretary determines that—

''(A) the action would not adversely affect the local economy of a county; and

''(B) operators in the county are having difficulties complying with conservation plans implemented under section 1212.

''(3) SHELTERBELTS AND WINDBREAKS.—The limitations established under this subsection shall not apply to cropland that is subject to an easement under chapter 1 or 3 of subtitle D that is used for the establishment of shelterbelts and windbreaks.

''(c) TENANT PROTECTION.—Except for a person who is a tenant on land that is subject to a conservation reserve contract that has been extended by the Secretary, the Secretary shall provide adequate safeguards to protect the interests of tenants and sharecroppers, including provision for sharing, on a fair and equitable basis, in payments under the programs established under subtitles B through D.

''(d) REGULATIONS.—Not later than 90 days after the effective date of this subsection, the Secretary shall issue regulations to implement the conservation reserve and wetlands reserve programs established under chapter 1 of subtitle D.''.

(b) CONFORMING AMENDMENTS.—

(1) The first sentence of the matter under the heading ''COMMODITY CREDIT CORPORATION'' of Public Law 99–263 (100 Stat. 59; 16 U.S.C. 3841 note) is amended by striking ''*: Provided further,*'' and all that follows through ''Acts''.

(2) Section 1232(a)(11) of the Food Security Act of 1985 (16 U.S.C. 3832(a)(11)) is amended by striking ''in a county that has not reached the limitation established by section 1243(f)''.

SEC. 10. CONFORMING AMENDMENTS.

(a) RURAL ENVIRONMENTAL CONSERVATION PROGRAM.—

(1) ELIMINATION.—Title X of the Agricultural Act of 1970 (16 U.S.C. 1501 et seq.) is repealed.

(2) CONFORMING AMENDMENTS.—Section 246(b) of the Department of Agriculture Reorganization Act of 1994 (7 U.S.C. 6962(b)) is amended—

(A) by striking paragraph (1); and

(B) by redesignating paragraphs (2) through (8) as paragraphs (1) through (7), respectively.

(b) OTHER CONSERVATION PROVISIONS.—Subtitle F of title XII of the Food Security Act of 1985 (16 U.S.C. 2005a and 2101 note) is repealed.

(c) COMMODITY CREDIT CORPORATION CHARTER ACT.—Section 5(g) of the Commodity Credit Corporation Charter Act (15 U.S.C. 714c(g)) is amended to read as follows:

''(g) Carry out conservation functions and programs.''.

(d) RESOURCE CONSERVATION.—

(1) ELIMINATION.—Subtitles A, B, D, E, F, G, and J of title XV of the Agriculture and Food Act of 1981 (95 Stat. 1328; 16 U.S.C. 3401 et seq.) are repealed.

(2) CONFORMING AMENDMENT.—Section 739 of the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 1982 (7 U.S.C. 2272a), is repealed.

(e) ENVIRONMENTAL EASEMENT PROGRAM.—Section 1239(a) of the Food Security Act of 1985 (16 U.S.C. 3839(a)) is amended by striking ''1991 through 1995'' and inserting ''1996 through 2002''.

(f) RESOURCE CONSERVATION AND DEVELOPMENT PROGRAM.—Section 1538 of the Agriculture and Food Act of 1981 (16 U.S.C. 3461) is amended by striking ''1991 through 1995'' and inserting ''1996 through 2002''.

SEC. 11. WILDLIFE BENEFITS.

In carrying out conservation programs, the Secretary of Agriculture is encouraged to promote wildlife benefits to the extent practicable and to the extent that the action does not conflict with the requirements or purposes of the programs.

SEC. 12. EFFECTIVE DATE.

(a) IN GENERAL.—This Act and the amendments made by this Act shall become effective on the later of—

(1) the date of enactment of this Act; or

(2) January 1, 1996.

(b) TRANSITION PROVISIONS.—Notwithstanding any other provision of law, this Act and the amendments made by this Act shall not affect the authority of the Secretary of Agriculture to carry out a program for any of the 1991 through 1995 calendar years under a provision of law in effect immediately before

the effective date required under subsection (a).

Mr. DOLE. Mr. President, when Republicans took control of Congress in January, we promised the American people that we would rein in the Federal Government, and shift power back where it belongs—to the States and to the people. The Senate has worked hard to fulfill that promise. We are tackling regulatory reform, tax reform, and private property rights—and we are just getting started.

Today, I am joined by Senator LUGAR, Senator CRAIG, and Senator GRASSLEY, to introduce the Resource Enhancement Act of 1995. This bill outlines practical and necessary reforms to the environmental provisions of the 1995 farm bill.

Mr. President, the 1985 farm bill included three environmental provisions which revolutionized farm policy. Swampbuster, sodbuster, and the Conservation Reserve Program provided the first link between the preservation of soil and wetlands, and farm program participation.

No doubt about it, these programs have been successful. But over the past decade, we have learned many valuable lessons. Now it is clear that substantive reform is needed. These provisions were not intended to put high-quality land in the CRP. They were not intended to allow the U.S. Fish and Wildlife Service or the Army Corps of Engineers to usurp the authority of the USDA.

In 1985, no one anticipated that a blanket ''highly erodible land'' designation—based on 1930's wind data—would reduce property values in 13 western Kansas counties. In 1985, no one expected that existing drainage ditches or tiles in farmed fields would be labeled ''abandoned'' and thus be prevented from repair.

In my view, this legislation achieves balanced reform by building on the intent of the original legislation. The primary focus of the 1985 farm bill was preventing soil erosion. We have made good progress toward that goal, but much remains to be done. Now we must expand our focus to include water quality and wildlife habitat improvements. Soil conservation and the Conservation Reserve Program are crucial to achieving those goals.

In the past, farm program participation was tied to conservation compliance. However, the trend in farm spending is clear. Since 1985, Commodity Credit Corporation spending on wheat has declined over 40 percent. Spending on milo has declined a staggering 69 percent. At this pace, any linkage will soon vanish. If we aim to fulfill the intent of conservation and wetlands laws—and we should—we must adjust to today's conditions.

Earlier this year, I spoke to the American Farm Bureau Federation's annual meeting. Farmers there told me that they are willing to accept less Government support—if the Government will stop interfering in their businesses.

Our bill is a prescription for judicious reform. In my view, it is a remedy desperately needed to save farmers from a terminal case of overregulation.

This legislation will accomplish three basic goals:

First, reduce unnecessary regulatory burdens, while maintaining basic environmental objectives;

Second, restore respect for basic private property rights;

Third, promote voluntary compliance of conservation and environmental objectives.

Further, this bill adds flexibility and uniformity to conservation and wetlands compliance.

Flexibility will be the guiding principle of conservation compliance. The current system of measuring erosion and regulating compliance will be clarified and codified.

The Conservation Reserve Program will be reauthorized and modified. In addition to protecting highly erodible land, the program will incorporate water quality goals, wetlands protection, and wildlife preservation.

Many farmers tell me that the current swampbuster regulations allow the Government to infringe on their property rights. However, the conservation community tells me that swampbuster is one of the most important wetlands protection laws ever enacted. In our bill, we address the need for deregulation by exempting frequently cropped and nuisance wetlands. At the same time, we aim to further wetlands protection by directing USDA to enroll wetlands in the CRP.

Mr. President, this bill is the result of months of hard work and cooperation among conservation, wildlife, and farm groups. I believe its impact will be good for the environment, good for wildlife preservation, and good for farmers. It is my hope that this legislation represents a new covenant between the environmental and farm communities. I urge my colleagues to join me in this effort to give the American people better, not bigger government.

Mr. CRAIG. Mr. President, I am very proud to introduce a bill today that I hope will serve as the framework for crafting the conservation title of the 1995 farm bill. The Resources Enhancement Act is a balanced approach to blending the successes of past policy with the changing scope of future needs.

The role of conservation programs in American agriculture are sometimes overlooked and underestimated. Farmers and ranchers are the original environmentalists and because of their dependence on the land they continue to implement voluntary practices that are in the best interests of those resources.

The Resources Enhancement Act will maximize the voluntary efforts of farmers and ranchers by extending the role of State and Federal agencies, as well as some private entities, as partners in that effort. This includes an extension of the immensely popular resource conservation and development districts through 2002.

However, it is of the utmost importance that Government agencies are not placed in the role of policing the actions of these farmers. This bill emphasizes technical advice and cost share of projects for our Nation's farmers, rather than enforcement and penalties.

The Conservation Reserve Program as currently implemented enjoys widespread support among Idaho farmers. CRP will be extended for at least another 10 years under the Resources Enhancement Act. The positive gains in soil conservation will be continued along with an increased focus on water quality and wildlife habitat.

Idaho farmers will now be able to enroll hill tops and filter strips, rather than entire fields of productive land. A premium of up to 125 percent of productivity adjusted rental rates will be paid for those partial field enrollments.

For those still submitting entire field bids, the enrollment criteria of an erodibility index of 8 is similar to the current program. To provide some stability to farmers and local economies, a floor will be established for reenrollments. That floor will be 80 percent of the average rental rate for other contracts in the same county.

Common sense must also prevail in other farm programs, especially those relating to compliance with conservation requirements on highly erodible lands. This bill will increase the flexibility of producers in meeting the requirements of their approved conservation plans.

For the first time, alternate conservation systems will be written into law and the use of on-farm research will be encouraged. Farmers from across the Nation will also benefit from expedited USDA decisions on requests for variances to their conservation compliance plans.

The issue of good faith and unintended violations is also addressed. From this bill forward, good-faith infractions by the farmer will be treated in good faith by the Department. Those good-faith violations will not be subject to a penalty. For any other violation, the size of the penalty will equate to the size of the violation. Currently, a small area of noncompliance on a farm can place an entire operation at risk. The commonsense provisions of the Resources Enhancement Act will rectify that situation.

Common sense also prevails in the sections of the bill that address reform of the swampbuster program. Improvements similar to the highly erodible section are made in swampbuster with regard to good faith violations and all penalties.

This bill will also place authority for ag wetlands in its natural place—the Department of Agriculture. The restoration and enhancement of existing wetlands and creation of new wetlands will be enhanced with an increased emphasis on mitigation banking.

The Resource Enhancement Act also ensures that the wetlands reserve program will be continued through 2002. This program allows for 20- or 30-year easements for wetlands or water quality to be placed on agricultural lands.

The broad scope of resource conservation needs are addressed in this bill while recognizing the ongoing voluntary efforts of farmers and ranchers and maintaining a respect for private property rights. These resource needs are best addressed by continued voluntary efforts in this time of declining Federal resources. It makes sense that the regulatory burdens on farmers and ranchers are decreasing, since the level of past farm program payments is also declining.

I commend Senators DOLE, GRASSLEY, and LUGAR for their efforts in crafting this bill and urge our other colleagues to join us in supporting the Resources Enhancement Act of 1995.

By Mr. CRAIG (for himself and Mr. KEMPTHORNE):

S. 1374. A bill to require adoptiion of a management plan for the Hells Canyon National Recreation Area that allows appropriate use of motorized and nonmotorized river craft in the recreation area, and for other purposes; to the Committee on Energy and Natural Resources.

HELL'S CANYON NATIONAL RECREATION AREA BOATING AMENDMENTS LEGISLATION

Mr. CRAIG. Mr. President, public Law 94–199, designating the Hells Canyon National Recreation Area, was signed into law December 31, 1975.

Section 10 of the act instructs the Secretary to promulgate such rules and regulations as he deems necessary to accomplish the purposes of the act, including a ''provision for the control of the use and number of motorized and nonmotorized river craft: *Provided,* That the use of such craft is hereby recognized as a valid use of the Snake River within the recreation area—''.

This language seems clear. However, the original intent of the act, the compromises and promises that allowed its passage, seem to have been forgotten or clouded with time. Assurances 20 years ago that long-established and traditional uses, such as motorized boating, are a valid use of the river and would be continued with the support of people who would otherwise have opposed the legislation. Yet, as the original participants disappear from the scene and new players arrive, these arrangements are being callously disregarded.

Throughout the process leading to designation and the ensuing management planning efforts, the USDA—Forest Service has exhibited a bias against motorized river craft. During hearings on the act, Assistant Secretary of Agriculture Long testified on a proposed amendment that would have authorized the Forest Service to prohibit jet boats. He noted that there were ''times when boating perhaps should be prohibited entirely''. Senator Church responded to that testimony unfavorably, explaining:

> . . . jet boats have been found to be the preferred method of travel by a great many people who have gone into the canyon. This is a matter of such importance that Congress itself should decide what the guidelines would be with respect to regulation of traffic on the river and that the discretion ought not to be left entirely to the administrative agencies.

In a clear indication of Congress' intentions, the jet boat ban was not adopted.

Later, in its first version of a comprehensive management plan in 1981, the Forest Service attempted to bypass congressional intent by eliminating power boating from the heart of Hells Canyon for the entire primary recreation season, granting exclusive use of the river from Wild Sheep Rapid to Rush Creek Rapid to those using nonmotorized river craft. Responding to public outrage, the Chief reconsidered his decision, and issued a new plan allowing access to the entire river for a very limited number of powered craft. On appeal, Assistant Secretary Crowell overturned this decision, allowing unlimited day use by powerboats and citing failure on the part of the Forest Service to demonstrate a need for such severe restrictions.

More recently, Wallowa-Whitman National Forest Supervisor Robert Richmond initiated a review and revision of the river management portion of the comprehensive management plan. Despite the lack of any demonstrable resource problems, and in the face of overwhelming public support for motorized river craft, the agency again decided to close part of the river to powerboats. The new river management plan adopted in November 1994 would have closed the heart of the canyon to motorized river craft for 3 days a week in July and August, the peak of the recreation season. In response to the many appeals received, a stay was granted by the regional Forester, avoiding a disastrous implementation of the new plan in 1995.

However, the regional forester's eventual decision on the substance of the appeals made clear that he supports the concept of a partial closure of the river to motorized river craft. The agency's intent to pursue a closure is quite evident. Even a partial closure is objectionable, as it is contrary to the intent of the law and the history of the river.

The Snake River is different from most rivers in the Wild and Scenic System. It is a high-volume river with a long and colorful history of use by motorized river craft. The first paying passengers to travel up through its rapids on a motor boat made their journey on the 110-foot *Colonel Wright* in 1865, and a memorable journey that was. Later, the 136-foot *Shoshone* made its plunge through the canyon from Boise to Lewiston in 1870 and was followed by the 165-foot *Norma* in 1895. Gasoline-powered craft began hauling people, produce, and supplies in and out of the canyon in 1910, and the first contract for regular mail delivery was signed in 1919, continuing today. The Corps of Engineers began blasting rocks and improving channels in 1903. They worked continuously until 1975 to make the river safer for navigation.

Today the vast majority of people—over 80 percent—who recreate in the Hells Canyon segment of the Snake River access it by motorized river craft. Some are private boaters, and others travel with commercial operators on scenic tours. This access is accomplished with a minimum of impact to the river, the land, or their resources. Most river users, motorized and nonmotorized, are willing to share the river. However, a small group of nonmotorized users objects to seeing powered craft. Those unwilling to share have a rich choice of alternatives in this geographic area, such as the Selway and Middle Fork of the Salmon rivers. Motorized users, however, don't have that luxury. The only other white water rivers open to them in the Wild and Scenic System are portions of the Rogue and Salmon rivers. Without a single doubt, the Hells Canyon portion of the Snake River is our Nation's premier white water power boating river.

Mr. President, as you can see, the use of motorized river craft is deeply interwoven in the history, traditions, and culture of Hells Canyon. That is why Congress deliberately created a nonwilderness corridor for the entire length of the river. That is why Congress tried to make it clear that use of both motorized and nonmotorized river craft are valid uses of the river within the recreation area—the entire river for the entire year. It was not the intent of Congress to allow the managing agency to decide that one valid use would prevail to the exclusive use over the other.

Quite clearly, the issue of power boating's validity will not be settled unless decided by the courts or unless Public Law 94–199 is clarified by Congress. The courts are already burdened by too many cases of this type, resulting in a waste of time, energy, and financial resources for both the United States and its citizens. The only practical and permanent resolution of this issue is to clarify congressional intent in a manner that will not allow any future misunderstanding. This is what I propose to do with this legislation.

By Mr. BURNS (for himself, Mr. CRAIG, Mr. GORTON, Mr. GRASSLEY, Mr. MCCONNELL, Mr. DASCHLE, Mr. HARKIN, Mr. KERREY, and Mr. KEMPTHORNE):

S. 1375. A bill to preserve and strengthen the Foreign Market Development Cooperator Program of the Department of Agriculture, and for other purposes; to the Committee on Agriculture, Nutrition, and Forestry.

THE FOREIGN MARKET DEVELOPMENT COOPERATOR PROGRAM ACT OF 1995

Mr. BURNS. Mr. President, I rise today together with Senators CRAIG,

GORTON, GRASSLEY, MCCONNELL, DASCHLE, HARKIN, and KERREY of Nebraska to introduce legislation that will preserve and strengthen the Foreign Market Development Cooperator Program of the Department of Agriculture.

In an effort to balance the budget by the year 2002, Congress has had to make some very difficult decisions. Whatever the final outcome of this process in budget reconciliation the fact remains that the American farmer will be asked to move into a market-oriented farm policy. Therefore it has become crystal clear that we must open up our thinking and provide our farmers access to international markets.

Changes that have resulted from the Uruguay round of GATT and the growing privatization of importing regimes in overseas markets demand that export programs be instituted that meet current needs and futures challenges. Such programs should reflect not only the successes we have had in the past, but they must also be dynamic and flexible enough to build on these gains.

One program that has stood the test of time is the Foreign Market Development Program, also known as the Cooperator Program. Amendments to the Agricultural Trade Development and Assistance Act of 1954 and the Agriculture and Food Act of 1981 authorized market development activities and the use of Federal funds to develop, maintain, and expand foreign markets for U.S. agriculture commodities. It was determined by the USDA's Foreign Agricultural Service that this could best be accomplished by private, nonprofit agricultural organizations. These organizations have been required to share in the financial expense of the market development activities.

In 1988, Congress stated,

> It is the sense of Congress that the foreign market development Cooperator Program of the Service, and the activities of the individual foreign market development cooperator organizations, have been among the most successful and cost-effective means to expand United States agricultural exports. Congress affirms its support for the program and the activities of the cooperator organizations. The Administrator and the private sector should work together to ensure that the program, and the activities of cooperator organizations, are expanded in the future.

While Congress has provided full funding through the regular appropriations process every year since the Cooperator Program's development in 1954, we have provided little statutory direction to the USDA and the Foreign Agricultural Service. Congress has simply established broad goals for market development programs. As a result, the Foreign Agricultural Service has been given wide discretion in establishing programs and funding.

Mr. President, this arrangement has been highly successful for a number of years. Unfortunately, in recent years the Cooperator Program has fallen victim to the intense competition within FAS for fewer discretionary funds. This has led to FAS requesting cuts in the program as a means of funding other FAS activities. Due to the success of this program, Congress has decided that these funds should continue and has stated such to the Foreign Agricultural Service. This year that administration proposed a budget that would have reduced the funding for the Cooperator Program by 20 percent.

A reduction of this magnitude would have meant a U.S. retreat from international markets at a time when the Foreign Agricultural Service has testified that the resources and staff of nonprofit commodity were less than adequate. This is to say that our nonprofit agricultural organizations were not able to meet the challenges and changes in the international market place. On the more meaningful level, this would have meant fewer opportunities for the producers in the world market.

As a member of the Agricultural Appropriations Subcommittee I can tell you what we took this seriously and restored full finding for the program this year. But we grow weary of the continued assault on such a successful program. It is a practice that must stop. This bill will stop this, by establishing a separate identity for the Foreign Market Development Cooperator Program from that of FAS.

The Foreign Market Development Cooperator Program is not only one of the oldest export programs, but it is also one of the most essential and effective. In fiscal year 1994, cooperators expended $29.8 million of FAS funds on the market development program. Cooperators reported additional contributions of $30 million. These cooperators conducted more than 1,000 individual market development activities in over 100 countries. The private sector funding assists in reducing the deficit while maintaining our presence in overseas markets. The involvement of the private sector also creates incentives for effective programs as it is their own producer dollars at stake. This has created an incentive-based program that FAS has stated that the combined cooperator and foreign third party contributions have exceeded the FAS contribution every year.

The cooperator program has been long regarded as a model of public-private sector cooperation. FAS has recently stated that the market development cooperator program has played an important role in increasing U.S. agricultural exports to the approximately $43.5 billion in fiscal year 1994.

According to a senior FAS official, the cooperator program is the mainstay of market development activities. Cooperators are by definition nonprofit, agricultural trade associations which represent farmers and farm-related interests. Cooperators participating include representatives from the feed grains, wheat, soybean, rice, cotton, poultry, meat, and forest products as well as many others.

High-volume commodities, like grains, rarely lend themselves to traditional consumer promotion programs, but rely instead on working directly with end-users and processors on a regular basis. Cooperator projects are suited to trade servicing activities such as the collection and dissemination of market facts; training programs; and demonstrations or technical seminars on product uses to producers, processors, manufacturers, and consumers. This focus requires a continual presence in the overseas market which is essential for the United States to remain competitive. Regular contact with the customer is necessary to follow shifts in the rapidly changing world market.

In my State of Montana, where we export up to 70 percent of the grain that we grow, programs of this nature are extremely important. In recent times when we have signed agreements with the world to place our family farmers in the world market it has become increasingly important that we provide them with tools to compete in these markets. I have stated many times that the American farmer is more than willing to compete with any and all farmers around the world. But we have placed them at a disadvantage by making them compete with the governments of other countries. This is a program that will provide them with a tool to use in the world market.

Throughout my time here in Washington I have fought for programs that will add dollars to the pockets of the small family farmers in Montana and the United States. This program in its design does this, whether it be a corn or soybean farmer in Iowa or a wheat and barley farmer in my state of Montana. Development of this type would also benefit the livestock producer in any area of our Nation. It might be a cotton producer in Mississippi or Texas, or maybe a rice farmer in Arkansas, or maybe even a small timber operator in Washington and Idaho. Whatever or wherever it is that they come from, by using their matching funds these cooperators have an investment and will see that they get a return on their funds. They will in turn see additional dollars for their products and will compete fully in the world market.

The future of this program is bright, and this legislation will make it only more of a reality. The unique resources that the nonprofit agriculture organizations bring to this cooperative program enhance the future of the exports we now have in agriculture. Recent developments in communications technologies hold promise for greatly enhancing the ability of cooperator organizations to communicate with their counterparts around the country and, for that matter, the rest of the world.

Mr. President, in light of the current trend of placing our family farmers on

the world market, and with the pressure to open the safety net which protects our food supply, I find it imperative that Congress act to give our rural families this tool to work within the world market. This one tool will send a message to the country and the world that we are working to keep our family farms strong and vital operations within our economic structure. This message will allow the Department of Agriculture to focus on the opportunities that these cooperative efforts between the public and private sector can and will produce.

Mr. President, I would like to take this opportunity to invite my colleagues to join me in this effort to provide an opportunity to the rural families in this country to meet the rest of the world on the field of grain and agriculture with the tools that will help them be successful.

Mr. CRAIG. Mr. President, the Cooperator Program Act exemplifies the export-based marketing that must occur if American agriculture is to lead the world into the 21st century. I am very proud to cosponsor this bill that will extend an extremely successful program. It is also my desire to lead the efforts on the Senate Agriculture Committee to include this bill as an important provision of the trade title of the 1995 farm bill.

The Cooperator Program is part of the Foreign Market Development Program as currently administered by the Foreign Agriculture Service of USDA. The cooperators in Foreign Market Development Program are regarded by many as a cost-effective and successful partnership that has expanded agriculture exports.

Idaho wheat producers especially rely on foreign market developments and the exports for their economic well-being. In fact, Idaho's wheat producers collectively export between 75 and 80 percent of their production every year. In 1994, the production, marketing and exportation of Idaho's wheat provided over 30,000 jobs and $1.09 billion in economic revenue in Idaho and the rest of the Pacific Northwest.

The Cooperator Program Act of 1995 will strengthen the foreign market development efforts of the past by creating a separate line-item authorization for future annual appropriations process.

I commend Senator BURNS for his efforts to introduce this legislation and urge my colleagues to support the bill.

Mr. GORTON. Mr. President, today I am pleased to join my colleagues Senators BURNS, CRAIG, GRASSLEY, MCCONNELL, DASCHLE, HARKIN, and KERREY, as an original cosponsor of the Cooperator Program Act of 1995.

The Foreign Market Development [FMD] Cooperator Program has been administered by USDA's Foreign Agriculture Service since 1954 without specific legislative authorization. Today we are introducing legislation that will provide the necessary authorization to maintain, preserve, and strengthen the FMD Cooperator Program. The FMD Cooperator Program has proven to be an effective, efficient, cost-shared program, providing trade service and technical assistance for U.S. agriculture commodities in overseas markets. This legislation will ensure that the FMD Cooperator Program is better able to compete for a limited number of discretionary dollars during the annual appropriations process.

Many important developments have taken place since the completion of the Uruguay Round of the General Agreement of Tariffs and Trade [GATT]. I believe that GATT will continue to open new world markets for the United States so programs like FMD are even more important to give U.S. agriculture the tools necessary to develop, maintain, and expand commercial export markets for U.S. agriculture commodities in this new post-GATT environment.

As a member of the Agriculture Appropriations Subcommittee, I have made funding for export programs my top priority. I am convinced that the Foreign Market Development Program, Market Promotion Program and the like are absolutely necessary if U.S. Agriculture is to remain competitive in the international marketplace. It is also in the best interest of the agriculture community specifically to authorize the FMD Cooperator Program. This kind of oversight will ensure that the agriculture community will continue to receive the full benefits of this program.

Since 1955, U.S. agriculture exports have increased from $3 billion to $43.5 billion in fiscal year 1994, and are projected to reach a record high of $51.1 billion during fiscal year 1995. USDA has stated that for each dollar of taxpayer money spent on the FMD, 7 dollars' worth of exports are generated, and this figure continues to grow. It is now every day that we appropriate Federal dollars and get a return on our investment as large and as significant as we do with the FMD.

In lieu of the reduction or phaseout of USDA's commodity price support programs, it seems only right to provide the agriculture community with the tools necessary to compete in the international marketplace. As I travel around my State of Washington I listen closely to the comments, suggestions, and concerns from my State's agriculture community.

The message has been clear: Strengthen, maintain, and preserve the tools necessary for us to export our products. In response to these comments, I believe that this legislation is the key to maintaining export programs important to so many in Washington State and across the Nation.

I would also like to acknowledge the overwhelming support we have received from the following State's wheat commissions. Washington, Idaho, Oregon, Nebraska, Kentucky, New Mexico, North Carolina, North Dakota, South Dakota, Ohio, Arizona, Arkansas, California, Colorado, Kansas, Maryland, Minnesota, Nebraska, Oklahoma, Texas, Virginia, and Wyoming. Among other associations we have received support from include: Washington Education Trade Economic Committee, National Association of Wheat Growers, U.S. Wheat Associates, USA Dry Pea and Lentil Council, National Barley Growers Association, National Council of Farmer Cooperatives, Western U.S. Agriculture Trade Association, National Corn Growers Association, National Dry Bean Council, American Seed Trade Association, USA Poultry and Egg Export Council, American Soybean Association, National Cotton Council, National Peanut Council of America, and National Sunflower Association. Clearly, Mr. President, this legislation has a tremendous amount of support from U.S. agriculture nationwide.

Mr. President, in closing I invite my colleagues to join me as cosponsors of this legislation and ask unanimous consent that a letter of support from the Washington State Wheat Commission be printed in the RECORD.

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

WASHINGTON WHEAT COMMISSION,
Spokane, WA, October 12, 1995.

Hon. SLADE GORTON,
U.S. Senate, Hart Senate Office Building, Washington, DC.

DEAR SENATOR GORTON: Exports are the life blood of the Washington wheat industry. Approximately 85 percent of all Washington's wheat production finds it way into the export market. Wheat is the number one agricultural export commodity from our state, which results in a major contribution to our state's economy and a major supplier of employment. Due to the importance of wheat exports, I would like to ask your support for a continuation and strengthening of the Foreign Market Development Program (FMD) of the USDA.

Currently the FMD program is administered by the Foreign Agricultural Service (FAS), USDA, and as Congress has already stated, ''the FMD program, and the activities of individual foreign market development Cooperator organizations, have been among the most successful and cost-effective means to expand United States' agricultural exports.''

Unfortunately, in recent years the cooperator program has fallen victim to the intense competition within FAS for fewer and fewer discretionary dollars. The FAS, with direct responsibility over the operation and funding of the program, has requested cuts in the program arguing that the ''savings'' be used to fund certain FAS activities. For this reason, we are asking that you support a separate line item in the budget for the FMD program.

There is no question that the FMD program is one of the most successful joint government-private funded activities in existence. It is time to give FMD some sunlight and expose it to the annual budgetary process. We welcome the opportunity to tell its success stories during the budgetary debates, and, at the same time, protect it from the predatory measures FAS has employed. FAS is currently arguing against a special line item for FMD stating that it will inhibit flexibility in the program. The only flexibility that will be hurt by this measure is that FAS will no longer have access to the funds.

For the first few years on the new program, we ask that you support a minimum allocation of $40 million to the FMD program.

Thank you, in advance, for taking this issue under consideration. If you have any questions or need clarification on any issue concerning the request, please do not hesitate to contact me.

Sincerely,

JAMES R. WALESBY,
Chairman.

By Mr. MCCAIN (for himself, Mr. THOMPSON, Mr. KERRY, Mr. FEINGOLD, Mr. KENNEDY, and Mr. COATS):

S. 1376. A bill to terminate unnecessary and inequitable Federal corporate subsidies; to the Committee on Governmental Affairs.

THE CORPORATE SUBSIDY REVIEW REFORM AND TERMINATION COMMISSION ACT OF 1995

Mr. MCCAIN. Mr. President, the Federal Government operates numerous programs which provide direct payments, services and other benefits to various sectors of private industry. Some of these may serve a valuable purpose. Others, however, have long outlived their usefulness and have no place in a budget wherein we are asking Americans across the board to sacrifice on behalf of deficit reduction. Congress can no longer delay taking action to correct this inequity.

Recently, the CATO Institute and the Progressive Policy Institute reported that the Federal Government spends as much as $85 billion per year on programs like these. The Progressive Policy Institute has identified an additional $30 billion per year in inequitable tax loopholes. Many here in Congress have identified still other sources of waste. Together, these programs and policies have rightfully earned the moniker ''corporate pork.''

Yet even when these programs have been consistently determined to provide little or no benefit to the taxpayer, Congress has found it exceedingly difficult to reduce or eliminate them.

Pressure to maintain the status quo can come in many forms: institutional pressure to maintain that which is considered consistent with the interests of one party or another; political pressure to maintain programs or policies that are favorable to particular constituencies; and special interest pressure that may come to bear in a variety of shapes and forms when a member or small group of members seeks to modify these programs.

In order to override these elusive yet firmly entrenched political obstacles, this amendment establishes a one-time, nonpartisan commission—styled along the lines of the successful Base Realignment and Closure Commission [BRAC]—charged with reforming corporate subsidies.

When all is said and done, the BRAC's work will yield billions of dollars in savings by identifying the waste in just one department. The American public will get to enjoy the fruit of BRAC's labors largely due to the fact that the Commission was able to operate in an environment completely devoid of the pressures I have just described.

By applying similar methods to examine the programs and policies of the entire Federal Government, Congress may be able to build on this record of success, saving even more for the taxpayers of this nation.

The structure and operations of this commission may seem quite familiar to those who followed the BRAC proceedings. Commissioners will be nominated, appointed, and confirmed in the same manner. They will begin their work in January 1997 and report to the President by July. The Commission will work closely with each Federal agency to identify programs and tax provisions which are no longer necessary to serve the purpose for which they were intended. They will also identify programs which unduly benefit a narrow corporate interest rather than providing clear and convincing public benefits. And, most importantly, they will operate as a nonpartisan, apolitical body—using only the guidelines we will establish with this amendment—to guide their actions.

By the summer of 1997, the Commission will provide the President and Congress recommendations for termination or specific modification of programs that satisfy these conditions.

I would like to emphasize that this bill's goals do not include increasing revenues or creating new taxes; the Commission will simply formulate recommendations to reform those programs or policies that result in inequitable financial advantages for special interest groups. Every dollar spent on an unnecessary program or lost through in inequitable tax loophole is one more that is not available for much needed broad-based tax relief.

Congress' role in this process will, however, differ somewhat from that which it plays under BRAC. In this case, enacting the Commission's recommendations may result in changes to Federal statute. Therefore, the Congress will be required to take positive action; a vote to accept or reject proposed changes in law—unlike BRAC which was accepted as law by default through Congress' inaction. Finally, in order to ensure that this stage of the process does not present opportunities for parochial interests to influence the process, disciplined and expedited procedures, similar to those used for congressional consideration of the budget, will be utilized.

It is evident that Congress has as much difficulty closing loopholes as it does closing unnecessary military bases. I, like many of my colleagues, have come to this floor on numerous occasions to offer arguments against the type of waste generated by the programs this amendment seeks to eliminate or reform. Like many of my colleagues, I have also been unsuccessful in the vast majority of these efforts. Regrettably, time, experience, and the lessons of history leave me highly skeptical that a spontaneous awakening is likely to occur here in Congress.

Therefore, despite my own reservations about passing along congressional responsibilities to outside commissions, I feel it is clearly time to institute alternative solutions. The taxpayers of this Nation do not deserve to wait any longer for us to get this right. For this reason, I think the most—or perhaps the least—we can expect from this body is that we collectively recognize this problem, and employ a logical and fair technique to help us solve it. The Commission proposed by this legislation provides an expedient opportunity to institute positive, meaningful change.

I am pleased and encouraged by the bipartisan cosponsorship of this bill, and am hopeful that the divergence of philosophies represented by this group is an indication of wide support within Congress for this measure.

I urge all of my colleagues to examine this legislation, consider the circumstances that have caused it to come about, and join myself and the cosponsors of this bill in giving life to a solution. I can see no rational reason to oppose this bill, and more reasons than we have time to present to support it.

Stand up for the American taxpayer, stand up for change, and stand in defiance of business as usual.

Mr. THOMPSON. Mr. President, the Corporate Subsidy Termination Commission Act which my colleagues and I are introducing today will take us one step further on the road to fairness in Government.

This Congress has done a thorough and, I believe, admirable job of examining thousands of items of Government spending. We have identified areas of spending which should be reformed because they don't work as they should. And we have identified those which should be terminated because their existence cannot be justified. Some areas, such as the Federal welfare program, have been completely transformed. In each case we have asked several questions: Does this spending promote a useful public purpose? if so, can Government afford it? Should the effort and the money for it be transferred to the State or local level, where it is closer to those it is supposed to benefit?

As part of this process we have examined some programs whose primary beneficiaries are profitmaking enterprises—businesses of all sizes. In several such cases we have made progress on incremental reforms. For instance, the Senate passed an amendment to restrict the Marketing Promotion Program through which $110 million is spent annually to underwrite advertising by some of our largest corporations in foreign countries. In addition, the program under which the Government leases mineral rights on public lands to private companies is being reformed to

allow the Government to charge fees more in line with real values.

But these efforts and others that are ongoing are necessarily piecemeal. We can cut or restrict a corporate subsidy here, and leave another one untouched.

Last week, as part of an effort to highlight the issue of Federal subsidies to profitmaking enterprises, a bipartisan group of colleagues and I proposed ending 12 specific items of corporate pork. These items were chosen from Federal spending programs which are characterized by some element of corporate subsidization. They affected areas including public resource management, energy development, export promotion, local construction, utility loans, sale of public airwaves, tourism promotion, defense construction, and aircraft design. They were only a sampling of all such programs—the Cato Institute recently identified 129 items characterized as corporate pork. Senator MCCAIN offered this package as an amendment to the reconciliation bill, where it received the support of only a fourth of this Body.

Clearly this problem needs to be attacked in a different way.

The bill we are introducing today also has bipartisan support. It establishes a Corporate Subsidy Termination Commission which is charged with identifying programs or tax policies which provide unnecessary benefits or inequitable tax advantages to profitmaking enterprises. The Commission is fashioned after the BRAC Commission, with expedited legislation procedures similar to those provided for the Congressional Budget Resolution. I ask unanimous consent that an overview of this Corporate Subsidy Termination Commission be printed in the RECORD.

Why establish a Commission and a new process to do what we could conceivably do directly?

First, and most important, this Commission will do what we cannot do well: make an overall assessment of all programs, on both the spending and revenue sides, at one time. Over the years we have created an intricate, interwoven system of subsidies, taxes and exemptions. As a rural Tennessee utility which would be affected by the spending cuts we proposed last week pointed out to me, they are competing against other energy providers who receive subsidies in the form of tax breaks.

Second, our experience last week demonstrated that voting hit or miss on individual items is not going to be successful. One person's pork is another's prize. And no one wants to give up their prize program if there isn't shared sacrifice. With the commission approach, we will know that all programs have been examined and those which provide unjustified subsidies have been exposed.

Third, the members of the Commission will be appointed specifically for this purpose by the President and the Congress. They will possess the expertise, authority and stature necessary to do the job.

Fourth, the commission's recommendations will not be buried in the corner of a Federal agency or a congressional committee. While the President and Congress will be able to amend or reject the Commission's recommendations, they must address them.

Mr. President, we should require no less of profitmaking enterprises than we ask of all Americans. It is a matter of fairness and shared sacrifice. At a time when the national debate is focused on getting control of the budget, now and in the future, we cannot afford to provide corporate subsidies which undermine our efforts and which send the wrong message to American taxpayers.

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

CORPORATE SUBSIDY REVIEW, REFORM AND TERMINATION COMMISSION

''The Termination Commission will do for Corporate Pork what BRAC did for military infrastructure; identify and terminate excess and waste!''

The eight-members of the Commission would: be nominated by the President by January 31; have six members nominated by Congress; require Senate Confirmation for their appointments; and identify programs or tax policies that provide unnecessary benefits to for-profit enterprise, or serve the pecuniary interests of an enterprise but do not provide a public benefit, or; provide inequitable tax advantages to for-profit enterprise.

Federal Agencies would: Submit a list of programs which meet ''corporate pork'' definitional criteria no later than their budget request in January 1997; and submit recommendations to the commission for termination or reform of such programs.

Commission would: Review the agencies' recommendations, perform their own analysis; receive Comptroller General's analysis April 15, 1997; and submit a comprehensive reform proposal to the President by July 1, 1997.

President would: Have 15 days to review the Commission's recommendations; have the ability to suggest changes to the Commission's package; and forward the package directly if there are no changes.

Commission would: Have until August 15 to act upon the President's proposed changes; and have until August 15 to reject the President's changes.

President: Must forward Commission's revised proposal to Congress by September 1. Failure to do so terminates the entire process.

Congress will: Have 20 days for Committee review in both Houses; follow Budget Act expedited procedures; and have limited debate and amendments.

Mr. FEINGOLD. Mr. President, I am pleased to join with my friend, the senior Senator from Arizona [Mr. MCCAIN] in introducing this legislation. This is the most recent of several bipartisan reform efforts in which I have joined with Senator MCCAIN.

In many ways, this measure focuses on the downstream results of the other problems on which we have worked. Unjustified corporate subsidies, through direct appropriation or through the Tax Code, continue to prosper in part because of the influence of the special constituencies that benefit from those subsidies.

But, Mr. President, these subsidies also continue to exist through simple inattention, and the Corporate Subsidy Commission created by this legislation will bring some needed scrutiny to subsidies that, though they may have had some merit once, are no longer justified.

Targeting unjustified corporate subsidies would be appropriate at any time, but they are especially needed as we try to balance the Federal books. We absolutely must subject these kinds of corporate subsidies to tougher scrutiny than we have before.

As with the spending we provide to individuals, nonprofits, and State and local governments, if we are to eliminate the Federal budget deficit, we need to demand a higher level of justification for corporate programs.

There is no doubt that those of us who have cosponsored this legislation differ greatly on the total package of spending cuts we would propose to balance the Federal budget, as the reconciliation legislation this body passed dramatically demonstrates.

But we are all united in suggesting that much more needs to be done in the area of corporate subsidies.

This legislation continues the broader effort to reduce the deficit that I have made, and which began with an 82+ point plan to reduce the deficit I offered during my campaign for the U.S. Senate in 1992.

Many of the provisions of that plan eliminated or reduced corporate subsidies that are no longer justified, including both direct appropriations and tax expenditures.

Mr. President, I am particularly pleased that the Commission's mission will include the review of tax expenditures. They are a significant and growing portion of the Federal budget. In a June, 1994 report, the General Accounting Office, using data from the Joint Committee on Taxation, stated that spending for tax expenditures totaled about $400 billion in 1993.

As that report notes, spending done through tax expenditures moves immediately to the front of the budget line. Tax expenditures are, in effect, funded before the Federal Government pays for a single school lunch or an aircraft carrier because, under our budget process, tax expenditures must be funded as they are created, and with the exception of a few that must be reauthorized, they can grow in the absence of Congressional oversight.

Mr. President, some current tax expenditures are certainly justified. However, the system of tax expenditures itself lacks appropriate review and control mechanisms, and many individual expenditures are unjustified.

The result is a loss of overall economic efficiency for the Nation's economy, and scarce budget resources at a time when we are trying to balance the Federal books.

This Commission can provide needed review of inefficient and expensive corporate subsidies, requiring Congress to examine this spending in a timely manner.

By Mr. LUGAR:

S. 1377. A bill to provide authority for the assessment of cane sugar produced in the Everglades agricultural area of Florida, and for other purposes; to the Committee on Agriculture, Nutrition, and Forestry.

CANE SUGAR LEGISLATION

Mr. LUGAR. Mr. President, I am introducing legislation today to establish an Everglades restoration fund. The Everglades restoration fund would be financed by a 2-cent-per-pound assessment on all cane sugar produced in the Everglades agricultural area, Florida. It is estimated that a 2-cents-per-pound assessment would produce revenues of $70 million per year or approximately $350 million over a 5-year period. These funds will be used for land acquisition in the Everglades agricultural area.

An Everglades restoration plan has been devised in cooperation with the Corps of Engineers and the South Florida Water Management District. This plan calls for 131,000 acres of land within the southern Everglades agricultural area to be acquired at an estimated cost of $355 million, assuming an acre cost of $2,700 per acre.

I believe this plan is fair to Florida sugar producers. Because of the Federal sugar program, sugar prices in Florida are higher than they otherwise would be.

The sugar growers in the Everglades agricultural area are also beneficiaries of federally subsidized water projects which created agricultural lands in the Everglades agricultural area and which pump waters in and out of these lands as needed for sugar production. It is reasonable for these beneficiaries to help restore the unique ecosystem that these projects have degraded.

I am aware of the fact that the State of Florida has enacted the Everglades Forever Act, which imposes a tax of $25 to $35 per acre over 20 years to raise a total of $322 million to improve water quality.

Sugar producers have also agreed to take other steps designed to improve water quality. These steps include compliance with phosphorous discharge standards and the creation of stormwater treatment areas to help filter phosphorous discharges and for other purposes. However, these measures are primarily related to improving water quality in the Everglades. My proposal is designed to restore the ecosystem to a natural condition with regard to water flows.

No more important or complex ecosystem in need of restoration exists in our Nation than the Everglades in south Florida. It is a troubled system, on the brink of collapse, largely caused by federally supported drainage construction designed to promote and protect agriculture. This problem is exacerbated by the Federal sugar program. Failure to act will doom the Everglades to accelerated deterioration, a tragic and totally unacceptable fate.

Mr. President, I urge my colleagues to support this bill to restore the Everglades and to bring assurances to homeowners in Florida, to bring assurances to those who fear the end of the coral in the Keys, who are disturbed by the algae in the Florida Bay, and who, in fact, appreciate that a fine balance is created here between benefits given to the sugar producers and an assessment that will make all the difference in the restoration of the Everglades.

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

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

S. 1377

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

SEC. 1 EVERGLADES AGRICULTURAL AREA.

Section 206 of the Agricultural Act of 1949 (7 U.S.C. 1446g) is amended—

(a) in subsection (i)—

(1) in paragraph (1)—

(A) by redesignating subparagraph (B) as (C);

(B) in subparagraph (A) by striking ''and'' after the semicolon; and

(C) by inserting ''and'' after the semicolon in subparagraph (B); and

(D) by inserting a new subparagraph (C) that reads as follows:

''(C) in the case of marketings from production from the Everglades Agricultural Area of Florida as determined by the Secretary, in addition to assessments under subparagraph B, the sum of 2 cents per pound of raw cane sugar for each of the 1996 through 2000 fiscal years;''

(b) redesignating subsection (j) as subsection (k); and

(c) by inserting a new subsection (j) that reads as follows:

''(j) EVERGLADES AGRICULTURAL AREA ACCOUNT—

(1) IN GENERAL.—

''(A) ACCOUNT.—The Secretary shall establish an Everglades Agricultural Area Account as an account of the Commodity Credit Corporation.''

''(B) AREA.—The Secretary shall determine the extent of the Everglades Agricultural Area of Florida for the purposes of subsection (i)(1)(C) and subparagraph (C).''

''(C) COMMODITY CREDIT CORPORATION.—The funds collected from the assessment provided in subsection (i)(1)(C) shall be paid into the Everglades Agricultural Area Account of the Commodity Credit Corporation, and shall be available until expended.''

''(D) PURPOSES.—The Secretary is authorized and directed to transfer funds from the Everglades Agricultural Area Account to the South Florida Water Management District or other appropriate public entities for the purpose of purchasing agricultural lands in the Everglades Agricultural Area of Florida and for other related purposes.''

ADDITIONAL COSPONSORS

S. 284

At the request of Mr. DOLE, the names of the Senator from Missouri [Mr. ASHCROFT], the Senator from Iowa [Mr. GRASSLEY], and the Senator from Mississippi [Mr. LOTT] were added as cosponsors of S. 284, a bill to restore the term of patents, and for other purposes.

S. 356

At the request of Mr. SHELBY, the name of the Senator from Virginia [Mr. WARNER] was added as a cosponsor of S. 356, a bill to amend title 4, United States Code, to declare English as the official language of the Government of the United States.

S. 607

At the request of Mr. WARNER, the name of the Senator from South Carolina [Mr. THURMOND] was added as a cosponsor of S. 607, a bill to amend the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 to clarify the liability of certain recycling transactions, and for other purposes.

S. 881

At the request of Mr. GRASSLEY, the name of the Senator from Vermont [Mr. JEFFORDS] was added as a cosponsor of S. 881, a bill to amend the Internal Revenue Code of 1986 to clarify provisions relating to church pension benefit plans, to modify certain provisions relating to participants in such plans, to reduce the complexity of and to bring workable consistency to the applicable rules, to promote retirement savings and benefits, and for other purposes.

S. 1200

At the request of Ms. SNOWE, the name of the Senator from Connecticut [Mr. DODD] was added as a cosponsor of S. 1200, a bill to establish and implement efforts to eliminate restrictions on the enclaved people of Cyprus.

S. 1316

At the request of Mr. KEMPTHORNE, the name of the Senator from South Carolina [Mr. THURMOND] was added as a cosponsor of S. 1316, A bill to reauthorize and amend title XIV of the Public Health Service Act (commonly known as the Safe Drinking Water Act), and for other purposes.

SENATE CONCURRENT RESOLUTION 11

At the request of Ms. SNOWE, the name of the Senator from Delaware [Mr. BIDEN] was added as a cosponsor of Senate Concurrent Resolution 11, A concurrent resolution supporting a resolution to the long-standing dispute regarding Cyprus.

SENATE RESOLUTION 146

At the request of Mr. JOHNSTON, the names of the Senator from Michigan [Mr. LEVIN], the Senator from South Dakota [Mr. PRESSLER], and the Senator from Washington [Mrs. MURRAY] were added as cosponsors of Senate Resolution 146, A resolution designating the week beginning November 19, 1995, and the week beginning on November 24, 1996, as ''National Family Week,'' and for other purposes.

SENATE RESOLUTION 191—NATIONAL AMERICAN INDIAN HERITAGE MONTH

Mr. MCCAIN (for himself, Mr. BAUCUS, Mr. BENNETT, Mr. BINGAMAN, Mr. BRADLEY, Mr. BREAUX, Mr. BROWN, Mr. BRYAN, Mr. BURNS, Mr. CAMPBELL, Mr. CHAFEE, Mr. COCHRAN, Mr. COHEN, Mr. CONRAD, Mr. CRAIG, Mr. D'AMATO, Mr. DASCHLE, Mr. DODD, Mr. DOMENICI, Mr. DORGAN, Mr. EXON, Mr. FAIRCLOTH, Mr. FEINGOLD, Mrs. FEINSTEIN, Mr. GORTON, Mr. GRAHAM, Mr. HATCH, Mr. INHOFE, Mr. INOUYE, Mr. JEFFORDS, Mrs. KASSEBAUM, Mr. KEMPTHORNE, Mr. KENNEDY, Mr. KERRY, Mr. LAUTENBERG, Mr. LEVIN, Mr. LIEBERMAN, Ms. MIKULSKI, Ms. MOSELEY-BRAUN, Mrs. MURRAY, Mr. NICKLES, Mr. PELL, Mr. PRESSLER, Mr. REID, Mr. SARBANES, Mr. SIMON, Mr. SIMPSON, Mr. SPECTER, Mr. STEVENS, Mr. THOMAS, Mr. THURMOND, and Mr. WELLSTONE) submitted the following resolution; which was considered and agreed to:

S. RES. 191

Whereas American Indians were the original inhabitants of the land that now constitutes the United States of America;

Whereas American Indian governments developed the fundamental principles of freedom of speech and separation of powers in government, and these principles form the foundation of the United States Government today;

Whereas American Indian societies have exhibited a respect for the finiteness of natural resources through deep respect for the earth, and these values continue to be widely held today;

Whereas American Indian people have served with valor in all wars from the Revolutionary War to the conflict in the Persian Gulf, often in a percentage well above the percentage of American Indians in the population of the United States as a whole;

Whereas American Indians have made distinct and important contributions to America and the rest of the world in many fields, including agriculture, medicine, music, language, and art;

Whereas American Indians deserve to be recognized for their individual contributions to American society as artists, sculptors, musicians, authors, poets, artisans, scientists, and scholars;

Whereas a resolution and proclamation as requested in this resolution will encourage self-esteem, pride, and self-awareness in American Indians of all ages; and

Whereas November is traditionally the month when American Indians have harvested their crops and is generally a time of celebration and giving thanks: Now, therefore, be it

Resolved, That the Senate designates November 1995 as ''National American Indian Heritage Month'' and requests that the President issue a proclamation calling on Federal, State, and local governments, interested groups and organizations, and the people of the United States to observe the month with appropriate programs, ceremonies, and activities.

AMENDMENTS SUBMITTED

THE FOREIGN OPERATIONS, EXPORT FINANCING, AND RELATED PROGRAMS APPROPRIATIONS ACT, 1996 MIDDLE EAST PEACE FACILIATION ACT OF 1995

LEAHY (AND OTHERS) AMENDMENT NO. 3041

Mr. LEAHY (for himself, Mrs. KASSEBAUM, Mr. FEINGOLD, MS. SNOWE, Mr. SIMPSON, Ms. MIKULSKI, and Mr. HATFIELD) proposed an amendment to the bill (H.R. 1868) making appropriations for foreign operations, export financing, and related programs for the fiscal year ending September 30, 1996, and for other purposes; as follows:

In lieu of the matter proposed, insert the following: *''; Provided,* That in determining eligibility for assistance from funds appropriated to carry out section 104 of the Foreign Assistance Act of 1961, nongovernmental and multilateral organizations shall not be subjected to requirements more restrictive than the requirements applicable to foreign governments for such assistance: *Provided further,* That none of the funds made available under this Act may be used to lobby for or against abortion.''

MCCAIN (AND KERRY) AMENDMENT NO. 3042

Mr. MCCAIN (for himself and Mr. KERRY) proposed an amendment to the bill H.R. 1868, supra; as follows:

At the end of the pending amendment add the following:

SEC. . Notwithstanding any other provision of this Act, funds made available in this Act may be used for international narcotics control assistance under chapter 8 of part I of the Foreign Assistance Act of 1961, or crop substitution assistance, directly for the Government of Buma if the Secretary of State certifies to the appropriate congressional committees that any such programs are fully consistent with the United States human rights concerns in Burma and serve a vital United States national interest. The President shall include in each annual International Narcotics Control Strategy Report submitted under section 489(a) of the Foreign Assistance Act of 1961 (22 U.S.C. 2291h(a)) a description of the programs funded under this section.

NOTICES OF HEARINGS

SUBCOMMITTEE ON OVERSIGHT OF GOVERNMENT MANAGEMENT AND THE DISTRICT OF COLUMBIA

Mr. COHEN, Mr. President, I wish to announce that the Subcommittee on Oversight of Government Management and the District of Columbia, Committee on Governmental Affairs, will hold a hearing on Wednesday, November 8, 1995, at 9:30 a.m., in room 342 of the Dirksen Senate Office Building, on ''Oversight of Courthouse Construction Program.''

COMMITTEE ON SMALL BUSINESS

Mr. BOND. Mr. President, I wish to announce that the Senate Committee on Small Business will hold a joint hearing with the House Committee on Small Business regarding ''Railroad Consolidation: Small Business Concerns'' on Wednesday, November 8, 1995, at 2 p.m., in room 2123 Rayburn House Office Building.

For further information, please contact Keith Cole at 224-5175.

AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

Mr. LOTT. Mr. President, I ask unanimous consent that the Committee on Commerce, Science, and Transportation be allowed to meet during the Wednesday, November 1, 1995, session of the Senate for the purpose of conducting a hearing on S. 1356, the Ocean Shipping Reform Act of 1995.

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

COMMITTEE ON THE JUDICIARY

Mr. LOTT. Mr. President, I ask unanimous consent that the Committee on the Judiciary be authorized to meet during the session of the Senate on November 1, 1995, at 10 a.m. to hold a hearing on ''The Aftermath of Waco: Changes in Federal Law Enforcement.''

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

SELECT COMMITTEE ON INTELLIGENCE

Mr. LOTT. Mr. President, I ask unanimous consent that the Select Committee on Intelligence be authorized to meet during the session of the Senate on Wednesday, November 1, 1995, at 2 p.m. to hold a closed hearing on intelligence matters.

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

SUBCOMMITTEE ON CLEAR AIR, WETLANDS, PRIVATE PROPERTY, NUCLEAR SAFETY

Mr. LOTT. Mr. President. I ask unanimous consent that the Subcommittee on Clean Air, Wetlands, Private Property, and Nuclear Safety be granted permission to conduct a hearing Wednesday, November 1, at 9:30 a.m., hearing room (SD–406) on S. 851, the Wetlands Regulatory Reform Act of 1995.

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

SUBCOMMITTEE ON INVESTIGATIONS

Mr. LOTT. Mr. President. I ask unanimous consent that the Permanent Subcommittee on Investigations of the Committee on Governmental Affairs, be authorized to meet during the session of the Senate on Wednesday, November 1, 1995, to hold hearings on ''Global Proliferation of Weapons of Mass Destruction.''

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

ADDITIONAL STATEMENTS

RETURNING POWER TO THE STATES

● Mr. MCCAIN. Mr. President, as we are about to debate the appointment of conferees to the reconciliation bill, I

wanted to take this opportunity to address a relevant issue. Last Friday, the Senate passed landmark legislation to balance the budget within 7 years, and to restore power and trust in State and local government.

During consideration of that legislation, Senator GRAMM offered an amendment regarding whether the Federal Government would dictate to States that they provide health care to children and pregnant women.

I raise this issue because I am certain that this amendment and the vote will be subject to gross mischaracterization. The amendment, Mr. President, was not about whether poor children and pregnant women should receive health care services. We all agree that they should, as I'm quite certain does every Governor in this country.

The vote was about whether Congress, in its arrogance, is going to assume that Governors and State officials cannot be depended upon to protect their own constituents and, unless compelled to be compassionate by Congress, they would most certainly abandon the neediest in their States.

Mr. President, I categorically reject that Governors and State legislators care less about their people than Congress. That is why I voted for the Gramm amendment. We are returning power to the States because, to the detriment of our Nation, we have slowly abandoned Jefferson's time honored axiom that the Government closest to the people governs best.

In devolving power back to the States as we rightfully should, we must also devolve our trust. Members of Congress are not morally superior beings to State and local officials and it is time we stopped presuming that we are.●

TRIBUTE TO PETER ZUANICH, RETIRING PORT OF BELLINGHAM COMMISSIONER

● Mrs. MURRAY. Mr. President, it is with great pleasure that I rise today to pay tribute to Peter Zuanich, a man who has devoted 43 years of his life to serving as an elected commissioner of the Port of Bellingham, in my home State of Washington. His record of public service extends beyond his work as port commissioner; he has dedicated time and resources to building our community in so many other capacities.

During his tenure in this post, he has cultivated economic and trade relations both domestically and internationally. In particular, he has fostered economic relations between the states of Washington and Alaska. Under his leadership, the port was successful in its bid to become the southern ferry terminus for the Alaska Marine Highway System.

Throughout his entire career as commissioner, Mr. Zuanich did not spend any of the earnings he received. Instead, he invested them, believing they should eventually be spent on an important community project. He recently donated the entire amount—about $88,000—to a fund created to raise money for the construction of a local community swimming pool.

In addition to his many accomplishments as port commissioner, Mr. Zuanich has served as president of a variety of groups, including the board of directors of the Purse Seine Vessels Association, the executive board of the Commercial Fisherman's Inter-Insurance Agency, the Bellingham Jaycees, and the Washington Public Ports Association.

I admire the foresight Mr. Zuanich exhibited in his early involvement with the recycling industry. During the 1950's, he founded the first waste paper recycling facility in western Canada. His activism in this area has continued, through the establishment of recycling centers throughout our community, and I want to thank him for his efforts in this area.

He has been recognized in these professional and community involvements in many ways, winning the Bellingham Jaycees' Man of the Year Award, receiving the Master Mariner Award of the Propeller Club, accepting a Legislative Citation in 1993 from the Alaska State Legislature, and receiving a ''Citation of Merit'' award from the Washington Parks and Recreation Association.

Born in Bellingham, WA in 1916, he has worked tirelessly to promote the development of our community. Following his retirement, Mr. Zuanich will have more time to spend with his family, including his wife Marie and two sons, Robert and Peter, Jr.

I am proud to salute the leadership and dedication Mr. Zuanich has demonstrated throughout his life. Although he will be retiring on December 31, I am certain his record of selfless service will continue far into the years ahead. His hard work and philanthropy truly make him a role model for all. Mr. Zuanich, please accept my best wishes as you enter not only the conclusion of one of your careers, but the beginning of a new chapter of your life.●

STRIKER REPLACEMENT ISSUE

● Mr. NICKLES. Mr. President, I ask that the March 13, 1995, editorial from the Washington Post regarding President Clinton's Executive order prohibiting the use of permanent replacement workers during an economic strike if you do any business with the Federal Government be printed in the RECORD.

The editorial follows:

[From the Washington Post, Mar. 13, 1995]

THE STRIKER REPLACEMENT ISSUE

President Clinton and the filibustering Senate Democrats are wrong on the striker replacement issue. The Senate Republicans are right, and we hope a couple of Democrats can sooner or later be persuaded to switch sides. Then the filibuster can be broken.

The president has no particular history of commitment on this issue. The executive order he signed, disturbing and tilting settled labor law in labor's favor, was plainly an effort to propitiate a constituency that couldn't get its way through normal procedures. The resisting Senate Republicans think that in issuing the order, the president was trying to snatch what ought to be regarded as a legislative prerogative, and they are determined to take it back. If not on the current appropriations bill, you can expect them to do it on some other. In the long run the law seems unlikely to be changed; this is more a fight over symbols, the president who frustrated organized labor on other issues over the last two years trying now to look on the cheap like its friend.

The executive order would bar large federal contractors from hiring permanent replacements when workers strike over economic issues. That's the rule that labor had tried and failed to get Congress to apply to all employers. The unions argue that the ban has become necessary to protect what they depict as a threatened right to strike. But it isn't because of labor law that unions have lost membership and clout in recent years. Rather, it's because, in part by virtue of their own past actions, they find themselves in an increasingly weak competitive position in a world economy. The insulating change they seek in labor law would be much more likely over time to make that problem worse than to make it better.

The law is contradictory. The National labor Relations Act says strikers can't be fired; the Supreme Court has nonetheless ruled that they can be permanently replaced. The contradiction may be healthy. By leaving labor and management both at risk, the law gives each an incentive to agree. For most of modern labor history, management in fact has made little use of the replacement power, and labor hasn't much protested it.

The unions say that now that's changed. The replacement power has been used in a number of celebrated cases in recent years, and labor is doubtless right that in some of these cases it wasn't used as a last resort, but as a union-breaking device from the beginning. The problem is that situations also arise when strikers by their behavior forfeit the right of return and ought to be permanently replaced. This newspaper faced such a situation in dealing with one of its own unions in the 1970s. A ban on the hiring of permanent replacements goes too far. Rather than restore some lost balance in labor law, as its supporters suggest, it would throw the law out of balance and in the long run likely do great economic harm. Maybe there are some modest changes that can usefully be made in current law. But the president's order ought to be reversed. He should find some other way to pose as labor's champion.●

ZORA KRAMER BROWN'S ENERGETIC EXAMPLE

● Mr. HOLLINGS. Mr. President, I rise today to highlight the accomplishments of a Washington, DC, activist whom we should all emulate. If each American had 1 ounce of the intense commitment that Zora Kramer Brown brings to her mission of seeking real solutions to breast cancer, we would live in a stronger America.

Zora Brown, a native of Oklahoma City, OK, is founder and chairperson of Cancer Awareness Program Services [CAPS] and the Breast Cancer Resource Committee, both located in Washington, DC. With CAPS, which

was organized in 1992, Ms. Brown started a comprehensive program to build cancer awareness and education efforts among women. Three years earlier, she started the Breast Cancer Resource Committee to cut breast cancer mortality rates in half among African-Americans by the year 2000.

Ms. Brown also has been appointed to the National Cancer Advisory Board of the National Cancer Institute. Last year in my hometown, she brought unbounded energy to Charleston as she emceed the First Annual Race for the Cure. More importantly, she now is a member of the board of the Hollings Cancer Center at the Medical University of South Carolina where her leadership and enthusiasm is contagious.

On October 27, 1995, McDonald's recognized Ms. Brown's efforts in a large ad featuring ''Portraits of the City.'' Her story of hard work and zeal shows how one person can make a difference in improving the lives of Americans. She is most deserving of this honor and the dozens of others that have been bestowed on her.

Mr. President, we need more Zora Browns across the Nation. I hope as Americans recognize how successful Zora has been, we all will be motivated to follow in her footsteps.●

REUBEN COHEN

● Ms. SNOWE. Mr. President, last week I submitted for the RECORD my personal statement concerning Reuben Cohen—the father of my friend and colleague from Maine, Senator BILL COHEN—who passed away in Bangor, ME, earlier this month.

Today, I would like to submit for the RECORD several items that appeared in the Bangor Daily News following Ruby's death.

The first is an article about Ruby's life that appeared 2 days after his death.

The second is an editorial that pays tribute to Ruby's well-known and admired work ethic.

And the third is an article about funeral services that were held in Bangor which contains many appropriate statements from family and friends about this remarkable man.

I believe these items remember Ruby as he was—someone who brought a lot of life into his community, and a lot of love into his family:

The material follows:

[From the Bangor Daily News, Oct. 11, 1995]

RUBY COHEN DIES IN BANGOR

SENATOR'S FATHER RAN LOCAL BAKERY FOR NEARLY 70 YEARS

(By John Ripley)

BANGOR.—A few years ago, Oklahoma Sen. David Boren needed to talk with Maine Sen. William Cohen, his colleague on the Intelligence Committee who was home in Bangor. So he called Reuben Cohen, the senator's father.

''Well, if you're chairman of the Intelligence Committee,'' Cohen barked into the telephone, ''you should be able to find him yourself.''

And he hung up.

The story is vintage Cohen.

Cohen—baker, husband, father of three children—died late Monday. He was 86.

Reuben ''Ruby'' Cohen is survived by his wife of 58 years, Clara; two sons, William and Robert; a daughter, Marlene Beckwith; and seven grandchildren.

Those who knew Ruby Cohen agree that he died the way he would have wanted: He was found at 9:45 p.m. by a worker at his store, The Bangor Rye Bread Co., where he had been making the next day's batch of rolls and bagels.

To many, Cohen is known best as the father of Bill, now the state's senior U.S. senator. But as proud as he was of his eldest son and all of his children, Cohen enjoyed a reputation of his own as a man of ornery independence, who wasn't above a little mischief every now and then.

In 1974, when the U.S. House of Representatives was deciding whether to impeach President Nixon for his Watergate shenanigans, the press followed then-Rep. William Cohen to Maine, dogging him about how he would vote.

The young congressman shrugged off the questions with ''no comment.'' Then, from the rear of the pack, came a gravelly voice.

''Billy says he's guilty as hell!''

It was Ruby Cohen.

He was a throwback to the days of smoky pool halls, Saturday night fights and dollar haircuts, when Bangor was a cauldron of ethnic neighborhoods and when friends were friends for life. Like many men of his generation, Cohen was held in awe by those who watched him work 18 hours a day, six days a week, for nearly 70 years.

Hunched over and with hands like shoe leather at the end of his beefy baker's forearms, Cohen would start his day as everyone else's was ending.

Work would begin around 8:30 p.m., when he would prepare the dough for the bulkie rolls, rye bread, French bread, Italian sandwich rolls, and bagels. Surrounded by 100-pound sacks of flour, sugar and corn meal, he would work quietly through the night, guided by recipes long ago committed to memory.

Early the next morning, he would pile overflowing paper grocery bags into the back of his battered station wagon and head out on his rounds. He would shuffle into a client's store or restaurant, drop off his goods, occasionally sit down for a quick cup of piping-hot coffee, and then be on his way.

''I guess you could say he worked to live and lived to work,'' Sen. Cohen said Tuesday after flying home from Washington, D.C. ''He wanted to work until he died, and he did.''

With little prodding, Cohen could be lured into conversation, treating everyone to his unhesitating opinions on everything from the big bang theory to Celtics basketball to Workers' Compensation.

Despite the ravages of age and occasional illness, Cohen could never be kept from his work.

In April 1979, a train derailed near Cohen's shop on Hancock Street, leading police to block off the neighborhood. Cohen somehow was able to sneak in, grab some rolls, and head out as always.

When his son was sworn into the U.S. Senate, Cohen grudgingly flew down to Washington, watched the ceremony, then returned to work.

''That's the only time he ever went down,'' Sen. Cohen said.

Even on Tuesday, as family and friends grieved Cohen's passing, the rolls and breads were delivered.

''When you think of Bangor, you think of the standpipe, the Paul Bunyan statue, and Ruby Cohen,'' said U.S. Rep. John Baldaccis, a lifelong friend.

The Baldaccis, as with a handful of other families in town, go back more than half a century with the Cohens. Grandfathers knew grandfathers, fathers knew fathers, some know sons.

A lover of jazz, Cohen was known in his younger years as a sharp dresser who would dance the night away at the old Chateau ballroom, now the site of a renovation project across from City Hall. Though not a large man, he could be fearless—he once decked a man who later became a bodyguard for a California mobster.

It was at a dance hall that he met Clara, then a 16-year-old Irish girl. They courted, and then married in 1937—not a small thing for a Jewish man in those days.

''I guess he wasn't too much concerned about what anyone thought about it,'' Sen. Cohen said.

To Cohen, life was about devotion to work, family and friends.

For years, he and Clara would eat dinner at different restaurants with Abe and Frieda Miller, his childhood friends.

Like his own son, Bobby, Ruby followed in his father's flour-dusted footsteps. Born Jan. 8, 1909, in New York City, Ruby was essentially raised in Bangor, where his father, who emigrated from Russia, owned a bakery. As with Bangor Rye Bread, the New York Model Bakery was a family affair, where everyone chipped in to bake bread in an old, coal-fired oven.

''It's a family of hard workers,'' Frieda Miller said.

Cohen expected the same of his own children.

Bobby still works at the store, Marlene is married to another baker, and Bill is known to lend a hand when he's in town from Washington.

''Billy works here once in a while . . . when he's campaigning,'' Ruby once joked.

Sen. Cohen often tells of scoring 43 points in a high school basketball game at Bangor Auditorium. Expecting praise from his father, Ruby instead replied, ''If you hadn't missed those two foul shots, you'd've had 45!''

Over the years, the Cohen bakeries could be found on Essex Street and then on Hancock, not far from the current location. Through it all—the Depression, World War II, urban renewal, generations come and gone—Cohen was a fixture in the Queen City.

''I was bred on his bread,'' Bangor restaurateur Sonny Miller said Tuesday. ''Ruby was just one of a kind—just a real fine gentleman.''

At his father's 80th birthday party in 1989, Sen. Cohen arranged for video messages from President Reagan and President-elect George Bush, among other dignitaries. As much as he appreciated the attention, Cohen was a man who thought as little of pretension and ego as he did of frozen bagels.

''If you come out to Los Angeles and see the Dodgers,'' manager Tommy Lasorda said in a telephone call that day, ''I'd like to meet you.''

''I hope you can,'' Cohen replied.

If Cohen's work ethic and wit were the stuff of reputation, his driving habits were legend.

''There's an old Bangor saying that you don't know Ruby Cohen until he hits your car,'' U.S. Sen. Olympia Snowe once joked.

Cohen himself once told of being stopped by a Bangor police officer, who didn't know that the baker's old Ford station wagon could be found traveling the city streets at all hours of night and day.

Suspecting that Cohen might have been drinking, the cop asked the octogenarian to recite the alphabet. Cohen did—backward.

Only in recent months, as his health began to slip, did Cohen relent and allow someone else to drive on the morning rounds.

With their father's passing, Bobby and the others hope to follow tradition and keep the bakery open, Sen. Cohen said.

But Bangor, he said, has tasted the last of Ruby Cohen's rye bread.

''That was something that went with him.''

RUBY COHEN

For the high and mighty, the most dangerous man in Bangor was the baker at the wheel of the station wagon.

Making morning rounds with rolls and rye loaves, Ruby Cohen could cut to the core on issues and people, and often did. His insight, like his skill at the oven, was sharpened by constant use.

There is a fearlessness, a strength, a virtue that comes from devoting 18 hours a day, six days a week to labor. It's a license to speak your mind, with candor. It's courage that comes from character.

Cohen's outspokenness shocked the eavesdropper at the corner market. The man from the station wagon, arms wrapped around bags of bulkie rolls, would walk in at midconservation and unload on the counter and on a program or politician. Those close to him respected his power, and were in awe of it. One of his sons, Sen. William Cohen, a man not easily flustered or impressed, was visibly on guard in the presence of his father. Playing straight man to Ruby was a lifelong learning experience that involved some pain.

Beneath the crust, Cohen was a man of wit and profound work ethic. His weakness as a role model for finding purpose and dignity in labor is that in its pursuit he set an impossible pace. Few of his own generation could keep up. To his last day on the job he loved, he was an exemplar of the American dream.

Seventy years a baker, 58 years a husband and father of three, Cohen was the epitome of the individual who became a local institution. He could humble the powerful, charm the casual acquaintance and feed the hungry with the world's most perfect loaf of rye bread.

He helped give his city its character. He is missed.

RUBY'S FRIENDS OFFER FAREWELL

FUNERAL RECALLS A BANGOR LEGEND

(By John Ripley)

BANGOR.—Bangor bid a bittersweet farewell Thursday to the wryest Reuben in town.

Reuben Cohen, known to presidents and plebes alike as ''Ruby,'' died Monday night at the place he loved most, the small Bangor Rye Bread Co. bakery he had owned since 1929. He was 86.

''In the Jewish view, if this was his time, God allowed death to be a soft kiss rather than a prolonged suffering,'' Rabbi Joseph Schonberger said during Cohen's funeral Thursday afternoon.

Outside Bangor, Cohen was known best as the father of U.S. Sen. William S. Cohen. But within this small community, particularly within the dwindling company of his own generation, Cohen was cherished for his well-honed wit and his iron constitution.

On an Indian summer day, the Beth Israel Synagogue was filled with Ruby's people—Jews, gentiles, blacks, whites, the young, the old, the famous and the anonymous.

And with so many funerals for colorful people, those who attended Cohen's service came to weep, but left laughing, grateful to have shared a slice of such an encompassing life.

Outwardly, Cohen was a simple baker who loved dancing and the saxophone, his work and his family. But as Sen. Cohen pointed out, his father also was one to dismantle barriers. He broke with his faith to marry his Irish sweetheart, Clara, and he was well informed on the issues of the day.

The essence of Cohen, Schonberger said, was the essence of friendship itself; breaking bread together is older than the ages.

His work ethic was legendary—18 hours a day, six days a week, for nearly 70 years. When his son and fellow baker, Bobby, finally decided to take a vacation after 30 years at Bangor Rye, Cohen asked, ''What's he going to do with a week off?'' Sen. Cohen recalled.

But as the world about him whizzed by, Ruby Cohen kept true to his core; he was, Sen Cohen said, a man who knew no envy.

''He was an innocent in a world grown selfish and cynical,'' Sen. Cohen said in a eulogy marked by moving poetry and knee-slapping Rubyisms.

At times, Sen. Cohen pointed out, his father sometimes showed a knack for being a little too innocent.

If a person expressed pride for losing 20 pounds, Cohen thought nothing of suggesting a trim of 10 or 15 more. He once loudly complained that Boston Celtics games were fixed, even as coach Red Auerbach sat nearby, redder than ever.

And though an honest man, Cohen ''cheated the law in the little ways,'' Sen. Cohen said.

He would envelop his eldest son in a large wool overcoat and sneak him into basketball games at the old Bangor Auditorium. Or, he might simply mingle with the out-going crowd and walk in backward.

If one of Bangor's finest stopped him for erratic driving—an occurence about as common as sunrises—Cohen would admit to having two drinks. After the cop had set up a sobriety test, Cohen would come clean: ''I had two, two cups of coffee.''

''I loved him for his daring, and his wanting me to be with him,'' said Sen. Cohen.

His father's irreverence often was best expressed in his relished role as devil's advocate: alimony was ''all-the-money''; Jesus knew where the rocks were when he walked on water; and Moses probably waited for a drought before crossing the Red Sea.

Through it all, Sen. Cohen said, his father dedicated his life to two loves: his family and his work. When the cost of flour and yeast rose over the years, the increases rarely were reflected in the prices of Cohen's products.

''His concern was always for the welfare of his customers,'' Sen. Cohen said, suggesting that some of the customers could afford a price increase or two. ''And I would say, 'Sonny Miller is doing OK. Bill Zoidas is doing fine. Doug Brown, don't cry for him.' ''

The future of some of these products, known to at least three generations of Bangor residents, was buried with Cohen on Thursday afternoon.

Since Cohen's death Monday night, Rabbi Schonberger joked, the oft-heard question has been, ''Did he make the sourdough for the rye bread before he died?''●

DIAMOND JUBILEE ANNIVERSARY OF THE TABERNACLE MISSIONARY BAPTIST CHURCH

● Mr. LEVIN. Mr. President, it is a distinct honor for me to acknowledge this milestone celebration—the Diamond Jubilee Anniversary of the Tabernacle Missionary Baptist Church in Detroit, MI, pastored by the Reverend Dr. Frederick G. Sampson.

The Tabernacle Missionary Baptist Church has been a cornerstone in Detroit for years having grown from its roots in Georgia and Mississippi. Not only did this church persevere in the face of change and hard times during the Depression years, but it has thrived and grown to become one of the largest and most prestigious churches in this great city.

I can only believe that the kind of growth and success many of its members have witnessed is a testament to the solid and unshakable faith of Mr. and Mrs. Alonzo Johnson who are known as The Founding Family and all those who followed in the belief of their mission which is to provide the community with spiritual guidance.

I thank Dr. Sampson, his predecessors, his ministers, and all those who have accepted the challenge of providing guidance and spiritual education to this community by establishing such services as adult education classes, child day care, meals on wheels, housing, and other community orientated programs. Your adoption and mentoring programs at neighborhood schools are commendable. They display the importance and positive impact that you have in the community. For we know that wisdom, knowledge, understanding, and all the academic education that anyone of us can muster is useless unless there is a solid moral foundation, which is what you have provided for the past 75 years.

I ask my colleagues to extend your sincerest congratulations to the entire Tabernacle Missionary Baptist Church family, and I extend my warmest wishes to them for another 75 years of success and service.●

CASINOS NOT SURE BET, OTHER STATES DISCOVER

● Mr. LUGAR. Mr. President, I ask unanimous consent that the attached article be printed in the RECORD.

The article follows:

[From the Washington Post, Aug. 6, 1995]

CASINOS NOT A SURE BET, OTHER STATES DISCOVER—ANALYSTS SAY AREA OFFICIALS COULD LEARN FROM SUCCESSES AND FAILURES ELSEWHERE

(By Charles Babington)

Anchored on the Mississippi River near downtown New Orleans are two massive, double-decker casino boats with the evocative names Crescent City Queen and Grand Palais.

There's nothing grand about them now, however. Both boats closed their doors last month, barely nine weeks after opening amid much hoopla and hope. The closings, forced by lower-than-expected revenue, left 1,800 people jobless and the City of New Orleans jockeying with other creditors to collect $3 million in unpaid taxes and fees.

The turn of events has been sobering—even on Bourbon Street—and may give pause to officials in Maryland, Virginia, the District and elsewhere who are contemplating legalizing casinos. Although some southern and midwestern towns are content with their riverboat revenue, others are finding that the reality does not always match the promise.

That's especially true in New Orleans, a city that bears watching by the likes of Baltimore and Washington, according to several analysts. Aside from the loss of the two riverboat casinos, New Orleans's ambitious land-based casino has needed only a third of its projected revenue since opening in May.

The picture is brighter in the Midwest. One reason, however, is that lawmakers quickly

relaxed regulations that had made casinos politically palatable in the first place. In Davenport, Iowa, a riverboat casino netted $14 million last year after legislators increased its operating hours and dropped a rule that had limited each gambler's loss to $200 a visit.

Those changes lured thousands of gamblers from a nearby casino boat in Rock Island, Ill. As a result, more than 200 people lost jobs there, and Rock Island now receives only a fraction of the $4 million in casino tax revenue that it got two years ago.

In Missouri, six riverboat casinos poured $79 million into state and local tax coffers last year. Again, looser regulations helped. Slot machines—initially banned in Missouri—were added to the table games.

A political cloud is looming, however. Missouri's attorney general alleges that the state House speaker broke the law by accepting thousands of dollars from casino companies and trying to influence licensing decisions. A grand jury is investigating.

Against this national backdrop, Maryland is preparing for a legislative decision on casinos this winter, a D.C. group has asked the elections board to place a casino initiative on the District's 1996 ballot, and an industry-backed coalition is still pushing for riverboat casinos in Virginia after three consecutive legislative setbacks.

Industry analysis conclude that under the right circumstances, casinos can boost local economies and government coffers, sometimes dramatically. But they say casinos are not a panacea for politicians hoping to revitalize a failing city or finance a state government while cutting taxes.

''Although casinos are spreading to more states, they have limited potential as a source of tax revenue,'' said Steven D. Gold, director of the Center for the Study of the States, in Albany, N.Y. Casinos take some money that otherwise would be spent on state lotteries or taxable goods and services, he said. Moreover, the growing number of casinos nationwide will result in smaller potential for new ones.

''There will never be another Nevada,'' Gold wrote recently. Nor, experts say, will there be another Atlantic City, where a dozen large casinos attract bus loads of betters to an otherwise blighted town.

Since 1990, six midwestern and southern states have legalized commercial, non-Indian casinos. (Federally recognized Indian tribes can operate casinos without state approval or tax assessments, and the casinos are highly successful in Connecticut and elsewhere.)

The six states are the guinea pigs now being scrutinized by cities and states trying to decide whether casinos are a good public bet. Among the groups conducting inquires are a government-appointed task force in Maryland and the Greater Washington Board of Trade. Casino companies are keen on the Washington area because it would help them crack the untapped mid-Atlantic region.

In Maryland, proposals range from a few small casinos, possibly at horse-racing tracks or in mountain counties, to large betting palaces in downtown Baltimore and the Port-America site in Prince George's County, near the Woodrow Wilson Bridge. If Baltimore and the D.C. suburbs are the ultimate targets, several analysis say, then New Orleans might be the most analogous site for scrutiny. Like Baltimore and the District, it is a city with a well established tourist trade but serious problems of crime and middle-class flight.

In 1991 and 1992, when Louisiana legislators approved 15 floating casinos throughout the state and one large land-based casino in New Orleans, boosters said gambling would be a sure-fire winner.

In the last four months, however, three of New Orlean's five floating casinos have closed, eliminating the jobs of hundreds of people who thought the boats would bring them a better life. Meanwhile, Harrah's temporary land-based casino has earned about $12 million a month, far short of the $33 million that was projected. The company is building a mammoth, permanent casino that officials hope will draw more gamblers when it opens next summer in the heart of the touristy French Quarter.

Some critics say the setbacks are the inevitable result of Louisiana's greed and haste in approving casinos, a process that enriched several friends of the high-stakes gambling governor, Edwin Edwards.

''It's the same scam going on worldwide'', said New Orleans lawyer C.B. Forgotson, Jr.

Forgotson said casino companies promise the moon without conducting realistic studies of who will come to gamble. Eventually, he said, ''they find out the only people coming to casinos are locals. So then you are cannibalizing your local businesses. . . . The same thing is going to happen in Detroit and Baltimore.''

Other analysts, however, say New Orleans is temporarily suffering from foolish decisions that other states can avoid.

''The root of the problem is that the wrong people were licensed, and they were licensed for political reasons,'' said Larry Pearson, publisher of the New Orleans-based Riverboat Gaming Report. He noted that river boat casinos in other parts of Louisiana are doing well.

Only a few states have been willing to try a non-Indian, land-based casino. In Mississippi and the four midwestern states with casinos, the facilities must be on boats, even though some never leave the dock.

Many analysis say ''riverboat gambling'' is a political ploy to ease the worries of some voters who associate land-based casinos with Las Vega's tackiness and Atlantic City's grit. ''State legislators think that a little cruise with a paddle wheel somehow makes it not gambling,'' said Brian Ford, a Philadelphia-based casino adviser for the accounting firm Ernst & Young.

Some analysts argue that if Washington and Baltimore want casinos, they should build big Vegas-like facilities that could lure tourists and large conventions.

''Scattering some riverboats around the Washington-Baltimore area would be a disaster,'' said Hunter Barrier, director of the Alexandria-based Gaming and Economic Development Institute. Most tourists would ignore such facilities, he said, ''so revenues will come from local residents. And that money would come from restaurants, theaters and other local businesses.''

It is just that scenario that has prompted Maryland's restaurant and thoroughbred racing industries to unite against casinos. They say casinos typically support bettors with cheap food and a fast-paced array of slot machines and card game that make horse races seem poky.

''Casinos would have a devastating impact on our industry,'' said Marcia Harris, of the Restaurant Association of Maryland.

Despite opposition to casinos from racing and restaurant interests, politicians in Maryland and elsewhere are tempted for a simple reason. Tax rates on casino earnings are typically about 20 percent, four times the level of Maryland's 5 percent sales tax. If a resident spends $100 in a casino rather than in a clothing store, the store suffers, but the state receives $20 rather than $5.

Barrier said most governments that are contemplating casinos focus on three concerns: crime, compulsive gambling and ''product substitution,'' or the losses to non-casino businesses when their customers gamble.

''I've come to the conclusion that crime is not a problem,'' Barrier said, an opinion supported by several studies and interviews with police officials in towns with riverboat casinos. But problem gambling, he said, is ''something that has to be looked at real carefully.''

Problem gambling is hard to measure, authorities say, and casino supporters note that most Americans already have ample opportunities to bet on lotteries and other ventures. However, a 1994 study of legalized gambling, funded by the Aspen Institute, a D.C. think tank, and the Ford Foundation, concluded: ''There is a direct increase in the numbers of people with pathological gambling problems as a result of increases in legalization.''

As for product substitution, a debate rages. Casino supporters say everyone in a community benefits if casinos hire new workers, attract tourist dollars and contribute to higher tax revenue.

There's not much hard data on the subject. In South Dakota, where Indian casinos operate, a 1991 state study found no appreciable drop in overall taxable retail sales. However, there were ''significant declines for selected activities such as clothing stores, recreation services, business services, auto dealers and service stations.''

When casinos open, ''existing vendors lose,'' said Jeff Finkle, executive director of the Washington-based National Council of Urban Economic Development. Nonetheless, he predicts that Maryland and Virginia officials will find it hard to withstand the lure of casino revenue, especially if Pennsylvania, West Virginia or Delaware threaten to strike first.

''Somebody in this area is going to do it,'' Finkle told a Greater Washington Board of Trade task force last week. ''It is inevitable, and when it happens it will hurt D.C.'' unless a revenue-sharing agreement is reached.●

THE PROFESSIONAL BOXING SAFETY ACT

● Mr. ROTH. Mr. President, the Senate's passage of the Professional Boxing Safety Act represents the culmination of nearly 4 years of working to make professional boxing a safer sport for the young men who choose to enter the ring. In large part, these efforts owe a great deal to a boxer from my home State of Delaware, whose misfortune and subsequent hard work made a lot of this possible. That boxer is Dave Tiberi and I believe that both the Senate and the American public owe a debt of gratitude to Dave for the legislation we have adopted.

On February 8, 1992, in a world title fight, Dave Tiberi lost a controversial split decision in Atlantic City to the International Boxing Federation's middleweight champion, James Toney. The ABC announcer described it as ''the most disgusting decision I have ever seen.'' As a result of that fight, I directed that the Permanent Subcommittee on Investigations undertake a comprehensive investigation of professional boxing, the first in the Senate in more than 30 years. Unfortunately, that investigation found that the sport's problems remained much as Senator Kefauver found them to be three decades earlier.

First and foremost among all the problems facing the sport today, none is more important that protecting the

health and safety of professional boxers. We work hard to protect our amateur boxers and take great pride in their accomplishments in the Olympics. Yet, when these and other young men step into the professional ranks, we deny them even the most basic health and safety protections such as minimum uniform national standards. Professional boxers are faced with a patchwork system of health and safety regulations that vary State by State, both by rule and enforcement.

Along with my colleague, Senator DORGAN, I have worked to ensure that the legislation we have adopted does include minimum uniform national health and safety standards. This will ensure that every professional boxing match in the United States is conducted under these standards. Every professional boxer will know that a physician must be at ringside; that an ambulance must be available; and that promoters must provide medical insurance. I commend Senator MCCAIN and Senator BRYAN, the sponsors of S. 187, for including these health and safety protections in this legislation.

Despite numerous lucrative offers, Dave Tiberi has never fought again. Instead, he has dedicated his efforts to reforming boxing and working with young people in Delaware. I believe that, in large part, without Dave Tiberi's work, we would not have passed this boxing reform legislation.

Professional boxing is important not only to its millions of fans, but also because the sport creates opportunities for many young men who have few opportunities. We owe these young men a system outside the ring that works as hard to protect them as they do inside the ring. That is why I have worked to reform professional boxing and I commend my colleagues for adopting this important legislation.●

THE PROFESSIONAL BOXING SAFETY ACT

● Mr. MCCAIN. Mr. President, I am very pleased the Senate passed S. 187, the Professional Boxing Safety Act, last night. This bill will make professional boxing a safer and better sport, and serve to protect the athletes who sustain this industry with their skill, dedication, and courage.

This legislation is the product of over 2 years of consultation with dozens of State boxing officials, professional boxers, and concerned industry members. S. 187 is an effective and practical measure that will strengthen and expand the health and safety precautions to protect the welfare of professional boxers. It will also go a long way toward enhancing the integrity of the sport.

I am deeply grateful for the strong support that Senator RICHARD BRYAN of Nevada has lent to this effort. As prime cosponsor of S. 187 and as a Senator representing America's premier boxing State, Senator BRYAN's assistance on this issue has been vital to its progress.

I would also like to thank Senators PRESSLER and Senator ROTH for cosponsoring this bill. Chairman PRESSLER helped move S. 187 through the Commerce Committee, and Senator ROTH has been a leader in bringing the issue of boxing reform before the Senate. Senator ROTH and Senator DORGAN helped strengthen the bill with additional health and safety provisions, as well.

I would like to speak for a moment on why the passage of boxing legislation is an important and necessary step for the Senate to take. Aptly described as ''the Red Light District of Sports'' some 70 years ago, professional boxing has continued to be an industry rife with controversy and scandal.

I have been an avid fan of boxing since I was a teenager, and I look back fondly on my days of painful mediocrity as a boxer at the U.S. Naval Academy. I idolized Sugar Ray Robinson, and have closely followed the many great champions and challengers who have followed in his wake. At its best, professional boxing can be a riveting and honorable contest between athletes.

Unfortunately, this standard of honorable competition is often ignored with respect to boxing in America today. Boxing continues to be corrupted by woefully inadequate safety precautions, fraudulent mismatches, and unethical business practices. The boxing industry has been justifiably tarnished in the public's eye due to individuals whose profit motives consistently outweigh their conscience.

Instead of the health and welfare of each boxer being paramount, many professional boxers are treated as sacrificial workhorses whose long-term interests do not count. This is especially true for the unknown club fighters who are the backbone of the sport. They live far out of the glare of the media spotlight, and box because it is the only way they know to make a living. A majority of professional boxers never make more than a few hundred dollars per bout during their entire careers.

Many boxers are routinely subjected to excessive punishment and injury in poorly supervised events. These bootleg shows feature dangerous mismatches and few if any health or safety precautions. Instead of being allowed to heal during a mandatory recuperation period, injured boxers are often lured to another State to avoid the suspension. Finally, when they are too old or debilitated to even attempt to compete, journeymen boxers are quickly dismissed from the sport.

There is no pension or medical assistance awaiting most boxers once they hang up their gloves. Indeed, their retirement often consists of nothing more than a steady and irreversible decline of their body and mind. This sad fate has faced literally thousands of boxers in America, and my overriding objective in introducing S. 187 is to prevent it from happening to future generations of boxers.

There are two major reasons these abuses have not been curbed. The first is the absence of a private governing body in the industry to mandate proper safety regulations and ethical guidelines. Second, the State-by-State nature of boxing regulation in America allows promoters to hold unsafe boxing shows in States with weak or nonexistent boxing regulations.

The Professional Boxing Safety Act will end this disturbing situation in an efficient and nonobtrusive manner. S. 187 will achieve the single most important step to make boxing safer: requiring State boxing officials to responsibly evaluate and supervise every professional boxing event held in the United States. Public oversight by State officials is absolutely essential to protect the health and safety of boxers.

We simply cannot allow the business interests which dominate the boxing industry to sanction and supervise events which they themselves organize and promote. The final authority for the content and conduct of each boxing event must rest with State athletic officials—not promoters or sanctioning bodies. State boxing officials are responsible for protecting both the welfare of the boxers and serving the public's interest, and S. 187 will greatly assist them in this important work.

Let me briefly describe the major provisions of this bill. First, all boxing events must be reviewed and officially approved by State boxing commissioners. If a State does not have a boxing commission—and currently six States in the United States do not—commissioners from a neighboring State must be brought in to supervise the event at the expense of the promoter.

Second, each boxer competing in the United States will receive an identification card which will be tied into the private boxing registries which serve the industry. This will assist State commissioners in evaluating the career record and medical condition of each boxer coming to their State to compete.

Furthermore, S. 187 requires all commissioners and promoters to honor the medical suspensions of boxers that have been ordered by other State commissions. This means no boxer can compete while suspended due to a recent knockout, injury, or need for a medical procedure. Commissioners will also be required to promptly share the results of the boxing shows they supervise with commissioners from other States.

Several additional health and safety provisions were added to S. 187 before it was passed by the full Senate. Licensed physicians must be continuously present at ringside for all boxing events, and an ambulance service must either be present at the site or have been notified of the event. Promoters are required to provide medical insurance for each boxer, as well. The

amount required will be left up to the discretion of each State.

These reasonable measures are already required by most State commissions, but establishing them as national standards will protect those boxers competing in less carefully regulated jurisdictions.

The U.S. attorneys in each State will enforce S. 187. The bill will empower U.S. attorneys to seek a temporary or permanent injunction against individuals violating this act. This will bolster State commissioners to resist the intimidation that results in dangerous and fraudulent professional boxing events.

Let me clearly emphasize what this legislation does not do. Unlike other boxing reform proposals that have been introduced in the Congress over the last decade, S. 187 requires no new Federal or State tax dollars; establishes no Federal boxing bureaucracy; and imposes no burdensome regulations upon State officials.

I am very pleased that S. 187 has received virtually unanimous support from every sector of the boxing industry. It has been enthusiastically endorsed by the Association of Boxing Commissions [ABC], which represents 35 State boxing commissions across the United States. Over 20 chief State boxing officers have written to me in support of this bill, ranging from prominent boxing States such as Nevada, Florida, and New Jersey, to smaller commissions such as Kentucky, Ohio, and my home State of Arizona.

Most important to me, however, is the enthusiastic support I have received from professional boxers themselves. They bear all the risk of this violent profession, and they are the people I want to protect with this legislation. Legendary champions Muhammad Ali, George Foreman, and Sugar Ray Leonard each wrote to me in support of S. 187, and I am deeply grateful to them.

I also want to note the special participation of two extremely impressive boxing industry professionals in this effort. Mr. Eddie Futch, perhaps the greatest trainer of this era, and accomplished junior featherweight Jerome Coffee both took the time to testify on boxing safety before the Commerce Committee. They graced the committee with their experienced views, and I again extend my sincere gratitude to the both of them for their contributions.●

SNOWBASIN LAND EXCHANGE ACT

● Mr. BURNS. Mr. President, yesterday Senators HATCH, BENNETT, CRAIG, and I introduced S. 1371, the Snowbasin Land Exchange Act. This bill would facilitate a land transfer in Utah.

The consolidation of ownership of lands in the West has been a goal of many Members of the Senate, including me. I have supported many land exchanges for Montana, and I am pleased to be a cosponsor of S. 1371. This bill deals with lands in Utah and would allow the Snowbasin ski area, which will be one of the sites for ski events of the 2002 Winter Olympic Games. The bill would transfer about 1,320 acres from the Forest Service to the ski area and Forest Service would receive lands of equal value which they desire.

About 10 years ago, discussions began between the owners of this land and the Forest Service. Since 1985, there have been studies, hearings, and assessments on the exchange. These include an environmental impact statement, environmental assessment, cultural and historical assessment, fish and wildlife studies, soil and water reviews, and geological studies. Despite a decision made by the Forest Service to exchange 700 acres of land at Snowbasin in 1990, the exchange remains uncompleted today.

Congress needs to act quickly on S. 1371 so the exchange can be completed in the near future. For the 2002 Olympic Games, planning has already begun. This exchange is important so the work at Snowbasin can be completed for Olympic ski events scheduled there.

The 2002 Olympic Games are important to the people of Montana for many reasons. For one, the Olympics will draw people to the Inter-Mountain West, including Montana. This means more travel and tourism dollars to Montana and greater exposure of the attributes Montana possesses.

Mr. President, the Public Lands Subcommittee will hold a hearing on S. 1371 next week, and I look forward to this bill moving forward quickly.●

ENERGY AND WATER APPROPRIATIONS ACT

Mrs. MURRAY. Mr. President, yesterday evening, the Senate passed the conference report on H.R. 1905, the Fiscal Year 1996 Energy and Water Development Appropriations Act. I would like to comment on one aspect of this bill that has tremendous meaning to people in my State of Washington.

During the debate, the senior Senator from Washington made a statement regarding a recent agreement between the various Members of the Senate from the Pacific Northwest and the Clinton administration regarding the recovery of salmon runs in the Columbia and Snake Rivers. He correctly pointed out the two things it represents: First, an acknowledgment by the administration of the need to stabilize recovery costs; and, second, an interim solution that provides some breathing space for the region to develop ideas for longer-term solutions.

My colleague also went the extra step of pointing out all the problems with the status quo, problems on which there is almost no disagreement. He spoke of the escalating costs of recovery measures. He spoke of the increasing financial pressures on Bonneville Power Administration. He spoke of conflicting Federal laws. He spoke of the inability of the Federal Government to develop solutions that work for a very unique region of the country. These are things on which we can both agree. These are problems on which I want to work with him to solve.

He also spoke of his goals in this debate. And again, his goals are substantially similar to mine. He spoke of the need to rebuild the once vibrant salmon runs which so much define the people of the Northwest and their culture. He wants to accomplish that soon, and so do I. He wants the Pacific Northwest—and the United States—to continue to benefit from the magnificent Federal Columbia River Power System, and I think he's right on target.

During his remarks, however, he drew an interesting parallel between this issue and the spotted owl controversy that has vexed our region for so many years. He said, in effect, that while owls are important, they should not be more important than people. I do not think any right-thinking person ever argued that owls should be more important than people; I know I have not. But most people know the real issue has been the gradual degradation of the public forests for which the owl became a symbol. The public has soundly rejected overcutting and overexploitation of the national forests, in favor of ecosystem management approach currently embodied by the Northwest forest plans.

The senior Senator suggests that—like his approach to the spotted owl—we should restore fish, but not at the expense of anyone else. I think that he fundamentally misjudges the differences between the salmon issue and the spotted owl issue. This is not as simple as jobs versus owls. Unlike the owl, salmon are firmly identified with people. They are part of people's basic vision of the Northwest, and they are part of the economic foundation on which our great State has been built. Salmon mean jobs. They put a roof over the heads of fishers and their families. They are at the spiritual center of native American cultures. They are at the core of many family relationships; how many parents have taken their child out for his or her very first fishing trip?

And the decline of salmon has sent a horrendous ripple effect through our economy, through our State, our politics, and even our international relations. The decline of salmon has driven fishers from Washington and Oregon up to Alaska. It has driven parents out of homes. It has created tension between politicians from neighboring States. Lawsuits have been filed. Indian peoples have threatened to enforce their treaty rights. Canada has taken a punitive line against our fishing boats, and our treaty with them has fallen into serious dispute. Why? Because the Federal Government has not taken care of our salmon runs. It is as simple as that, and it's a problem we can fix.

My colleague from Washington correctly points out that the administrative agreement reached last week to

establish a budget for salmon recovery is just that—a promise by the administration to bring costs under control. He also expressed concern that nothing has been committed to paper describing this agreement. That is why I insert language into the conference report on H.R. 1905—with his support—that directs the agencies involved to enter into a memorandum of agreement detailing the manner in which the annual salmon budget will be implemented.

Make no mistake: a huge amount of money will be devoted to salmon recovery, and the public deserves detailed accounting of how it is spent. We will have accountability, or we will pull the plug. I expect the National Marine Fisheries Service, the Bonneville Power Administration, and the four Northwest States—either through their Governors, or the Northwest Power Planning Council—to reach agreement on the best approach to recovery, and to provide a full written accounting of their efforts.

How will we recover these salmon runs, when we have had so little success to date? The answer is by following good science. The senior Senator and I also agree on this, though he made one comment that disturbs me. He said we should not spend all this money solely to recover one, two, or three weak runs of fish. Well, I agree, and I do not think anyone is suggesting we should just focus on three runs. There are over 80 salmon and steelhead runs in this basin, and we should focus on managing the whole population to maximum advantage. Like the national forests that are home to the spotted owl, the health of the river system is in trouble. Nearly every single salmon and steelhead run is trending downward in population.

If we examine the science as it is currently understood, we will find that what is good for 1 weak run is also good for 79 others. Furthermore, the Northwest Power Planning Council has developed its own plan, and it's almost identical to that of the Federal Government. The only difference is that it targets the whole basin. That is right; the regional, homespun salmon plan aims to rebuild all salmon runs in the basin, and yet it calls for recovery measures almost identical to those required by the ESA: better passage around dams, faster travel time to the ocean, habitat conservation, and decreased predation. So it is reasonable to conclude that scientific theories are headed in the same direction for all salmon in the basin, be they listed under the Endangered Species Act, or not.

My colleague also pointed out that the region's current problems are the fault of Federal laws and overzealous bureaucrats. While that is surely true in part, it is not the whole story. The Endangered Species Act gives NMFS the responsibility to act to save salmon. It has kicked in as a measure of last resort, because other actions have failed. There are other laws that also apply. The Northwest Power Act—written by our Senators Warren Magnuson, Scoop Jackson, and MARK HATFIELD specifically for the region—requires BPA to manage the river system to ensure the propagation of salmon. That law set up the Northwest Power Planning Council to oversee BPA.

It was a regional solution; but it maybe outdated, because it's no longer working.

But that's not all. The Federal Power Act requires non-Federal dams to take serious measures to protect salmon before they can get an operating license. There are treaties with native Americans—upheld by the Supreme Court of the United States as the highest law of the land—that require the Government to ensure healthy salmon runs exist. And finally, we have a treaty with Canada that requires each country to replaced the amount of fish it takes from the other's waters.

What solutions have been proposed by my senior colleague? He consistently has proposed shortcutting the law and tilting the balance of decision-making by limiting public involvement. His approach has been to find the quick fix: suspend the laws as they apply to our region, and impose an outcome from the Federal level. Well, more often than not, that approach shortchanges the science and leads to massive lawsuits. He has also proposed sweeping revision to the ESA, some of which might be needed. But the fact remains, we could repeal the ESA tomorrow, and it would not do a thing to help restore salmon to the Columbia Basin.

It is not as simple as turning the whole mess over to the States. That might get the Feds out of the picture, but it does not begin to solve the problem. In the end, we need to stop addressing all Columbia River issues in isolation. Salmon costs are not BPA's only problem; some might argue it is the least of its problems. BPA's biggest problem is how to continue delivering benefits to the people, given competitive changes to energy markets. It has inefficient management, a huge debt load, numerous public policy mandates, very little accountability, and virtually no regulatory oversight.

Politicians should commit to working for a series of shared values, and then start looking for ways to achieve them for the people. I think those values remain very clear: we should have clean, affordable hydropower; we should have bountiful fish and wildlife; and we should pay off the debts incurred to construct the system.

For fish, we need to find a way to make the requirements of all these laws and treaties consistent. And then we need one plan to meet these requirements. One set of standards, and one plan to meet them. We must utilize a scientifically sound, adaptive management approach. We must test, monitor, and adapt as we learn more about salmon science. The fact is, salmon science is inexact. There are many different theories on what is best for them; only by experimenting will we find the solutions that work best. Our challenge is to conduct these tests in the most sensible, cost effective way.

For the hydro system, we need to carefully reevaluate the role of BPA—and all its assets—as we enter the 21st century, and try to identify the role that makes the most sense for consumers in the new marketplace. The four Northwest Governors and the Department of Energy are currently planning a regional forum to review these issues. I hope this forum can be used to review proposals for change coming from the bottom up. I have been talking with many constituents over the past year, and I know much work has been done on the ground to scope out changes to the law that make sense for the region. I want to see that work carry over into the public arena. In my view, the Governors are best positioned to bring people together, review ideas, and forward useful guidance to the congressional delegation here in Washington, DC.

Mr. President, I have listened very closely to the people of the Northwest. They want salmon runs. They want clean hydropower in favor of nuclear power, or coal, or even gas. But above all else, they want to avoid the controversies of the past like the spotted owl: they want a solution. I am passionately committed to finding a solution that works for the Northwest. People do not want to see their politicians bicker. They do not want to see winners and losers in public debate. They want to see their politicians work together, and they want problems solved.

The agreement reached with the Clinton administration last week was a solid beginning. It was not landmark, and it certainly was not a long-term solution. But it buys time for the region to think this through very carefully, and it does not harm any aspect of the river system, or the fish. We now have an opportunity. We can move forward, and find solutions, or we can draw lines in the sand and let things devolve into politics. I know the people of the Pacific Northwest want the former.

NATIONAL SECURITY PROVISIONS OF THE GATT TREATY AS APPLIED TO ECONOMIC EMBARGOES

Mr. D'AMATO. Mr. President, I rise today to offer a brief explanation of article 21 of the GATT, otherwise known as the General Agreement on Tariffs and Trade, especially as it relates to the imposition of secondary economic sanctions against Iran. This is particularly pertinent because of my bill, S. 1228, the Iran Foreign Oil Sanctions Act.

Briefly, the provisions of article 21, are so broadly written, that legislation such as S. 1228 is possible, and in fact,

sustainable under the GATT. Furthermore, the concept has been tested before, in relative terms as it relates to economic sanctions imposed upon Cuba in the 1960's, Nicaragua, and even against Czechoslovakia in the 1940's.

I want to add that even when President Reagan imposed similar sanctions against the Soviet Union in the 1980's, in retaliation to the imposition of martial law in Poland, a Federal court upheld sanctions against Dresser France.

I feel that this point must be made clear for those who feel that there would be a challenge to this once it became law, or that it would cause legal disputes. In light of this, I ask unanimous consent that the following documents be printed in the RECORD, explaining the legality of secondary boycotts under the GATT: First, a memo dated June 28, 1983, from Sherman Unger, then legal counsel for the Department of Commerce, on the subject of the legality of import sanctions under GATT; an article from the New York Times from August 25, 1982, entitled ''Judge Backs U.S. Bid to Penalize Company on Soviet Pipeline Sale,'' that details an attempt by Dresser France to defy President Reagan's secondary boycott against foreign companies supplying oil pipeline equipment to the Soviet Union; and finally, an analytical index Guide to GATT Law and Practice, explaining article 21 in GATT, the national security exception.

In their totality, these documents will help to explain the legality and I hope that they will go some way toward settling any doubts about S. 1228.

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

GENERAL COUNSEL OF THE
U.S. DEPARTMENT OF COMMERCE,
Washington, DC, June 28, 1983.

Memorandum to Lionel H. Olmer, Under Secretary for International Trade, from Sherman E. Unger, General Counsel.

EXPORT ADMINISTRATION ACT—INTERNATIONAL LEGALITY OF PROPOSED IMPORT SANCTION

SUMMARY

Proposed amendments to the Export Administration Act would authorize subjecting violators of national security export controls to sanctions in the form of import restrictions. The proper exercise of this authority would be consistent with United States obligations under the General Agreements on Tariffs and Trade (GATT) and under other potentially applicable trade agreements. GATT legality would not preclude the possibility of a claim of ''nullification or impairment'' under GATT Article XXIII, but the relationship of such sanctions to security interests and the likelihood of their relatively insignificant impact on a country's exports greatly reduce the risk of GATT-sanctioned counter-measures.

BACKGROUND

The Administration bill would amend section 11 of the Export Administration Act of 1979, as amended (the ''EAA'')[1]

''(3) Whoever violates any national security control imposed under section 5 of this Act, or any regulation, order or license related thereto, may be subject to such controls on the importing of its goods and technology into the United States or its territories and possessions as the President may prescribe.''[2]

The bill reported by the Senate Banking Committee contains a similar amendment, but the import controls on a violator are not limited to ''its'' goods and technology, and the sanction is also applicable to a violation of ''any regulation issued pursuant to a multilateral agreement to control exports for national security purposes, to which the United States is a part.''[3]

Under the present statute and regulations, violators of the export controls under the EAA are subject to criminal penalties and to administratively imposed civil fines and denial or limitation of access to exports from the United States.[4] When a violator is outside the United States, it may not be possible to acquire personal jurisdiction over that person for purposes of criminal proceedings or the collection of civil fines. The export control authority of the EAA can be used to deny a violator access to U.S. exports even if the violator elects not to contest the administrative enforcement proceedings and remains outside of United States territory.[5] Thus, denial of export privileges may be the only available sanction in certain cases. Whether this sanction will provide a meaningful penalty to deter further violations will depend upon the extent to which the violator needs continued access to U.S.-origin goods and technology. The ability to restrict imports, as well, would increase the economic impact on any violator and, for some, might be key to achieving an effective sanction.

GATT LEGALITY

GATT Article XI bars ''prohibitions or restrictions'' on imports, with certain exceptions not applicable to the EAA sanctions under consideration. Article XI applies to prohibitions or restrictions on the importation of ''any product of the territory of any other contracting party.'' Thus, the origin of the affected imports, rather than the nationality or place of business of the sanctioned violator, would be controlling. Absent an exception in the GATT, an affected contracting party could challenge the import sanction as an illegal restraint on the exports of its products to the United States.[6]

The United States would be able to defend a proper use of the import sanction against violators on the basis of exceptions provided in Articles XX and XXI of the GATT.

Among the general exceptions in Article XX is that in subparagraph (d) with respect to measures ''necessary to secure compliance with laws or regulations which are not inconsistent with the provisions of [the GATT] . . . ''. To qualify for an exception under the terms of Article XX, measures must not constitute ''a means of arbitrary or unjustifiable discrimination between countries where the same conditions prevail'' or ''a disguised restriction on international trade.''

It should not be subject to serious question that denial of import privileges to violators would constitute a measure to secure compliance with the export control laws, with the likely economic consequences of such a sanction serving as a deterrent. The real issue, therefore, would be whether the export controls themselves are consistent with the GATT.

Article XI bars prohibitions or restrictions through export licenses with respect to the exportation or sale for export of any product destined for the territory of any other contracting party. The application of this prohibition is limited by exclusions stated in paragraph 2 of the Article, but none of these is applicable to national security export controls.

For purposes of this memorandum, I shall assume that the import sanction is imposed in connection with a violation of a control restricting the export of a product destined for the territory of a contracting party. It should be noted, however, that most of the controlled destinations under U.S. national security controls are Communist countries that are not GATT contracting parties. Where an export license must be applied for in connection with an export of a national security controlled product to a Free World destination, the basic purpose of licensing (with limited nuclear-related exceptions) is to assure that the indicated destination is bona fide and that diversion to a controlled destination is not in prospect. As the purpose of these licensing requirements is not to deny these Free World destinations access to the products, and as the trade impact in fact is nil because licenses are rarely denied to these destinations, it is arguable that such controls are not the kind of trade practice which Article XI should be deemed to prohibit. This argument would gain force if Article XI were invoked in a case involving the unauthorized export of a U.S.-origin product from the territory of the contracting party lodging the complaint. It is not unlikely that such reexport controls would be involved in a complaint, as it is this jurisdictional reach that distinguishes U.S. controls from those of its major trading partners.

Even if Article XI were applicable to the national security export control being enforced, the United States should be able to GATT—justify its actions under the security exception in Article XXI. This provides in pertinent part:

''Nothing in this Agreement shall be construed . . . (b) to prevent any contracting party from taking any action which it considers necessary for the protection of its essential security interests (i) relating to fissionable materials or the materials from which they are derived; (ii) relating to traffic in arms, ammunition and implements of war, and to such traffic in other goods and materials as is carried on directly or indirectly for the purpose of supplying a military establishment; (iii) taken in time of war or other emergency in international relations. . . .''

The use in Article XXI of the term ''which it considers necessary'' is indicative of the deference to the judgment of contracting parties when they wish to justify measures on security grounds. The very limited testing of this Article in GATT proceedings has confirmed this deference.[7] Professor Jackson quotes statements from the GATT preparatory conference that ''some latitude must be granted for security as opposed to commercial purposes'' and that ''the spirit in which the Members of the Organization would interpret these provisions was the only guarantee against abuse.''[8] The United States invoked Article XXI in successfully defending its export controls against a Czechoslovak challenge in 1949. In May 1982, Argentina complained to the GATT Council that the trade sanctions (not limited to military or strategic items) imposed by the United kingdom, the European Community, Canada and Australia violated various GATT requirements and could not be justified under Article XXI. The complaint remains unresolved.

The scarcity of official interpretations of Article XXI is due not only to the very few complaints in which it has been invoked, but also to the fact that the broad wording of the Article XXI exception relieves contracting parties of the obligation to provide notification of security-related measures.

Footnotes at end of article.

If the GATT were to be invoked with respect to controls on industrial goods being exported for industrial use, it might be contended that the controls are not within the Article XXI reference to traffic in ''other goods and materials . . . carried on directly or indirectly for the purpose of supplying a military establishment.'' Weighing strongly against the success of any such contention, however, is the fact that, from the earliest years of the GATT, the United States and the major industrialized countries of the West have operated a coordinated system of export controls with very broad product coverage and often with little or no concern as to whether supply of a military establishment was involved. In fact, in the early years of the GATT, Western embargoes of Communist countries were not confined to strategic goods, but included common industrial raw materials, so as to impair the growth of the economic base that could support a military effort. The targets of these controls included Czechoslovakia, a GATT contracting party.

If there is little likelihood of a successful GATT challenge to the security-related export control measure itself, might import sanctions imposed against a violator of that control nonetheless be found to be ''arbitrary or unjustifiable discrimination between countries'' or a ''disguised restriction on international trade'', preventing justification under the Article XX general exception? GATT negotiating history is not helpful in interpreting these provisions.[9] Import sanctions are unlikely to be overtly discriminatory between countries, for, as already noted, restrictions would apply to imports of a violator, irrespective of the country of origin. In practice, the impact of the import restraints would fall most heavily on the country where most of the violator's production occurs. It is conceivable, however, unlikely, that a pattern of selective use the import sanction could develop over time sufficient to sustain a claim of unjustifiable discrimination. The type of situation that could more reasonably be expected to lead to a GATT challenge and possible success would be a transparent use of the import sanction to achieve protectionist objectives. Circumstances suggesting such abuse would include the targeting of sanctions toward particular products accounting for troublesome import competition for domestic producers and the imposition of import restraints of such breadth or duration as to give them an economic impact disproportionate to other penalties for violation of export controls. (Note that denial of export privileges can serve both as a penalty and as a protective device—a blanket cut-off of a violator's access to U.S. goods and technology reduces that person's ability to engage in further diversions of strategic items).

Justification of import sanctions under Article XX would also require a showing that the measures were ''necessary'' to secure compliance—whereas Article XXI permits a contracting party to take measures ''which it considers necessary'' to protect its essential security interests. Where Article XX is applied to enforcement measures relating to security controls, however, it is reasonable to expect the same GATT deference to a party's assessment of its security needs and reluctance to render a decision on what would be viewed as a ''political'' matter.

NULLIFICATION OR IMPAIRMENT

The imposition of the import sanction against one of its companies could cause a contracting party to invoke Article XXIII claiming that the reduction of its exports to the U.S. has ''nullified or impaired'' benefits accruing to it under the GATT. It is not necessary to claim or establish that a GATT obligation has been breached. Art. XXIII: ((b) and (c). If the complaint is not satisfactorily adjusted between the parties concerned, it may be referred to the GATT disputes machinery and result in a panel proceeding and a GATT Council recommendation or ruling. The contracting parties could authorize the complaining country to suspend the application of concessions or obligations under the GATT to the country imposing the measures found to nullify or impair benefits.

Given the extreme rarity of Article XXIII complaints actually proceeding to authorized retaliation, it is hard to believe that an import sanction case would ever lead to this result. Specific factors weighing against a finding of nullification or impairment are 1) the likelihood that other producers in the country concerned would remain free to supply the exports to the U.S. barred to the violator 2) the likelihood that the economic impact of the sanction would be insignificant in relation to the concerned country's overall trade and 3) the likelihood that the contracting parties would avoid acting with respect to security-related measures even though they would not have to rule on their legality.

OTHER CONSIDERATIONS

United States treaties such as our Friendship, Commerce and Navigation treaties typically provide ''most favored nation'' treatment for imports from the other country. In general, import sanctions would seem even less vulnerable under such treaties then under the GATT. First, an enforcement system that treats similarly situated violators the same, without regard to country of origin, arguably does not violate an MFN obligation. Secondly, these treaties typically contain a ''security'' or ''vital interests'' exception more broadly worded than GATT Article XXI. However, a consideration that could induce a country to invoke such a treaty rather than GATT procedures would be concern over the difficulty of getting such cases decided in GATT and the belief that the World Court would be more willing to adjudicate.

The EAA import sanction amendment has been criticized as an example of the allegedly improper extraterritorial extension of U.S. export controls. Although the sanction is available whether the violation involves conduct within United States territory or abroad, it is undoubtedly recognized that the sanction would most likely be applied to persons beyond the reach of U.S. legal process. It is to be expected that the violations charged would often involve activity abroad, such as unauthorized reexports, which other governments claim is beyond the regulatory jurisdiction of the United States. The new sanction, of course, does not extend the jurisdictional reach of the regulations. Like the existing authority to deny export privileges, it simply supplies an enforcement tool that can be effective against persons outside the United States. In any possible challenge to the import sanction under the GATT, these questions of legal jurisdiction should be irrelevant. The Article XX exception is for measures to secure compliance with laws or regulations ''which are not inconsistent with the provisions of this Agreement.'' The Agreement contains no provision affecting rule-making jurisdiction, so claimed jurisdictional excesses ought not to bear on GATT justification based on Article XX. It should not be a surprise, nonetheless, if a government that finds cause to complain in the GATT of a U.S. export control action involving conduct abroad seeks to inject the jurisdictional issue. That government may well recognize that it has no real chance of having positive action taken on its complaint yet it may hope to get a GATT panel report to include some potentially useful criticism of the jurisdictional reach of the controls.

Finally, it should be noted that the factors that would be most important in sustaining the international legality of the proposed import sanction would be, for the most part, inapplicable to the other proposed EAA amendment that would permit controls to be imposed against imports from a country as to which export controls had been applied for foreign policy purposes. The Article XXI exception would be unavailable unless the controls could somehow be brought within that Article's characterization of ''security interests''. In contrast with sanctions against companies and individuals, sanctions against countries would entail literal conflict with the terms of pertinent GATT articles and MFN provisions in treaties.

In conclusion, the reasonable use of the import sanction against violators of security-related controls can be justified under pertinent GATT and treaty provisions. A government's good faith in imposing import controls is more likely to be questioned, due to the protectionist potential of such measures. Notwithstanding the traditional deference in official proceedings to a country's security-related justification of its measures, it will be important for our government to avoid measures which debase the national security standard and invite corresponding measures damaging to our trading interests and to the integrity of the international system of trade discipline.

FOOTNOTES

[1] 50 U.S.C. app. §2410(c) (Supp V, 1981).

[2] Section 8(6) H.R. 2500, 98th Cong., 1st Sess., 129th Cong. Rec. H. 1992 (April 12, 1983); Section 8(6) S. 979, 98th Cong., 1st Sess., 129th Cong. Rec. S. 4183, 4186 (April 6, 1983).

[3] Section 7 S. 979, 98th Cong., 1st Sess.

[4] 50 U.S.C. app. §2410 (a)–(c); 15 CFR §§387.1, 388.3 (1982).

[5] 15 CFR §388.8.

[6] The imposition of the import sanction arguably would not violate the ''most favored nation'' (MFN) requirements of Articles I and XIII of the GATT. Presumably, such sanctions would be applied in a source-neutral manner, that is, to bar all imports by or from the violator irrespective of the country of origin. The clear applicability of Article XI makes it unnecessary to pursue the question of MFN, but the issue of discrimination is addressed below with respect to the availability of an exception under the GATT.

[7] See Jackson, World Trade and the Law of GATT, 748–752 (1969).

[8] Id., at 748–49.

[9] Id., at 744.

[From the New York Times, Aug. 25, 1982]

JUDGE BACKS U.S. BID TO PENALIZE COMPANY ON SOVIET PIPELINE SALE

(By Clyde H. Farnsworth)

WASHINGTON, Aug. 24.—A Federal judge today cleared the way for the Commerce Department to penalize an American company for refusing to comply with President Reagan's sanctions against supplying equipment for the Siberian natural gas pipeline.

The company, Dresser Industries, has declined to order its French subsidiary to defy a French Government order to deliver equipment to be used for the Soviet pipeline.

In another move against the company, two Administration sources said, Cabinet members recommended during a meeting held in unusual secrecy that Dresser and Dresser France, the subsidiary, be placed on an American ''denial list.'' The action would prevent the subsidiary from having any commercial relations with the United States.

They said the blacklist was one of the options that President Reagan was asked to consider in an options paper that went to him tonight in California after the meeting, which was under the chairmanship of Secretary of State George P. Shultz.

Another meeting began at the Justice Department tonight to prepare for enforcement of the denial order once the pipeline equipment is actually loaded on a Russian freighter, the Borodin, at Le Havre. The loading, which was to take place today, has reportedly been delayed until Wednesday.

The sources stressed that it was still up to the President to decide on a course of action in the developing confrontation with France and other Western European countries over the pipeline and the extraterritorial reach of American laws.

United States District Judge Thomas O. Flannery, turning down a last minute appeal by Dresser, refused to bar the Administration from punishing the company.

JUDGE DENIES DRESSER REQUEST

The judge was asked by a lawyer representing Dresser, John Vanderstar of the Washington law firm of Covington & Burling, to issue a temporary restraining order that would prohibit the Government from issuing penalties against Dresser. However, the judge said that Mr. Vanderstar had failed to show that the Dallas-based company would suffer ''immediate and irreparable harm'' if the order was not issued.

Dresser France has agreed to supply three compressors, worth $2 million, that it has already built. The Russians have ordered a total of 21 compressors from Dresser, worth $18 million to $20 million, to pump natural gas through the 3,600 mile pipeline. The company argued that if its subsidiary did not ship the equipment, it would be liable to criminal and civil penalties in France.

On the other hand, if it did ship the compressors, it would violate the ban on supplying pipeline equipment to the Russians imposed by President Reagan under an executive decree last June 22. The American Export Administration Act of 1979, under which that decree was issued, also calls for civil and criminal penalties against violators.

That ruling extended American export controls not only to the foreign activities of United States companies, but also to foreign companies that use American technological licenses to manufacture products of their own. The controls were intended to deny American technology for the pipeline in retaliation for Soviet-inspired repression in Poland.

''The plaintiff is in a terrible jam,'' Mr. Vanderstar said. ''Congress simply cannot have intended to authorize the Secretary of Commerce, no matter how good his intentions, to impose sanctions against this company.''

Richard Willard, Acting Assistant Attorney General in the civil division of the Justice Department, told the judge that injunctive relief would ''severely damage the foreign relations of the United States.'' He emphasized that this was an issue on which the President felt strongly.

He also said that the United States was not prepared to concede that the French Government order to Dresser France to ship the compressors represented even a ''valid exercise of French law.''

On the other hand, the French and other Europeans, who have filed a strong protest against the American sanctions, argue that Europe cannot accept the right of the United States to extend its jurisdiction to companies established outside its territory.

Although it is the subsidiary of a Dallas-based company, Dresser France is a French company and operates under French laws.

Many other American subsidiaries in Europe and European companies that produce pipeline equipment under American license are affected by the June 22 order of the President. The reason that Dresser became the target is that, according to an Administration source, ''it just happened to have the earliest delivery schedule.''

Commerce Secretary Malcolm Baldrige, who was cited as a defendant in Dresser's petition for injunctive relief, said he was ''pleased with the judge's ruling.'' But neither he, nor Secretary of State Shultz, nor any other participant at the Cabinet-level meeting would comment on the results of the hearing.

The President has justified his action by citing both the Polish repression and the financial and political advantages the pipeline would bring to the Soviet Union. Europeans are both financing and providing equipment for the line to diversify energy sources and to provide employment for depressed industries.

The President said that the Russians stand to earn $10 billion to $12 billion a year from the gas and could use the proceeds to become an even greater military threat.

The penalties that may be levied against Dresser are discretionary, meaning that at one extreme the Government need do nothing at all. At the other extreme, officials explained, the United States could seek extradition of chief executives of offending companies and seek to jail them in the United States.

Although Secretary of State Shultz has supported the sanctions, he had gone on record before joining the Administration as opposing the use of trade as an instrument of United States foreign policy.

He was quoted once, for instance, as saying that trade cannot be ''turned on and off like a light switch,'' and called for a ''predictable set of rules'' to avoid domestic and foreign confusion.

COMPRESSORS FOR PIPELINE

Compressors are devices that increase the pressure of a gas, vapor, or mixture of gas and vapor by reducing the volume of such fluids as they pass through the device. In a pipeline, they are used to increase the amount of fuel that can be pumped through a line of a given diameter.

Dresser Industries manufactures a variety of compressors used in transporting fuels, including centrifugal, reciprocating, and axial compressors.

There are 21 50-ton centrifugal compressors involved in the current dispute, according to Edward Luter, Dresser's senior vice president. They cost about $700,000 each.

''Each compressor order is to certain specifications,'' Mr. Luter said yesterday in a telephone interview from Dresser's Dallas headquarters.

GUIDE TO GATT LAW AND PRACTICE

I. TEXT OF ARTICLE XXI

Article XXI—Security Exceptions

Nothing in this Agreement shall be construed

(a) to require any contracting party to furnish any information the disclosure of which it considers contrary to its essential security interests; or

(b) to prevent any contracting party from taking any action which it considers necessary for the protection of its essential security interests

(i) relating to fissionable materials or the materials from which they are derived;

(ii) relating to the traffic in arms, ammunition and implements of war and to such traffic in other goods and materials as is carried on directly or indirectly for the purpose of supplying a military establishment;

(iii) taken in time of war or other emergency in international relations; or

(c) to prevent any contracting party from taking any action in pursuance of its obligations under the United Nations Charter for the maintenance of international peace and security.

II. INTERPRETATION AND APPLICATION OF ARTICLE XXI

A. Scope and application of article XXI

1. Paragraphs (a) and (b): ''it considers . . . essential security interests'':

During discussions in the Geneva session of the Preparatory Committee, in response to an inquiry as to the meaning of ''essential security interests'', it was stated by one of the drafters of the original Draft Charter that ''We gave a good deal of thought to the question of the security exception which we thought should be included in the Charter. We recognized that there was a great danger of having too wide an exception and we could not put it into the Charter, simply by saying: 'by any Member of measures relating to a Member's security interests,' because that would permit anything under the sun. Therefore we thought it well to draft provisions which would take care of real security interests and, at the same time, so far as we could, to limit the exception so as to prevent the adoption of protection for maintaining industries under every conceivable circumstance. . . . There must be some latitude here for security measures. It is really a question of balance. We have got to have some exceptions. We cannot make it too tight, because we cannot prohibit measures which are needed purely for security reasons. On the other hand, we cannot make it so broad that, under the guise of security, countries will put on measures which really have a commercial purpose''. The Chairman of Commission A suggested in response that the spirit in which Members of the Organization would interpret these provisions was the only guarantee against abuses of this kind.[1]

During the discussion of the complaint of Czechoslovakia at the Third Session in 1949 (see page 556) it was stated, inter alia, that ''every country must be the judge in the last resort on questions relating to its own security. On the other hand, every contracting party should be cautious not to take any step which might have the effect of undermining the General Agreement.[2]

In 1961, on the occasion of the accession of Portugal, Ghana stated that its boycott of Portuguese goods was justified under the provisions of Article XXI:(b)(iii), noting that

''. . . under this Article each contracting party was the sole judge of what was necessary in its essential security interest. There could therefore be no objection to Ghana regarding the boycott of goods as justified by security interests. It might be observed that a country's security interests might be threatened by a potential as well as an actual danger. The Ghanaian Government's view was that the situation in Angola was a constant threat to the peace of the African continent and that any action which, by bringing pressure to bear on the Portuguese Government, might lead to a lessening of this danger, was therefore justified in the essential security interests of Ghana''.[3]

During the Council discussion in 1982 of trade restrictions applied for non-economic reasons by the EEC, its member States, Canada and Australia against imports from Argentina (see page 557), the representative of the EEC stated that ''the EEC and its member States had taken certain measures on the basis of their inherent rights, of which Article XXI of the General Agreement was a reflection. The exercise of these rights constituted a general exception, and required neither notification, justification nor approval, a procedure confirmed by thirty-five years of implementation of the General Agreement. He said that in effect, this procedure showed that every contracting party

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Footnotes at end of article.

was—in the last resort—the judge of its exercise of these rights''. The representative of Canada stated that ''Canada's sovereign action was to be seen as a political response to a political issue . . . Canada was convinced that the situation which had necessitated the measures had to be satisfactorily resolved by appropriate action elsewhere, as the GATT had neither the competence nor the responsibility to deal with the political issue which had been raised. His delegation could not, therefore, accept the notion that there had been a violation of the General Agreement''.[4] The representative of Australia ''stated that the Australian measures were in conformity with the provisions of Article XXI:(c), which did not require notification or justification''.[5] The representative of the United States stated that ''The General Agreement left to each contracting party the judgment as to what it considered to be necessary to protect its security interests. The CONTRACTING PARTIES had no power to question that judgement''.[6]

The representative of Argentina noted that it had attempted to submit to GATT only the trade aspects of this case and stated ''that in order to justify restrictive measures a contracting party invoking Article XXI would specifically be required to state reasons of national security . . . there were no trade restrictions which could be applied without being notified, discussed and justified''.[7]

Paragraph 7(iii) of the Ministerial Declaration adopted 29 November 1982 at the Thirty-eighth Session of the Contracting Parties provides that ''. . .the contracting parties undertake, individually and jointly: . . . to abstain from taking restrictive trade measures, for reasons of a non-economic character, not consistent with the General Agreement''.[8]

The question of whether and to what extent the Contracting Parties can review the national security reasons for measures taken under Article XXI was discussed again in the GATT Council in May and July 1985 in relation to the US trade embargo against Nicaragua which had taken effect on 7 May 1985.[9] While a panel was established to examine the US measures, its terms of reference stated that ''the Panel cannot examine or judge the validity or motivation for the invocation of Article XXI(b)(iii) by the United States''.[10] In the Panel Report on ''United States—Trade Measures affecting Nicaragua'', which has not been adopted,

''. . . The Panel noted that, while both parties to the dispute agreed that the United States, by imposing the embargo, had acted contrary to certain trade-facilitating provisions of the General Agreement, they disagreed on the question of whether the non-observance of these provisions was justified by Article XXI(b)(iii) . . .

''The Panel further noted that, in the view of Nicaragua, this provision should be interpreted in the light of the basic principles of international law and in harmony with the decisions of the United Nations and of the International Court of Justice and should therefore be regarded as merely providing contracting parties subjected to an aggression with the right of self-defence. The Panel also noted that, in the view of the United States, Article XXI applied to any action which the contracting party taking it considered necessary for the protection of its essential security interests and that the Panel, both by the terms of Article XXI and by its mandate, was precluded from examining the validity of the United States' invocation of Article XXI.

''The Panel did not consider the question of whether the terms of Article XXI precluded it from examining the validity of the United States' invocation of that Article as this examination was precluded by its mandate. It recalled that its terms of reference put strict limits on its activities because they stipulated that the Panel could not examine or judge the validity of or the motivation for the invocation of Article XXI:(b)(iii) by the United States . . . The Panel concluded that, as it was not authorized to examine the justification for the United States' invocation of a general exception to the obligations under the General Agreement, it could find the United States neither to be complying with its obligations under the General Agreement nor to be failing to carry out its obligations under that Agreement''.[11]

2. Paragraph (a): ''disclose . . . any information'':

During the discussion at the Third Session of a Czechoslovak complaint concerning United States national security export controls, in response to a request by Czechoslovakia for information under Article XIII:3 on the export licensing system concerned, the US representative stated that while it would comply with a substantial part of the request, ''Article XXI . . . provides that a contracting party shall not be required to give information which it considers contrary to its essential security interests. The United States does consider it contrary to its security interest—and to the security interest of other friendly countries—to reveal the names of the commodities that it considers to be most strategic''.[12]

The ''Decision Concerning Article XXI of the General Agreement'' of 30 November 1982 (see page 559 below) provides inter alia that ''Subject to the exception in Article XXI:a, contracting parties should be informed to the fullest extent possible of trade measures taken under Article XXI''.[13]

3. Paragraph (b): ''action'':

(1) ''relating to fissionable materials or the materials from which they are derived'':

The records of the Geneva discussions of the Preparatory Committee indicate that the representative of Australia withdrew its reservation on the inclusion of a reference to ''fissionable materials'' in the light of a statement that the provisions of Article 35 [XXIII] would apply to Article XXI; see below at page 560.[14]

(2) ''relating to the traffic in arms, ammunition and implements of war and to such traffic in other goods and materials as is carried on directly or indirectly for the purpose of supplying a military establishment'':

During discussions in the Geneva session of the Preparatory Committee, in connection with a proposal to modify Article 37(g) [XX(g)] to permit export restrictions on raw materials for long-term defense purposes, the question was put whether the phrase ''for the purpose of supplying a military establishment'' would permit restrictions on the export of iron ore when it was believed that the ore would be used by ordinary smelting works and ultimately for military purposes by another country. It was stated in response that ''if a Member exporting commodities is satisfied that the purpose of the transaction was to supply a military establishment, immediately or ultimately, this language would cover it''.[15]

At the Third Session in 1949, Czechoslovakia requested a decision under Article XXIII as to whether the US had failed to carry out its obligations under Articles I and XIII, by reason of the 1948 US administration of its export licensing controls (both short-supply controls and new export controls instituted in 1948 discriminating between destination countries for security reasons). The US stated that its controls for security reasons applied to a narrow group of exports of goods which could be used for military purposes[16] and also stated that ''the provisions of Article I would not require uniformity of formalities, as applied to different countries, in respect of restrictions imposed for security reasons''.[17] It was also stated by one contracting party that ''goods which were of a nature that could contribute to war potential'' came within the exception of Article XXI.[18] The complaint was rejected by a roll-call vote of 17 to 1 with 3 abstentions.[19]

(3) ''taken in time of war or other emergency in international relations'':

The 1970 Working Party Report on ''Accession of the United Arab Republic'' notes that in response to concerns raised regarding the Arab League boycott against Israel and the secondary boycott against firms having relations with Israel, the representative of the UAR stated that ''the history of the Arab boycott was beyond doubt related to the extraordinary circumstances to which the Middle East area had been exposed. The state of war which had long prevailed in that area necessitated the resorting to this system. . . . In view of the political character of this issue, the United Arab Republic did not wish to discuss it within GATT. . . . It would not be reasonable to ask that the United Arab Republic should do business with a firm that transferred all or part of its profits from sales to the United Arab Republic to an enemy country''.[20] Several members of the working party supported the views of the representative of the UAR that the background of the boycott measures was political and not commercial.[21]

In November 1975 Sweden introduced a global import quota system for certain footwear. The Swedish Government considered that the measure was taken in conformity with the spirit of Article XXI and stated, inter alia, that the ''decrease in domestic production has become a critical threat to the emergency planning of Sweden's economic defence as an integral part of the country's security policy. This policy necessitates the maintenance of a minimum domestic production capacity in vital industries. Such a capacity is indispensable in order to secure the provision of essential products necessary to meet basic needs in case of war or other emergency in international relations''.[22] In the discussion of this measure in the GATT Council, ''Many representatives . . . expressed doubts as to the justification of these measures under the General Agreement . . . Many delegations reserved their rights under the GATT and took note of Sweden's offer to consult''.[23] Sweden notified the termination of the quotas as far as leather and plastic shoes were concerned as of 1 July 1977.[24]

In April 1982, the EEC and its member states, Canada, and Australia suspended indefinitely imports into their territories of products of Argentina. In notifying these measures they stated that ''they have taken certain measures in the light of the situation addressed in the Security Council Resolution 502 [the Falkland/Malvinas issue]; they have taken these measures on the basis of their inherent rights of which Article XXI of the General Agreement is a reflection''.[25] Argentina took the position that, in addition to infringing the principles and objectives underlying the GATT, these measures were in violation of Articles I;1, II, XI:1, XIII, and Part IV. The legal aspects of these trade restrictions affecting Argentina were discussed extensively in the Council.[26] The measures were removed in June 1982. Argentina sought an interpretation of Article XXI; these efforts led to the inclusion of paragraph 7(iii) in the Ministerial Declaration of November 1982, which provides that ''. . . the contracting parties undertake, individually and

jointly: . . . to abstain from taking restrictive trade measures, for reasons of a non-economic charter, not consistent with the General Agreement''[27] and also led to the adoption of the text below at page 559.

On 7 May 1985 the US notified the contracting parties of an Executive Order prohibiting all imports of goods and services of Nicaraguan origin, all exports from the US of goods to or destined for Nicaragua (except those destined for the organized democratic resistance) and transactions relating thereto.[28] In Council discussions of this matter, Nicaragua stated that these measures contravened Article I, II, V, XI, XIII and Part IV of the GATT, and that ''this was not a matter of national security but one of coercion''.[29] Nicaragua further stated that Article XXI could not be applied in an arbitrary fashion; there had to be some correspondence between the measures adopted and the situation giving rise to such adoption.[30] Nicaragua stated that the text of Article XXI made it clear that the Contracting Parties were competent to judge whether a situation of ''war or other emergency in international relations'' existed and requested that a Panel be set up under Article XXIII:2 to examine the issue.[31] The United States stated that its actions had been taken for national security reasons and were covered by Article XXI:(b)(iii) of the GATT; and that this provision left it to each contracting party to judge what action it considered necessary for the protection of its essential security interest.[32] The terms of reference of the Panel precluded it from examining or judging the validity of the invocation of Article XXI(b)(ii) by the U.S. Concerning the Panel decision on this issue, see page 555 and the discussion of Article XXIII below. When the Council discussed the Panel Report, Nicaragua requested that the Council recommend removal of the embargo; authorized special support measures for Nicaragua so that countries wanting to do so could grant trade preferences aimed at re-establishing a balance in Nicaragua's pre-embargo global trade relations and at compensating Nicaragua for the damage caused by the embargo; and prepare an interpretative note on Article XXI. Consensus was not reached on any of these alternatives. The Panel Report has not been adopted. At the meeting of the Council on 3 April 1990 Nicaragua announced the lifting of the trade embargo. The representative of the US announced that the conditions which had necessitated action under Article XXI had ceased to exist, his country's national security emergency with respect to Nicaragua had been terminated, and all economic sanctions, including the trade embargo, had been lifted.[33]

In November 1991, the European Community notified the contracting parties that the EC and its member States had decided to adopt trade measures against Yugoslavia ''on the grounds that the situation prevailing in Yugoslavia no longer permits the preferential treatment of this country to be upheld. Therefore, as from 11 November, imports from Yugoslavia into the Community are applied m.f.n. treatment . . . These measures are taken by the European Community upon consideration of its essential security interests and based on GATT Article XXI.''[34] The measures comprised suspension of trade concessions granted to the Socialist Federal Republic of Yugoslavia under its bilateral trade agreement with the EC; application of certain limitations (previously suspended) to textile imports from Yugoslavia; withdrawal of GSP benefits; suspension of similar concessions and GSP benefits for ECSC products; and action to denounce or suspend the application of the bilateral trade agreements between the EC and its member states and Yugoslavia. On 2 December the Community and its member states decided to apply selective measures in favor of ''those parties which contribute to progress toward peace.'' Economic sanctions or withdrawal of preferential benefits from the Yugoslavia were also taken by Australia, Austria, Canada, Finland, Japan, New Zealand, Norway, Sweden, Switzerland, and the United States.

At the Forty-seventh Session in December 1991, Yugoslavia referred to the Decision of 1982 on notification of measures taken under Article XXI (see page 559 below) and reserved its GATT rights. In February 1992 Yugoslavia requested establishment of a panel under Article XXIII:2, stating that the measures taken by the EC were inconsistent with Articles I, XXI and the Enabling Clause; departed from the letter and intention of paragraph 7(iii) of the Ministerial Decision of November 1982; and impeded the attainment of the objectives of the General Agreement. Yugoslavia further stated:

''The situation in Yugoslavia is a specific one and does not correspond to the notion and meaning of Article XXI (b) and (c). There is no decision or resolution of the relevant UN body to impose economic sanctions against Yugoslavia based on the reasoning embodied in the UN Charger. . . . the 'positive compensatory measures' applied by the European Community to certain parts of Yugoslavia [are] contrary to the MFN treatment of 'products originating in or destined for the territories'—taken as a whole—'of all contracting parties' ''.[35]

In March 1992, the Council agreed to establish a panel with the standard terms of reference unless, as provided in the Decision of 12 April 1989, the parties agreed otherwise within twenty days.[36] At the April 1992 Council meeting, in discussion of the notification of the transformation of the Socialist Federal Republic of Yugoslavia (SFRY) into the Federal Republic of Yugoslavia (FRY) consisting of the Republics of Serbia and Montenegro, the EC representative said that until the question of succession to Yugoslavia's contracting party status had been resolved, the Panel process which had been initiated between the former SFRY and the EC no longer had any foundation and could not proceed.[37] At the May 1992 Council meeting, in a discussion concerning the status of the FRY as a successor to the former SFRY as a contracting party, the Chairman stated that ''In these circumstances, without prejudice to the question of who should succeed the former SFRY in the GATT, and until the Council returned to this issue, he proposed that the representative of the FRY should refrain from participating in the business of the Council''. The Council so agreed.[38] At the June 1993 Council meeting this decision was modified taking into account United Nations General Assembly Resolution 47/1 to provide that the FRY could not continue automatically the contracting party status of the former SFRY and that it shall not participate in the work of the Council and its subsidiary bodies.[39]

4. Other invocations of Article XXI:

The United States embargo on trade with Cuba, which was imposed by means of Proclamation 3447 by the President of the United States, dated 3 February 1962, was not formally raised in the Contracting Parties but notified by Cuba in the inventory of non-tariff measures. The United States invoked Article XXI as justification for its action.[40]

5. Procedures concerning notification of measures under Article XXI:

During the Council discussion in 1982 of trade measures for non-economic reasons taken against Argentina (see page 557), it was stated by the countries taking these measures that ''Article XXI did not mention notification'' and that many contracting parties had, in the past, invoked Article XXI without there having been any notification or challenge to the situation in GATT.[41] Argentina sought an interpretation of Article XXI. Informal consultations took place during the Thirty-eighth Session in November 1982 in connection with the adoption of the Council report to the Contracting Parties, in so far as it related to these trade restrictions.[42] As a result, on 30 November 1982 the Contracting Parties adopted the following ''Decision Concerning Article XXI of the General Agreement'':

''Considering that the exceptions envisaged in Article XXI of the General Agreement constitute an important element for safeguarding the rights of contracting parties when they consider that reasons of security are involved;

''Noting that recourse to Article XXI could constitute, in certain circumstances, an element of disruption and uncertainty for international trade and affect benefits accruing to contracting parties under the General Agreement;

''Recognizing that in taking action in terms of the exceptions provided in Article XXI of the General Agreement, contracting parties should take into consideration the interests of third parties which may be affected;

''That until such time as the Contracting Parties may decide to make a formal interpretation of Article XXI it is appropriate to set procedural guidelines for its application;

The Contracting Parties decide that:

''1. Subject to the exception in Article XXI:a, contracting parties should be informed to the fullest extent possible of trade measures taken under Article XXI.

''2. When action is taken under Article XXI, all contracting parties affected by such action retain their full rights under the General Agreement.

''3. The Council may be requested to give further consideration to this matter in due course''.[43]

See the references to this Decision above in the case of EC measures on trade with Yugoslavia.

B. Relationship between article XXI and other articles of the General Agreement

1. Articles I and XIII:

During the discussion at the Third Session of the complaint of Czechoslovakia that U.S. export controls were administered inconsistently with Articles I and XIII (see page 556), the US representative stated that these restrictions were justified under Article XXI(b)(ii). In calling for a decision, the Chairman indicated that Article XXI ''embodied exceptions to the general rule contained in Article I''. In a Decision of 8 June 1949 under Article XXIII:2, the Contracting Parties rejected the contention of the Czechoslovak delegation.[44]

2. Article XXIII:

During discussions in Geneva in 1947 in connection with the removal of the provisions now contained in Article XXI and their relocation in a separate exception (Article 94) at the end of the Charter, the question was raised whether the dispute settlement provisions of Article 35 of the New York Draft [XXII/XXIII] would nevertheless apply. It was stated that ''It is true that an action taken by a Member under Article 94 could not be challenged in the sense that it could not be claimed that a Member was violating the Charter; but if that action, even though not in conflict with the terms of Article 94, should affect another Member, I should think that that Member would have the right to seek redress of some kind under Article 37 as it now stands. In other words, there is no exception from the application of Article 35 to this or any other Article''.[45] The

addition of a note to clarify that the provisions of paragraph 2 of Article 35 [XXIII] applied to Article 94 was rejected as unnecessary.[46]

See the discussion above of the Czechoslovak complaint concerning export controls, in which the Contracting Parties make a decision under Article XXIII:2 as to ''whether the Government of the United States had failed to carry out its obligations under the Agreement through its administration of the issue of export licences''.[47]

During the discussion of the trade restrictions affecting Argentina applied for non-economic reasons, the view was expressed ''that the provisions of Article XXI were subject to those of Article XXIII:2''. Argentina reserved its rights under Article XXIII in respect of any injury resulting from trade restrictions applied in the context of Article XXI.[48]

Paragraph 2 of the ''Decision Concerning Article XXI of the General Agreement'' of 30 November 1982 stipulates that ''. . . when action is taken under Article XXI, all contracting parties affected by such action retain their full rights under the General Agreement''.[49]

The 1984 Panel Report on ''United States—Imports of Sugar from Nicaragua'' examined the action taken by the US government to reduce the share of the US sugar import quota allocated to Nicaragua and distribute the reduction in Nicaragua's allocation to El Salvador, Honduras and Costa Rica. The Panel Report notes that ''The United States stated that it was neither invoking any exceptions under the provisions of the General Agreement nor intending to defend its actions in GATT terms . . . the action of the United States did of course affect trade, but was not taken for trade policy reasons.''[50]

''The Panel noted that the measures taken by the United States concerning sugar imports from Nicaragua were but one aspect of a more general problem. The Panel, in accordance with its terms of reference . . . examined those measures solely in the light of the relevant GATT provisions, concerning itself only with the trade issue under dispute.''[51]

''. . . The Panel . . . concluded that the sugar quota allocated to Nicaragua for the fiscal year 1983/84 was inconsistent with the United States' obligations under Article XIII:2.

''The Panel noted that the United States had not invoked any of the exceptions provided for in the General Agreement permitting discriminatory quantitative restrictions contrary to Article XXIII. The Panel did not examine whether the reduction in Nicaragua's quota could be justified under any such provision.''[52]

The follow-up on the Panel report was discussed in the Council meetings of May and July 1984. The United States said that it ''had not obstructed Nicaragua's resort to GATT's dispute settlement process; it had stated explicitly the conditions under which the issue might be resolved; and it recognized that Nicaragua had certain rights under Article XXIII which it had reserved and could continue to exercise''.[53] Nicaragua stated that it was aware of its rights under Article XXIII.

In July 1985, following a request by Nicaragua for the establishment of a panel to review certain US trade measures affecting Nicaragua, the right of a contracting party to invoke Article XXIII in cases involving Article XXI was discussed again in the GATT Council.[54] At its meetings in October 1985 and March 1986 respectively the Council established a panel with the following terms of reference to deal with the complaint by Nicaragua:

''To examine, in the light of the relevant GATT provisions, of the understanding reached at the Council on 10 October 1985 that the Panel cannot examine or judge the validity of or motivation for the invocation of Article XXI(b)(iii) by the United States, of the relevant provisions of the Understanding Regarding Notification, Consultation, Dispute Settlement and Surveillance (BISD 26S/211–218), and of the agreed Dispute Settlement Procedures contained in the 1982 Ministerial Declaration (BISD 29S/13–16), the measures taken by the United States on 7 May 1985 and their trade effects in order to establish to what extent benefits accruing to Nicaragua under the General Agreement have been nullified or impaired, and to make such findings as will assist the Contracting Parties in further action in this matter''.[55]

In the Panel Report on ''United States—Trade Measures affecting Nicaragua'', which has not been adopted, the Panel noted the different views of the parties regarding whether the United States' invocation of Article XXI(b)(iii) was proper, and concluded that this issue was not within its terms of reference; see above at page 555. With regard to Nicaragua's claim of non-violation nullification or impairment, the Panel ''decided not to propose a ruling in this case on the basic question of whether actions under Article XXI could nullify or impair GATT benefits of the adversely affected contracting party''.[56]

When the Panel's report was discussed by the Council in November 1986, the US representative stated that ''Nullification or impairment when no GATT violation had been found was a delicate issue, linked to the concept of 'reasonable expectations'. It was not simply a question of trade damage, since no one doubted the existence of trade damage. Applying the concept of 'reasonable expectations' to a case of trade sanctions motivated by national security considerations would be particularly perilous, since at a broader level those security considerations would nevertheless enter into expectations . . . the Panel had acted wisely in refraining from a decision that could create a precedent of much wider ramifications for the scope of GATT rights and obligations . . .''.[57] The representative of Nicaragua stated that her delegation could not support adoption of the report, inter alia because it could only be adopted once the Council was in a position to make recommendations.[58]

C. Relationship between article XXI and general international law

The 1986 Panel Report on ''United States—Trade Measures Affecting Nicaragua'', which has not been adopted, noted the different views of the parties to the dispute concerning the relationship between Article XXI and general international law including decisions of the United Nations and the International Court of Justice.[59]

In discussion at the Forty-seventh Session in December 1991 concerning trade measures for non-economic purposes against Yugoslavia, the representative of India stated that ''India did not favour the use of trade measures for non-economic reasons. Such measures should only be taken within the framework of a decision by the United Nations Security Council. In the absence of such a decision or resolution, there was serious risk that such measures might be unilateral or arbitrary and would undermine the multilateral trading system''.[60]

III. PREPARATORY WORK

In the US Draft Charter, and London and New York Draft Charter texts, the Article on exceptions to the commercial policy chapter included the provisions of what is now GATT Article XXI (see Article 32, US draft; Article 37, London and New York drafts). Also in these drafts, the exceptions clause for the chapter on commodity agreements included provisions excepting arrangements relating to fissionable materials; to the traffic in arms, ammunition and implements of war and traffic in goods and materials for the purpose of supply a military establishment; or in time of war or other emergency in international relations, to the protection of the essential security interests of a member (Article 49:2, US Draft; Article 59(2), London Draft; article 59(c), New York Draft). At Geneva it was decided to take paragraphs (c), (d), (e) and (k) of Article 37 and place them in a separate Article.[61] It was agreed that this Article would be a general exception applicable to the entire Charter.[62] The corresponding security exception was also removed from the commodity chapter. The security exception provisions became Article 94 in Chapter VII of the Geneva draft Charter, which was virtually identical to the present text of Article XXI.

The text of Article 94 was extensively discussed at Havana in the Sixth Committee on Organization. Article 94 became Article 99 of the Charter on General Exceptions, of which paragraphs 1(a) and (b) were almost identical to those of Article XXI, the only differences being (i) an addition in the first line of paragraph (b) as follows: ''to prevent any Member from taking, either singly or with other States, any action . . .'', and (ii) an addition to paragraph (b)(ii) as follows: ''a military establishment of any other country''. Article 99 also included a paragraph 1(c) exempting intergovernmental military supply agreements[63]; a paragraph 1(d) on trade relations between India and Pakistan (dealt with in the General Agreement by the provisions of Article XXIV:11); and a paragraph 2 providing that nothing in the Charter would override the provisions of peace treaties resulting from the Second World War or UN instruments creating trust territories or other special regimes.

However, ''on examining several of the proposals submitted by delegations relating to action taken in connection with political matters or with the essential interests of Members, the Committee concluded that the provisions regarding such action should be made in connection with an article on 'Relations with the United Nations', since the question of the proper allocation of responsibility as between the Organization and the United Nations was involved'',[64] Accordingly a new Article 86 of the Charter on ''Relations with the United Nations'' was drafted, including the former paragraph 1(c) of Article 94 [XXI:(c)].

Article 86 of the Charter dealt with various institutional questions such as the conclusion of a specialized agency agreement between the ITO and the UN. It also stated, in paragraph 3, that:

''3. The Members recognize that the Organization should not attempt to take action which would involve passing judgment in any way on essentially political matters. Accordingly, and in order to avoid conflict of responsibility between the United Nations and the Organization with respect to such matters, any measure taken by a Member directly in connection with a political matter brought before the United Nations in accordance with the provisions of Chapters IV or VI of the United Nations Charter shall be deemed to fall within the scope of the United Nations, and shall not be subject to the provisions of this Charter.

''4. No action, taken by a Member in pursuance of its obligations under the United Nations Charter for the maintenance or restoration of international peace and security, shall be deemed to conflict with the provisions of this Charter''.

The interpretative notes to paragraph 3 provided that:

''1. If any Member raises the question whether a measure is in fact taken directly in connection with a political matter brought before the United Nations in accordance with the provisions of Chapters IV or VI of the United Nations Charter, the responsibility for making a determination on the question shall rest with the Organization. If, however, political issues beyond the competence of the Organization are involved in making such a determination, the question shall be deemed to fall within the scope of the United Nations.

''2. If a Member which has no direct political concern in a matter brought before the United Nations considers that a measure taken directly in connection therewith and falling within the scope of paragraph 3 of Article 86 constitutes a nullification or impairment within the terms of paragraph 1 of Article 93, it shall seek redress only by recource to the procedures set forth in Chapter VIII of this Charter''.

The purpose of these provisions was explained by the Sixth Committee as follows:

''Paragraph 3 of Article [86], which like paragraph 4 is independent in its operation, is designed to deal with any measure which is directly in connection with a political matter brought before the United Nations in a manner which will avoid conflict of responsibility between the United Nations and the Organization with respect to political matters. The Committee agreed that this provision would cover measures maintained by a Member even though another Member had brought the particular matter before the United Nations, so long as the measure was taken directly in connection with the matter. It was also agreed that such a measure, as well as the political matter with which it was directly connected, should remain within the jurisdiction of the United Nations and not within that of the Organization. The Committee was of the opinion that the important thing was to maintain the jurisdiction of the United Nations over political matters and over economic measures of this sort taken directly in connection with such a political matter, and nothing in Article [86] could be held to prejudice the freedom of action of the United Nations to settle such matters and to take steps to deal with such economic measures in accordance with the provisions of the Charter of the United Nations if they see fit to do so.

''It was the view of the Committee that the word 'measure' in paragraph 3 of Article [86] refers only to a measure which is taken directly in connection with a political matter brought before the United Nations in accordance with Chapters IV and VI of the Charter of the United Nations and does not refer to any other measure''.[65]

The Charter provisions in Articles 86 and 99 were not not taken into the General Agreement. While Article XXIX:1 provides that ''The contracting parties undertake to observe . . . the general principles of Chapters I to VI and of Chapter IX of the Havana Charter'', the Note Ad Article XXIX:1 provides that ''Chapters VII and VIII . . . have been excluded from paragraph 1 because they generally deal with the organization, functions and procedures of the International Trade Organization''. In this connection, during the discussion at the Sixth Session of the Contracting Parties of the US suspension of trade relations with Czechoslovakia it was stated with reference to Article 86, paragraph 3 of the Havana Charter that ''although Chapter VII of the Charter was not specifically included by reference in Article XXIX of the Agreement, it had surely been the general intention that the principles of the Charter should be guiding ones for the Contracting Parties''.[66]

The present text of Article XXI dates from the 30 October 1948 Geneva Final Act. It has never been amended. Amendment of Article XXI was neither proposed nor discussed in the 1954–55 Review Session.

IV. RELEVANT DOCUMENTS

Geneva:

Discussion: EPCT/WP.1/SR/11, EPCT/A/SR/25, 30, 33, 40(2), EPCT/A/PV/25, 30, 33, 40(2).

Reports: EPCT/103.

Other: EPCT/W/23.

Havana:

Discussion: E/CONF.2/C.5/SR.14, E/CONF.2/C.6/SR.18, 19, 37, and Add. 1.

Reports: E/CONF.2/C.5/14, E/CONF.2/C.6/45, 93, 104.

Other: E/CONF.2/C.6/12/Add.9, E/CONF.2/C.6/W/48.

See also London, New York and Geneva document references concerning Article XX.

FOOTNOTES

[1] EPCT/A/PV/33, p. 20–21 and Corr. 1; see also EPCT/A/SR/33, p. 3.
[2] GATT/CP.3/SR.22, Corr. 1.
[3] SR.19/12, p. 196.
[4] C/M/157, p. 10.
[5] C/M/157, p. 11.
[6] C/M/159, p. 19; see also C/M/157, p. 8.
[7] C/M/157, p. 12; C/M/159, pp. 14–15.
[8] L/5424, adopted on 29 November 1982, 29S/9, 11.
[9] C/M/188, pp. 2–16; C/M/191, pp. 41–46.
[10] C/M/196 at p. 7.
[11] L/6053, dated 13 October 1953 (unadopted), paras. 5.1–5.3.
[12] GATT/CP.3/38, p. 9.
[13] L/5426, 29S/23–24, para. 1.
[14] EPCT/A/PV/33, p. 29; see also EPCT/A/PV/33/Corr. 3.
[15] EPCT/A/PV/36, p. 19; see also proposal referred to at EPCT/W/264.
[16] GATT/CP.3/38; GATT/CP.3/SR.22, p. 8.
[17] GATT/CP.3/SR.22, p. 4–5.
[18] GATT/CP.3/SR.20, p. 3–4.
[19] GATT/CP.3/SR.22, p. 9; Decision of 8 June 1949 at II/28.
[20] L/3362, adopted on 27 February 1970, 17S/33, 39, para. 22.
[21] Ibid., 17S/40, para. 23.
[22] L/4250, p. 3.
[23] C/M/109, p. 8–9.
[24] L/4250/Add.1; L/4254, p. 17–18.
[25] L/5319/Rev. 1.
[26] L/5317, L/5336; C/M/157, C/M/159.
[27] L/5424. adopted on 29 November 1982, 29S/9, 11.
[28] L/5803.
[29] C/M/188l p. 4.
[30] C/M/188, p. 16.
[31] L/5802; C/M/191, pp. 41–46.
[32] C/M/191, pp. 41,46.
[33] C/M/240, p. 31; L/6661.
[34] L/6948.
[35] DS27/2, dated 10 February 1992.
[36] C/M/255, p. 18.
[37] C/M/256, p. 32.
[38] C/M/257 p. 3 and Corr. 1.
[39] C/M/264, p. 3.
[40] COM.IND/6/Add.4, p. 53 (notification); MTN/3B/4, p. 559 (response citing binding reolution under Inter-American Treaty of Reciprocal Assistance). See also Council discussion May 1986 concerning US measures authorizing denial of sugar import quota to any failing to certify that it does not import sugar produced in Cuba for re-export to the US, stated by US to be a ''procedural safeguard'' against tran-shipment of sugar in violation of the embargo; C/M/198 p. 33, L/5980.
[41] C/M/159, p. 18.
[42] See L/5414 (Council report); see also C/W/402, W.38/5, L/5426.
[43] L/5426, 29S/23.
[44] GATT/CP.3/SR.22, p. 9; II/28.
[45] EPCT/A/PV/33, p. 26–27.
[46] EPCT/A/PV/33 p. 27–29 and EPCT/A/PV/33/Corr. 3.
[47] GATT/CP.3/SR.22, p. 9.
[48] C/M/157, p. 9; C/M/159, p. 14; C/M/165, p. 18.
[49] 29S/24.
[50] L/5607, adopted on 13 March 1984, 31S/67, 72, para. 3.10.
[51] Ibid., 31S/73, para. 4.1.
[52] Ibid., 31S/74, paras. 4.4–4.5.
[53] C/M/178, p. 27.
[54] C/M/191, pp. 41–46.
[55] C/M/196, p. 7.
[56] L/6053 (unadopted), dated 13 October 1986, paras. 5.4–5.11.
[57] C/M/204.
[58] C/M/204. See also communication from Nicaragua at C/W/506.
[59] L/6053, unadopted, dated 13 October 1986, prs. 5.2.
[60] SR.47/3, p. 5.
[61] See proposal at EPCT/W/23, reports on discussions in Commission A (commercial policy) at EPCT/WP.1/SR/11, EPCT/103 p. 3, EPCT/A/PV/25 p. 38–42.
[62] EPCT/A/PV/25 p. 39–42.
[63] See Havana Reports, p. 118, para. 32 and p. 145–147.
[64] Havana Reports, p. 153, para. (a).
[65] Havana Reports, p. 153–154, paras. (b)-(c).
[66] GATT/CP.6/SR.12, p. 4.

NOTE

In the RECORD of October 27, at page S16007, during consideration of the balanced budget reconciliation bill, Mr. LIEBERMAN moved to commit the bill to the Finance Committee with instructions to report the bill back to the Senate with an amendment. The text of the amendment was not printed in the RECORD. The permanent RECORD will be corrected to reflect the following omitted language.

MOTION TO COMMIT WITH INSTRUCTIONS

Mr. President, I move to commit the bill S. 1357 to the Committee on Finance with instructions to report the bill back to the Senate within 3 days (not to include any day the Senate is not in session) with the following amendment, and to make sufficient reductions in the tax cuts to maintain deficit neutrality.

(Purpose: To restore the solvency of the Medicare part A Hospital Insurance Trust Fund for the next 10 years. To reform the Medicare Program and provide real choices to Medicare beneficiaries by increasing the range of health plans available, providing better information so that beneficiaries can act as informed consumers and to require strategic planning for the demographic changes that will come with the retirement of the ''babyboom'' generation)

On page 442, beginning on line 1, strike all through page 748, line 18, and insert:

Subtitle A—Medicare

SEC. 7001. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This subtitle may be cited as the ''Medicare Improvement and Solvency Protection Act of 1995''.

(b) TABLE OF CONTENTS.—The table of contents of this subtitle is as follows:

CHAPTER 1—PROVISIONS TO IMPROVE AND EXPAND MEDICARE CHOICES

Sec. 7002. Increasing choice under medicare.
Sec. 7003. Provisions relating to medicare coordinated care contracting options.
Sec. 7004. Provisions relating to medicare supplemental policies.
Sec. 7005. Special rule for calculation of payment rates for 1996.
Sec. 7006. Graduate medical education and disproportionate share payment adjustments to hospitals providing services to enrollees in eligible organizations.
Sec. 7007. Effective date.

CHAPTER 2—PROVISIONS RELATING TO QUALITY IMPROVEMENT AND DISTRIBUTION OF INFORMATION

Sec. 7011. Quality report cards.

CHAPTER 3—PROVISIONS TO STRENGTHEN RURAL AND UNDER-SERVED AREAS

Sec. 7021. Rural referral centers.
Sec. 7022. Medicare-dependent, small, rural hospital payment extension.
Sec. 7023. PROPAC recommendations on urban medicare dependent hospitals.

Sec. 7024. Payments to physician assistants and nurse practitioners for services furnished in outpatient or home settings.
Sec. 7025. Improving health care access and reducing health care costs through telemedicine.
Sec. 7026. Establishment of rural health outreach grant program.
Sec. 7027. Medicare rural hospital flexibility program.
Sec. 7028. Parity for rural hospitals for disproportionate share payments.

CHAPTER 4—GENERAL PROGRAM IMPROVEMENTS AND REFORM

Sec. 7031. Increased flexibility in contracting for medicare claims processing.
Sec. 7032. Expansion of centers of excellence.
Sec. 7033. Selective contracting.

CHAPTER 5—REDUCTION OF WASTE, FRAUD, AND ABUSE

SUBCHAPTER A—IMPROVING COORDINATION, COMMUNICATION, AND ENFORCEMENT

PART I—MEDICARE ANTI-FRAUD AND ABUSE PROGRAM

Sec. 7041. Medicare anti-fraud and abuse program.
Sec. 7042. Application of certain health anti-fraud and abuse sanctions to fraud and abuse against Federal health programs.
Sec. 7043. Health care fraud and abuse provider guidance.
Sec. 7044. Medicare/medicaid beneficiary protection program.
Sec. 7045. Medicare benefit quality assurance.
Sec. 7046. Medicare benefit integrity system.

PART II—REVISIONS TO CURRENT SANCTIONS FOR FRAUD AND ABUSE

Sec. 7051. Mandatory exclusion from participation in medicare and State health care programs.
Sec. 7052. Establishment of minimum period of exclusion for certain individuals and entities subject to permissive exclusion from medicare and State health care programs.
Sec. 7053. Permissive exclusion of individuals with ownership or control interest in sanctioned entities.
Sec. 7054. Sanctions against practitioners and persons for failure to comply with statutory obligations.
Sec. 7055. Sanctions against providers for excessive fees or prices.
Sec. 7056. Applicability of the bankruptcy code to program sanctions.
Sec. 7057. Agreements with peer review organizations for medicare coordinated care organizations.
Sec. 7058. Effective date.

PART III—ADMINISTRATIVE AND MISCELLANEOUS PROVISIONS

Sec. 7061. Establishment of the health care fraud and abuse data collection program.
Sec. 7062. Inspector general access to additional practitioner data bank.
Sec. 7063. Corporate whistleblower program.

PART IV—CIVIL MONETARY PENALTIES

Sec. 7071. Social Security Act civil monetary penalties.

PART V—CHAPTER 5—AMENDMENTS TO CRIMINAL LAW

Sec. 7081. Health care fraud.
Sec. 7082. Forfeitures for Federal health care offenses.
Sec. 7083. Injunctive relief relating to Federal health care offenses.
Sec. 7084. Grand jury disclosure.
Sec. 7085. False Statements.
Sec. 7086. Obstruction of criminal investigations, audits, or inspections of Federal health care offenses.
Sec. 7087. Theft or embezzlement.
Sec. 7088. Laundering of monetary instruments.
Sec. 7089. Authorized investigative demand procedures.

PART VI—STATE HEALTH CARE FRAUD CONTROL UNITS

Sec. 7091. State health care fraud control units.

PART VII—MEDICARE/MEDICAID BILLING ABUSE PREVENTION

Sec. 7101. Uniform medicare/medicaid application process.
Sec. 7102. Standards for uniform claims.
Sec. 7103. Unique provider identification code.
Sec. 7104. Use of new procedures.
Sec. 7105. Required billing, payment, and cost limit calculation to be based on site where service is furnished.

SUBCHAPTER B—ADDITIONAL PROVISIONS TO COMBAT WASTE, FRAUD, AND ABUSE

PART I—WASTE AND ABUSE REDUCTION

Sec. 7111. Prohibiting unnecessary and wasteful medicare payments for certain items.
Sec. 7112. Application of competitive acquisition process for Part B items and services.
Sec. 7113. Interim reduction in excessive payments.
Sec. 7114. Reducing excessive billings and utilization for certain items.
Sec. 7115. Improved carrier authority to reduce excessive medicare payments.
Sec. 7116. Effective date.

PART II—MEDICARE BILLING ABUSE PREVENTION

Sec. 7121. Implementation of General Accounting Office recommendations regarding medicare claims processing.
Sec. 7122. Minimum software requirements.
Sec. 7123. Disclosure.
Sec. 7124. Review and modification of regulations.
Sec. 7125. Definitions.

PART III—REFORMING PAYMENTS FOR AMBULANCE SERVICES

Sec. 7131. Reforming payments for ambulance services.

PART IV—REWARDS FOR INFORMATION

Sec. 7141. Rewards for information leading to health care fraud prosecution and conviction.

CHAPTER 6—ESTABLISHMENT OF COMMISSION TO PREPARE FOR THE 21ST CENTURY

Sec. 7161. Establishment.
Sec. 7162. Duties of the Commission.
Sec. 7163. Powers of the Commission.
Sec. 7164. Commission personnel matters.
Sec. 7165. Termination of the Commission.
Sec. 7166. Funding for the Commission.

CHAPTER 7—MEASURES TO IMPROVE THE SOLVENCY OF THE TRUST FUNDS

SUBCHAPTER A—PROVISIONS RELATING TO PART A

PART I—GENERAL PROVISIONS

Sec. 7171. PPS hospital payment update.
Sec. 7172. Modification in payment policies regarding graduate medical education.
Sec. 7173. Elimination of DSH and IME for outliers.
Sec. 7174. Capital payments for PPS inpatient hospitals.
Sec. 7175. Treatment of PPS-exempt hospitals.
Sec. 7176. PPS-exempt capital payments.
Sec. 7177. Prohibition of PPS exemption for new long-term hospitals.
Sec. 7178. Revision of definition of transfers from hospitals to post-acute facilities.
Sec. 7179. Direction of savings to hospital insurance trust fund.

PART II—SKILLED NURSING FACILITIES

Sec. 7181. Prospective payment for skilled nursing facilities.
Sec. 7182. Maintaining savings resulting from temporary freeze on payment increases for skilled nursing facilities.
Sec. 7183. Consolidated billing.

SUBCHAPTER B—PROVISIONS RELATING TO PART B

Sec. 7184. Physician update for 1996.
Sec. 7185. Practice expense relative value units.
Sec. 7186. Correction of MVPS upward bias.
Sec. 7187. Limitations on payment for physicians' services furnished by high-cost hospital medical staffs.
Sec. 7188. Elimination of certain anomalies in payments for surgery.
Sec. 7189. Upgraded durable medical equipment.

SUBCHAPTER C—PROVISIONS RELATING TO PARTS A AND B

PART I—SECONDARY PAYOR

Sec. 7189A. Extension and expansion of existing medicare secondary payor requirements.

PART II—HOME HEALTH AGENCIES

Sec. 7189B. Interim payments for home health services.
Sec. 7189C. Prospective payments.
Sec. 7189D. Maintaining savings resulting from temporary freeze on payment increases.
Sec. 7189E. Elimination of periodic interim payments for home health agencies.
Sec. 7189F. Effective date.

CHAPTER 1—PROVISIONS TO IMPROVE AND EXPAND MEDICARE CHOICES

SEC. 7002. INCREASING CHOICE UNDER MEDICARE.

(a) IN GENERAL.—Title XVIII is amended by inserting after section 1804 the following new section:

''PROVIDING FOR CHOICE OF COVERAGE

''SEC. 1805. (a) CHOICE OF COVERAGE.—

''(1) IN GENERAL.—Subject to the provisions of this section, every individual who is entitled to benefits under part A and enrolled under part B shall elect to receive benefits under this title through one of the following:

''(A) THROUGH TRADITIONAL MEDICARE SYSTEM.—Through the provisions of parts A and B (hereafter in this section, referred to as the 'traditional medicare option').

''(B) THROUGH AN ELIGIBLE ORGANIZATION.—Through an eligible organization with a contract under part C.

''(b) PROCESS FOR EXERCISING CHOICE.—

''(1) IN GENERAL.—The Secretary shall establish a process through which elections described in subsection (a) are made and changed, including the form and manner in which such elections are made and changed. Such elections shall be made or changed during enrollment periods specified under part C.

''(4) DEFAULT.—

''(A) INITIAL ELECTION.—

''(i) IN GENERAL.—Subject to clause (ii), an individual who fails to make an election during an open enrollment period described in section 1852(b)(3) is deemed to have chosen the traditional medicare option.

''(ii) SEAMLESS CONTINUATION OF COVERAGE.—The Secretary shall establish procedures under which individuals who are enrolled with an eligible organization at the time of an open enrollment period described in section 1852(b)(3) and who fail to elect to receive coverage other than through the organization are deemed to have elected to have enrolled in a plan offered by the organization.

''(B) CONTINUING PERIODS.—An individual who has made (or deemed to have made) an election under this section is considered to have continued to make such election until such time as—

''(i) the individual changes the election under this section, or

''(ii) an eligible organization's plan is discontinued, if the individual had elected such plan at the time of the discontinuation.

''(5) AGREEMENTS WITH COMMISSIONER OF SOCIAL SECURITY TO PROMOTE EFFICIENT ADMINISTRATION.—In order to promote the efficient administration of this section and the program under part C, the Secretary may enter into an agreement with the Commissioner of Social Security under which the Commissioner performs administrative responsibilities relating to enrollment and disenrollment in eligible organizations under this section.''.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to contracts effective on and after January 1, 1997.

SEC. 7003. PROVISIONS RELATING TO MEDICARE COORDINATED CARE CONTRACTING OPTIONS.

(a) IN GENERAL.—Title XVIII is amended by redesignating part C as part D and by inserting after part B the following new part:

''PART C—PROVISIONS RELATING TO MEDICARE COORDINATED CARE CONTRACTING OPTIONS

''DEFINITIONS

''SEC. 1851. For purposes of this part:

''(a) ADJUSTED COMMUNITY RATE.—The term 'adjusted community rate' for a service or services means, at the election of an eligible organization, either—

''(A) the rate of payment for that service or services which the Secretary annually determines would apply to a member enrolled under this part with an eligible organization if the rate of payment were determined under a 'community rating system' (as defined in section 1302(8) of the Public Health Service Act, other than subparagraph (C)), or

''(B) such portion of the weighted aggregate premium, which the Secretary annually estimates would apply to a member enrolled under this part with the eligible organization, as the Secretary annually estimates is attributable to that service or services,

but adjusted for differences between the utilization characteristics of the members enrolled with the eligible organization under this part and the utilization characteristics of the other members of the organization (or, if the Secretary finds that adequate data are not available to adjust for those differences, the differences between the utilization characteristics of members in other eligible organizations, or individuals in the area, in the State, or in the United States, eligible to enroll under this part with an eligible organization and the utilization characteristics of the rest of the population in the area, in the State, or in the United States, respectively).

''(b) ELIGIBLE ORGANIZATION.—

''(1) IN GENERAL.—The term 'eligible organization' shall include any of the public or private entities described in paragraph (2), organized under the laws of any State:

''(2) ENTITIES DESCRIBED.—The entities described in this paragraph are the following:

''(A) COORDINATED CARE PLANS.—

''(i) IN GENERAL.—Private managed or coordinated care plans which provide health care services through an integrated network of providers, including—

''(I) qualified health maintenance organizations as defined in section 1310(d) of the Public Health Service Act; and

''(II) beginning with services provided on or after January 1, 1997, preferred provider organization plans, point of service plans, provider-sponsored network plans, or other integrated health plans (subject to approval by the Secretary).

''(ii) REQUIREMENTS FOR CERTAIN COORDINATED CARE PLANS.—A coordinated care plan described in clause (i)(II) shall meet the following requirements:

''(I) The plan shall be in the business of providing a plan of health insurance or health benefits and be organized under the laws of any State.

''(II) The plan shall provide physician's services directly or through physicians who are either employees or partners of such an organization or through contracts or agreements with individual physicians or one or more groups of physicians.

''(III) The plan has made adequate provision against the risk of insolvency, which provision is satisfactory to the Secretary.

''(IV) The plan has effective procedures, satisfactory to the Secretary, to monitor utilization and to control the costs of services.

''(V) The plan shall offer all services covered under parts A and B (or B only, as applicable) and such preventive health services designated by the Secretary under section 1853(a)(1).

''(VI) The plan shall provide all enrollees under this part with a comprehensive out-of-plan service benefit (point-of-service) that allows enrollees to obtain all services covered under parts A and B (or B only, as applicable) and such preventive health services designated by the Secretary under section 1853(a)(1) from a provider with whom the plan does not have a contract.

''(VII) The plan shall provide that cost-sharing for services described in subclause (VI) may not exceed the deductibles and coinsurance amounts applicable to services under part A or B.

''(VIII) A provider under contract with the plan may not bill an enrollee under this part an amount in excess of the applicable cost-sharing amount of the rate negotiated between the provider and the plan.

''(IX) The plan shall meet quality and access standards under this part.

''(iii) POINT-OF-SERVICE OPTION.—Not later than January 1, 1996, the Secretary shall issue guidelines that would permit a qualified health maintenance organization (as defined in section 1310(d) of the Public Health Service Act) to offer a point-of-service option under a risk-sharing contract under this part.

''(B) COMPETITIVE MEDICAL PLAN.—A competitive medical plan that meets the following requirements:

''(i) The entity provides to enrolled members at least the following health care services:

''(I) Physicians' services performed by physicians (as defined in section 1861(r)(1)).

''(II) Inpatient hospital services (except in the case of an entity that had contracted with a single State agency administering a State plan approved under title XIX for the provision of services (other than inpatient services) to individuals eligible for such services under such State plan on a prepaid risk basis prior to 1970).

''(III) Laboratory, X-ray, emergency, and preventive services.

''(IV) Out-of-area coverage.

''(ii) The entity is compensated (except for deductibles, coinsurance, and copayments) for the provision of health care services to enrolled members by a payment which is paid on a periodic basis without regard to the date the health care services are provided and which is fixed without regard to the frequency, extent, or kind of health care service actually provided to a member.

''(iii) The entity provides physicians' services primarily—

''(I) directly through physicians who are either employees or partners of such organization, or

''(II) through contracts with individual physicians or one or more groups of physicians (organized on a group practice or individual practice basis).

''(iv) The entity assumes full financial risk on a prospective basis for the provision of the health care services listed in clause (i), except that such entity may—

''(I) obtain insurance or make other arrangements for the cost of providing to any enrolled member health care services listed in clause (i) the aggregate value of which exceeds $5,000 in any year,

''(II) obtain insurance or make other arrangements for the cost of health care service listed in clause (i) provided to its enrolled members other than through the entity because medical necessity required their provision before they could be secured through the entity,

''(III) obtain insurance or make other arrangements for not more than 90 percent of the amount by which its costs for any of its fiscal years exceed 115 percent of its income for such fiscal year, and

''(IV) make arrangements with physicians or other health professionals, health care institutions, or any combination of such individuals or institutions to assume all or part of the financial risk on a prospective basis for the provision of basic health services by the physicians or other health professionals or through the institutions.

''(v) The entity has made adequate provision against the risk of insolvency, which provision is satisfactory to the Secretary.

''(3) PROVIDER SPONSORED NETWORK.—The term 'provider sponsored network' has the meaning given such term in section 1858(a).

''(c) CONTRACTS.—The term—

''(1) 'risk-sharing contract' means a contract entered into under section 1856(b); and

''(2) 'reasonable cost reimbursement contract' means a contract entered into under section 1856(c).

''(d) AREAS.—

''(1) PAYMENT AREA.—

''(A) IN GENERAL.—Subject to subparagraph (B), the term 'payment area' means an entire metropolitan statistical area or single statewide area that does not include a metropolitan statistical area.

''(B) EXCEPTION.—The Secretary may modify the geographic area covered by a payment area if the application of paragraph (1) would result in a substantial disruption of services provided to enrollees under this part by eligible organizations in an area.

''(2) SERVICE AREA.—

''(A) IN GENERAL.—Except as provided in subparagraph (B), the term 'service area' means, with respect to an eligible organization, the payment area for such organization.

''(B) EXCLUSION.—The Secretary may permit an organization's service area to exclude any portion of a payment area (other than the central county of a metropolitan statistical area) if—

''(i) the organization demonstrates that it lacks the financial or administrative capacity to serve the entire payment area; and

''(ii) the Secretary finds that the composition of the organization's service area does

not reduce the financial risk to the organization of providing services to enrollees because of the health status or other demographic characteristics of individuals residing in the service area (as compared to the health status or demographic characteristics of individuals residing in the portion of the payment area which the organization seeks to exclude from its service area).

''ELIGIBILITY, ENROLLMENT AND DISENROLLMENT, AND INFORMATION

''SEC. 1852. (a) ELIGIBILITY FOR ENROLLMENT.—Subject to the provisions of subsection (b), every individual entitled to benefits under part A and enrolled under part B or enrolled under part B only (other than an individual medically determined to have end-stage renal disease) shall be eligible to enroll under this part with any eligible organization with which the Secretary has entered into a contract under this part and which serves the geographic area in which the individual resides.

''(b) COORDINATED OPEN ENROLLMENT PERIOD.—

''(1) IN GENERAL.—Each eligible organization must have an open enrollment period (which shall be specified by the Secretary for each payment area), for the enrollment of individuals under this part, of at least 30 days duration every year and including the period or periods specified under paragraphs (2) through (4), and must provide that at any time during which enrollments are accepted, the organization will accept up to the limits of its capacity (as determined by the Secretary) and without restrictions, except as may be authorized in regulations, individuals who are eligible to enroll under subsection (a) in the order in which they apply for enrollment, unless to do so would result in failure to meet the requirements of section 1855(k) or would result in the enrollment of enrollees substantially nonrepresentative, as determined in accordance with regulations of the Secretary, of the population in the service area of the organization.

''(2) OPEN ENROLLMENT PERIODS IF CONTRACT NOT RENEWED OR TERMINATED.—

''(A) IN GENERAL.—If a risk-sharing contract under this part is not renewed or is otherwise terminated, eligible organizations with risk-sharing contracts under this part and serving a part of the same service area as under the terminated contract are required to have an open enrollment period for individuals who were enrolled under the terminated contract as of the date of notice of such termination. If a risk-sharing contract under this part is renewed in a manner that discontinues coverage for individuals residing in part of the service area, eligible organizations with risk-sharing contracts under this part and enrolling individuals residing in that part of the service area are required to have an open enrollment period for individuals residing in the part of the service area who were enrolled under the contract as of the date of notice of such discontinued coverage.

''(B) DURATION OF PERIOD.—The open enrollment periods required under subparagraph (A) shall be for 30 days and shall begin 30 days after the date that the Secretary provides notice of such requirement.

''(C) EFFECT OF ENROLLMENT.—Enrollment under this paragraph shall be effective 30 days after the end of the open enrollment period, or, if the Secretary determines that such date is not feasible, such other date as the Secretary specifies.

''(3) ENROLLMENT UPON MEDICARE ELIGIBILITY.—Each eligible organization shall have an open enrollment period for each individual eligible to enroll under subsection (a) during any enrollment period specified by section 1837 that applies to that individual. Enrollment under this paragraph shall be effective as specified by section 1838.

''(4) MOVED FROM GEOGRAPHIC AREA OR DISENROLLED FROM ANOTHER ORGANIZATION.—Each eligible organization shall have an open enrollment period for each individual eligible to enroll under subsection (a) who has previously resided outside the organization's service area or who has disenrolled from another organization. The enrollment period shall begin with the beginning of the month that precedes the month in which the individual becomes a resident of that service area or disenrolls from another plan and shall end at the end of the following month. Enrollment under this paragraph shall be effective as of the first of the month following the month in which the individual enrolls.

''(5) PROCEDURES FOR ENROLLMENT AND DISENROLLMENT.—An individual may enroll under this part with an eligible organization in such manner as may be prescribed in regulations (including enrollment through a third party) and may terminate the individual's enrollment with the eligible organization as of the beginning of the first calendar month following the date on which the request is made for such termination (or, in the case of financial insolvency of the organization, as may be prescribed by regulations) or, in the case of such an organization with a reasonable cost reimbursement contract, as may be prescribed by regulations. In the case of an individual's termination of enrollment, the organization shall provide the individual with a copy of the written request for termination of enrollment and a written explanation of the period (ending on the effective date of the termination) during which the individual continues to be enrolled with the organization and may not receive benefits under this title other than through the organization.

''(6) ENROLLMENT AND DISENROLLMENT BY MAIL, PHONE, OR LOCAL SOCIAL SECURITY OFFICE.—

''(A) IN GENERAL.—Each eligible organization that provides items and services pursuant to a contract under this part shall permit an individual eligible to enroll under this part—

''(i) to obtain enrollment forms and information by mail, telephone, or from local social security offices, and

''(ii) to enroll or disenroll by mail or at a local social security office.

''(B) NO VISITS BY AGENTS.—No agent of an eligible organization may visit the residence of such an individual for purposes of enrolling the individual under this part or providing enrollment information to the individual.

''(c) INFORMATION.—

''(1) INFORMATION DISTRIBUTED BY ORGANIZATION.—The Secretary shall prescribe the procedures and conditions under which an eligible organization that has entered into a contract with the Secretary under this part may inform individuals eligible to enroll under this part with the organization about the organization, or may enroll such individuals with the organization. No brochures, application forms, or other promotional or informational material may be distributed by an organization to (or for the use of) individuals eligible to enroll with the organization under this part unless—

''(A) at least 45 days before its distribution, the organization has submitted the material to the Secretary for review; and

''(B) the Secretary has not disapproved the distribution of the material.

The Secretary shall review all such material submitted and shall disapprove such material if the Secretary determines, in the Secretary's discretion, that the material is materially inaccurate or misleading or otherwise makes a material misrepresentation.

''(2) DISTRIBUTION OF COMPARATIVE MATERIALS BY SECRETARY.—

''(A) IN GENERAL.—The Secretary shall develop and distribute comparative materials during the enrollment periods described in paragraphs (1) and (3) of subsection (b) to individuals eligible to enroll under this part. Such comparative materials shall present comparative information (in a standardized format and in language easily understandable by the target population) about all eligible organizations with contracts under this part and medicare supplemental policies under section 1882 available in the individual's payment area. The Secretary shall allocate the costs for developing and distributing such materials to such eligible organizations and issues medicare supplemental policies represented in such materials.

''(B) MATERIAL DESCRIBED.—The comparative materials distributed under subparagraph (A) shall include where applicable, with respect to eligible organizations and medicare supplemental policies, the following information:

''(i) Benefits, including maximums limitations and exclusions.

''(ii) Premiums, cost-sharing, administrative charges and availability of out-of-plan services.

''(iii) Coordination of care.

''(iv) Procedures for obtaining benefits including the locations, qualifications, and availability of participating providers.

''(v) Grievance and appeal procedures, including the right to address grievances with the organization to the Secretary and the appropriate peer review entity.

''(vi) Programs for health promotion, the prevention of diseases, disorders, disabilities, injuries and other health conditions.

''(vii) Rights and responsibilities of enrollees.

''(viii) Prior authorization requirements.

''(ix) Procedures used to monitor and control utilization of services and expenditures.

''(x) Procedures for assuring and improving quality of care.

''(xi) Risk and referral arrangements under the plan.

''(xii) Loss ratios and an easily understandable explanation that such ratio reflects the percentage of premiums spent on health services compared to total premiums paid.

''(xiii) Whether the organization is out-of-compliance with standards (as defined by the Secretary).

''(xiv) In the case of medicare supplemental policies, underwriting policies and projected premiums in age-bands.

''BENEFITS AND PREMIUMS

''SEC. 1853. (a) BENEFITS COVERED.—

''(1) IN GENERAL.—

''(A) COVERED SERVICES.—Except as provided in subparagraph (B), the organization must provide to members enrolled under this part, through providers and other persons that meet the applicable requirements of this title and part A of title XI—

''(i) only those services covered under parts A and B of this title (and such preventive health services and reduced cost-sharing as the Secretary may designate) for those members entitled to benefits under part A and enrolled under part B, or

''(ii) only those services covered under part B of this title (and such preventive health services and reduced cost-sharing designated under clause (i)) for those members enrolled only under such part.

''(B) ADDITIONAL SERVICES.—The organization may provide such members with such additional health care services as the members may elect, at their option, to have covered, and in the case of an organization with

a risk-sharing contract, the organization may provide such members with such additional health care services as the Secretary may approve. The Secretary shall approve any such additional health care services which the organization proposes to offer to such members, unless the Secretary determines that including such additional services will substantially discourage enrollment by covered individuals with the organization.

''(C) PAYMENTS IN LIEU OF OTHER AMOUNTS.—Subject to paragraph (2)(B) and section 1857(h), payments under a contract to an eligible organization under subsection (a) or (b) of section 1857 shall be instead of the amounts which (in the absence of the contract) would be otherwise payable, pursuant to sections 1814(b) and 1833(a), for services furnished by or through the organization to individuals enrolled with the organization under this part.

''(2) NATIONAL COVERAGE DETERMINATION.—If there is a national coverage determination made in the period beginning on the date of an announcement under section 1857(a)(1) and ending on the date of the next announcement under such section that the Secretary projects will result in a significant change in the costs to the organization of providing the benefits that are the subject of such national coverage determination and that was not incorporated in the determination of the per capita rate of payment included in the announcement made at the beginning of such period—

''(A) such determination shall not apply to risk-sharing contracts under this part until the first contract year that begins after the end of such period; and

''(B) if such coverage determination provides for coverage of additional benefits or under additional circumstances, paragraph (1)(C) shall not apply to payment for such additional benefits or benefits provided under such additional circumstances until the first contract year that begins after the end of such period,

unless otherwise required by law.

''(b) PREMIUMS, DEDUCTIBLES, COINSURANCE, AND COPAYMENTS.—

''(1) IN GENERAL.—In no case may—

''(A) the portion of an eligible organization's premium rate and the actuarial value of its deductibles, coinsurance, and copayments charged (with respect to services covered under parts A and B, preventive services designated under section 1853(a)(1), and, if applicable, the point-of-service benefit described in section 1851(b)(2)(A)(ii)(VI)) to individuals who are enrolled under this part with the organization and who are entitled to benefits under part A and enrolled under part B, or

''(B) the portion of its premium rate and the actuarial value of its deductibles, coinsurance, and copayments charged (with respect to services covered under part B, preventive services designated under section 1853(a)(1) and the point-of-service benefit described in section, if applicable, 1851(b)(2)(A)(ii)(VI)) to individuals who are enrolled under this part with the organization and enrolled under part B only,

exceed the actuarial value of the coinsurance and deductibles that would be applicable on the average to individuals enrolled under this part with the organization (or, if the Secretary finds that adequate data are not available to determine that actuarial value, the actuarial value of the coinsurance and deductibles applicable on the average to individuals in the area, in the State, or in the United States, eligible to enroll under this part with the organization, or other appropriate data) and entitled to benefits under part A and enrolled under part B, or enrolled under part B only, respectively, if they were not members of an eligible organization.

''(2) ADDITIONAL SERVICES.—If the eligible organization provides to its members enrolled under this part services in addition to services covered under parts A and B of this title and such preventive health services designated by the Secretary under subsection (a)(1)(A), election of coverage for such additional services (unless such services have been approved by the Secretary under subsection (a)(1)(B)) shall be optional for such members and such organization shall furnish such members with information on the portion of its premium rate or other charges applicable to such additional services. In no case may the sum of—

''(A) the portion of such organization's premium rate charged, with respect to such additional services, to members enrolled under this part, and

''(B) the actuarial value of its deductibles, coinsurance, and copayments charged, with respect to such services to such members,

exceed the adjusted community rate for such services.

''(c) SECONDARY PAYER.—Notwithstanding any other provision of law, the eligible organization may (in the case of the provision of services to a member enrolled under this part for an illness or injury for which the member is entitled to benefits under a workmen's compensation law or plan of the United States or a State, under an automobile or liability insurance policy or plan, including a self-insured plan, or under no fault insurance) charge or authorize the provider of such services to charge, in accordance with the charges allowed under such law or policy—

''(1) the insurance carrier, employer, or other entity which under such law, plan, or policy is to pay for the provision of such services, or

''(2) such member to the extent that the member has been paid under such law, plan, or policy for such services.''

''PATIENT PROTECTIONS

''SEC. 1855. (a) ANTIDISCRIMINATION.—The organization must provide assurances to the Secretary that it will not expel or refuse to re-enroll any such individual because of the individual's health status or requirements for health care services, and that it will notify each such individual of such fact at the time of the individual's enrollment.

''(b) EXPLANATION OF RIGHTS.—Each eligible organization shall provide each enrollee, at the time of enrollment and not less frequently than annually thereafter, an explanation of the enrollee's rights under this part, including an explanation of—

''(1) the enrollee's rights to benefits from the organization,

''(2) if any the restrictions on payments under this title for services furnished other than by or through the organization,

''(3) out-of-area coverage provided by the organization,

''(4) the organization's coverage of emergency services and urgently needed care, and

''(5) appeal rights of enrollees.

''(c) ASSURANCES RELATING TO PREEXISTING CONDITION.—Each eligible organization that provides items and services pursuant to a contract under this part shall provide assurances to the Secretary that in the event the organization ceases to provide such items and services, the organization shall provide or arrange for supplemental coverage of benefits under this title related to a preexisting condition with respect to any exclusion period, to all individuals enrolled with the entity who receive benefits under this title, for the lesser of 6 months or the duration of such period.

''(d) NOTICE OF RIGHT TO TERMINATE CONTRACT OR REFUSE TO RENEW.—

''(1) IN GENERAL.—Each eligible organization having a risk-sharing contract under this part shall notify individuals eligible to enroll with the organization under this part and individuals enrolled with the organization under this part that—

''(A) the organization is authorized by law to terminate or refuse to renew the contract, and

''(B) termination or nonrenewal of the contract may result in termination of the enrollments of individuals enrolled with the organization under this part.

''(2) NOTICE INCLUDED.—The notice required by paragraph (1) shall be included in—

''(A) any marketing materials described in section 1852(c)(1) that are distributed by an eligible organization to individuals eligible to enroll under this part with the organization, and

''(B) any explanation provided to enrollees by the organization pursuant to subsection (b).

''(e) ACCESS.—

''(1) IN GENERAL.—The organization must—

''(A) make the services described in section 1853(a)(1)(A) (and such other health care services as such individuals have contracted for)—

''(i) available and accessible to each such individual, within the area served by the organization, with reasonable promptness and in a manner which assures continuity, and

''(ii) when medically necessary, available and accessible 24 hours a day and 7 days a week, and

''(B) provide for reimbursement with respect to emergency services which are provided to such an individual other than through the organization.

''(2) EMERGENCY SERVICES DEFINED.—For purposes of this subsection, the term 'emergency services' means services provided to an individual after the sudden onset of a medical condition that manifests itself by symptoms of sufficient severity (including severe pain) such that the absence of immediate medical attention could reasonably be expected by a prudent layperson (possessing an average knowledge of health and medicine) to result in placing the individual's health in serious jeopardy, the serious impairment of a bodily function, or the serious dysfunction of any bodily organ or part, and includes services furnished as a result of a call through the 911 emergency system.

''(3) NO PRIOR AUTHORIZATION.—An eligible organization with a contract under this part may not require prior authorization for emergency services.

''(f) HEARING AND GRIEVANCES.—

''(1) IN GENERAL.—The organization must provide meaningful procedures for hearing and resolving grievances between the organization (including any entity or individual through which the organization provides health care services) and members enrolled with the organization under this part.

''(2) HEARING BEFORE THE SECRETARY.—A member enrolled with an eligible organization under this part who is dissatisfied by reason of his failure to receive any health service to which he believes he is entitled and at no greater charge than he believes he is required to pay is entitled, if the amount in controversy is $100 or more, to a hearing before the Secretary to the same extent as is provided in section 205(b), and in any such hearing the Secretary shall make the eligible organization a party. If the amount in controversy is $1,000 or more, the individual or eligible organization shall, upon notifying the other party, be entitled to judicial review of the Secretary's final decision as provided in section 205(g), and both the individual and the eligible organization shall be entitled to be parties to that judicial review. In applying sections 205(b) and 205(g) as provided in this subparagraph, and in applying section 205(l) thereto, any reference therein

to the Commissioner of Social Security or the Social Security Administration shall be considered a reference to the Secretary or the Department of Health and Human Services, respectively.

''(g) ARRANGEMENTS FOR ONGOING QUALITY ASSURANCE.—The organization must have arrangements, established in accordance with regulations of the Secretary, for an ongoing quality assurance program for health care services it provides to such individuals, which program—

''(1) stresses health outcomes; and

''(2) provides review by physicians and other health care professionals of the process followed in the provision of such health care services.

''(h) ADVANCE DIRECTIVES.—A contract under this part shall provide that the eligible organization shall meet the requirement of section 1866(f) (relating to maintaining written policies and procedures respecting advance directives).

''(i) UTILIZATION REVIEW PROGRAM.—

''(1) IN GENERAL.—An eligible organization may not deny coverage of or payment for items and services on the basis of a utilization review program unless the program meets the standards established by the Secretary under paragraph (2).

''(2) STANDARDS.—The Secretary shall establish standards for utilization review programs of eligible organizations, consistent with paragraph (3), and shall periodically review and update such standards to reflect changes in the delivery of health care services. The Secretary shall establish such standards in consultation with appropriate parties.

''(3) CONTENTS OF STANDARDS.—Under the standards established under paragraph (2)—

''(A) individuals performing utilization review may not receive financial compensation based upon the number of denials of coverage; and

''(B) determinations regarding requests for authorization for service shall be made in a timely manner, based on the urgency of the request.

''(j) QUALIFIED HEALTH PROVIDERS.—

''(1) IN GENERAL.—The eligible organization shall demonstrate to the Secretary that the organization has a sufficient number, distribution, and variety of qualified health care providers to ensure that all covered health care services will be available and accessible in a timely manner to all individuals enrolled in the organization.

''(2) SPECIALISTS.—The eligible organization shall demonstrate to the Secretary that organization enrollees have access, when medically or clinically indicated in the judgment of the treating health professional, to specialized treatment expertise.

''(3) DISTANCE.—In order to meet the requirements of paragraph (1), any eligible organization that restricts an enrollee's choice of doctor shall provide that primary care services for each enrollee who lives in a rural area (as defined in section 1886(d)(2)(D)) are not more than 30 miles or 30 minutes in travel time from the enrollee's residence. The Secretary may provide for exceptions from this paragraph on a case-by-case basis.

''(k) 50/50 RULE.—

''(1) IN GENERAL.—Each eligible organization with which the Secretary enters into a contract under this part shall have, for the duration of such contract, an enrolled membership at least one-half of which consists of individuals who are not entitled to benefits under this title or under a State plan approved under title XIX.

''(2) MODIFICATION OR WAIVER.—Subject to paragraph (3), the Secretary may modify or waive the requirement imposed by paragraph (1) only—

''(A) to the extent that more than 50 percent of the population of the area served by the organization consists of individuals who are entitled to benefits under this title or under a State plan approved under title XIX,

''(B) in the case of an eligible organization that is owned and operated by a governmental entity, only with respect to a period of 3 years beginning on the date the organization first enters into a contract under this part, and only if the organization has taken and is making reasonable efforts to enroll individuals who are not entitled to benefits under this title or under a State plan approved under title XIX, or

''(C) the Secretary determines (in accordance with criteria developed by the Secretary not later than January 1, 1997) that individuals who are entitled to benefits under this title who are enrolled with the eligible organization with a contract under this part in the organization's payment area receive the same quality of service as enrollees in private sector health plans in the same payment area.

''(4) FAILURE TO COMPLY.—If the Secretary determines that an eligible organization has failed to comply with the requirements of this subsection, the Secretary may provide for the suspension of enrollment of individuals under this part or of payment to the organization under this part for individuals newly enrolled with the organization, after the date the Secretary notifies the organization of such noncompliance.

''CONTRACTS WITH ELIGIBLE ORGANIZATIONS

''SEC. 1856. (a) IN GENERAL.—The Secretary shall not permit the election under section 1805 of enrollment in an eligible organization under this part, and no payment shall be made under section 1857 to an organization, unless the Secretary has entered into a contract under this part with the organization. Such contract shall provide that the organization agrees to comply with the requirements of this part and the terms of conditions of payment as provided for in this part.

''(b) REQUIREMENTS RELATING TO RISK-SHARING CONTRACTS.—

''(1) MINIMUM ENROLLMENT.—The Secretary may enter a risk-sharing contract with any eligible organization which has at least 5,000 members, except that the Secretary may enter into such a contract with an eligible organization that has fewer members if the organization primarily serves members residing outside of urban areas.

''(2) PROVISION OF ADDITIONAL BENEFITS IF ADJUSTED COMMUNITY RATE LESS THAN PER CAPITA RATE OF PAYMENT.—

''(A) IN GENERAL.—Each risk-sharing contract shall provide that—

''(i) if the adjusted community rate, as defined in section 1851(a), for services under parts A and B and such preventive services designated by the Secretary under section 1853(a)(1) (as reduced for the actuarial value of the coinsurance and deductibles under those parts and such reduced cost-sharing designated by the Secretary under such section) for members enrolled under this part with the organization and entitled to benefits under part A and enrolled in part B, or

''(ii) if the adjusted community rate for services under part B and such preventive services (as reduced for the actuarial value of the coinsurance and deductibles under that part and such reduced cost-sharing) for members enrolled under this part with the organization and entitled to benefits under part B only,

is less than the average of the per capita rates of payment to be made under section 1857(a) at the beginning of an annual contract period for members enrolled under this part with the organization and entitled to benefits under part A and enrolled in part B, or enrolled in part B only, respectively, the eligible organization shall provide to members enrolled under a risk-sharing contract under this part with the organization and entitled to benefits under part A and enrolled in part B, or enrolled in part B only, respectively, the additional benefits described in paragraph (3) which are selected by the eligible organization and which the Secretary finds are at least equal in value to the difference between that average per capita payment and the adjusted community rate (as so reduced).

''(B) EXCEPTIONS.—

''(i) RECEIPT OF LESSER PAYMENT.—Subparagraph (A) shall not apply with respect to any organization which elects to receive a lesser payment to the extent that there is no longer a difference between the average per capita payment and adjusted community rate (as so reduced).

''(ii) STABILIZATION FUND.—An organization (with the approval of the Secretary) may provide that a part of the value of such additional benefits be withheld and reserved by the Secretary as provided in paragraph (4).

''(C) CALCULATION OF PER CAPITA RATES OF PAYMENT.—If the Secretary finds that there is insufficient enrollment experience to determine an average of the per capita rates of payment to be made under section 1857(a) at the beginning of a contract period, the Secretary may determine such an average based on the enrollment experience of other contracts entered into under this part.

''(3) ADDITIONAL BENEFITS DESCRIBED.—The additional benefits referred to in paragraph (2) are—

''(A) the reduction of the premium rate or other charges made with respect to services furnished by the organization to members enrolled under this part, or

''(B) the provision of additional health benefits,

or both.

''(4) STABILIZATION FUND.—An organization having a risk-sharing contract under this part may (with the approval of the Secretary) provide that a part of the value of additional benefits otherwise required to be provided by reason of paragraph (2) be withheld and reserved in the Federal Hospital Insurance Trust Fund and in the Federal Supplementary Medical Insurance Trust Fund (in such proportions as the Secretary determines to be appropriate) by the Secretary for subsequent annual contract periods, to the extent required to stabilize and prevent undue fluctuations in the additional benefits offered in those subsequent periods by the organization in accordance with paragraph (3). Any of such value of additional benefits which is not provided to members of the organization in accordance with paragraph (3) prior to the end of such period, shall revert for the use of such trust funds.

''(5) PROMPT PAYMENT.—

''(A) IN GENERAL.—A risk-sharing contract under this part shall require the eligible organization to provide prompt payment (consistent with the provisions of sections 1816(c)(2) and 1842(c)(2)) of claims submitted for services and supplies furnished to individuals pursuant to such contract, if the services or supplies are not furnished under a contract between the organization and the provider or supplier.

''(B) FAILURE TO MAKE PROMPT PAYMENT.—In the case of an eligible organization which the Secretary determines, after notice and opportunity for a hearing, has failed to make payments of amounts in compliance with subparagraph (A), the Secretary may provide for direct payment of the amounts owed to providers and suppliers for such covered services furnished to individuals enrolled under this part under the contract. If the Secretary provides for such direct payments,

the Secretary shall provide for an appropriate reduction in the amount of payments otherwise made to the organization under this part to reflect the amount of the Secretary's payments (and costs incurred by the Secretary in making such payments).

''(c) REASONABLE COST REIMBURSEMENT CONTRACT.—

''(1) IN GENERAL.—If—

''(A) the Secretary is not satisfied that an eligible organization has the capacity to bear the risk of potential losses under a risk-sharing contract under this part, or

''(B) the eligible organization so elects or has an insufficient number of members to be eligible to enter into a risk-sharing contract under subsection (b)(1),

the Secretary may, if the Secretary is otherwise satisfied that the eligible organization is able to perform its contractual obligations effectively and efficiently, enter into a contract with such organization pursuant to which such organization is reimbursed on the basis of its reasonable cost (as defined in section 1861(v)) in the manner prescribed in paragraph (3).

''(2) REIMBURSEMENT.—A reasonable cost reimbursement contract under this part may, at the option of such organization, provide that the Secretary—

''(A) will reimburse hospitals and skilled nursing facilities either for the reasonable cost (as determined under section 1861(v)) or for payment amounts determined in accordance with section 1886, as applicable, of services furnished to individuals enrolled with such organization pursuant to section 1852(a), and

''(B) will deduct the amount of such reimbursement from payment which would otherwise be made to such organization.

If such an eligible organization pays a hospital or skilled nursing facility directly, the amount paid shall not exceed the reasonable cost of the services (as determined under section 1861(v)) or the amount determined under section 1886, as applicable, unless such organization demonstrates to the satisfaction of the Secretary that such excess payments are justified on the basis of advantages gained by the organization.

''(3) RETROACTIVE ADJUSTMENT.—Payments made to an organization with a reasonable cost reimbursement contract shall be subject to appropriate retroactive corrective adjustment at the end of each contract year so as to assure that such organization is paid for the reasonable cost actually incurred (excluding any part of incurred cost found to be unnecessary in the efficient delivery of health services) or the amounts otherwise determined under section 1886 for the types of expenses otherwise reimbursable under this title for providing services covered under this title to individuals described in section 1853(a)(1).

''(4) FINANCIAL STATEMENT.—Any reasonable cost reimbursement contract with an eligible organization under this part shall provide that the Secretary shall require, at such time following the expiration of each accounting period of the eligible organization (and in such form and in such detail) as he may prescribe—

''(A) that the organization report to him in an independently certified financial statement its per capita incurred cost based on the types of components of expenses otherwise reimbursable under this title for providing services described in section 1853(a)(1), including therein, in accordance with accounting procedures prescribed by the Secretary, its methods of allocating costs between individuals enrolled under this part and other individuals enrolled with such organization;

''(B) that failure to report such information as may be required may be deemed to constitute evidence of likely overpayment on the basis of which appropriate collection action may be taken;

''(C) that in any case in which an eligible organization is related to another organization by common ownership or control, a consolidated financial statement shall be filed and that the allowable costs for such organization may not include costs for the types of expense otherwise reimbursable under this title, in excess of those which would be determined to be reasonable in accordance with regulations (providing for limiting reimbursement to costs rather than charges to the eligible organization by related organizations and owners) issued by the Secretary; and

''(D) that in any case in which compensation is paid by an eligible organization substantially in excess of what is normally paid for similar services by similar practitioners (regardless of method of compensation), such compensation may as appropriate be considered to constitute a distribution of profits.

''(d) CONTRACT PERIOD AND EFFECTIVENESS.—

''(1) PERIOD.—

''(A) IN GENERAL.—Each contract under this part shall be for a term of at least 1 year, as determined by the Secretary, and may be made automatically renewable from term to term in the absence of notice by either party of intention to terminate at the end of the current term.

''(B) TERMINATION OR IMMEDIATE SANCTIONS FOR CAUSE.—The Secretary, in accordance with procedures established under paragraph (9), may terminate any such contract at any time, or may impose the intermediate sanctions described in paragraph (6)(B) or (6)(C) (whichever is applicable), if the Secretary finds that the organization—

''(i) has failed substantially to carry out the contract,

''(ii) is carrying out the contract in a manner inconsistent with the efficient and effective administration of this part, or

''(iii) no longer substantially meets the applicable conditions of this part.

''(2) EFFECTIVE DATE OF CONTRACT.—The effective date of any contract executed pursuant to this part shall be specified in the contract.

''(3) PROTECTIONS AGAINST FRAUD AND BENEFICIARY PROTECTIONS.—Each contract under this part—

''(A) shall provide that the Secretary, or any person or organization designated by him—

''(i) shall have the right to inspect or otherwise evaluate—

''(I) the quality, appropriateness, and timeliness of services performed under the contract, and

''(II) the facilities of the organization when there is reasonable evidence of some need for such inspection, and

''(ii) shall have the right to audit and inspect any books and records of the eligible organization that pertain—

''(I) to the ability of the organization to bear the risk of potential financial losses, or

''(II) to services performed or determinations of amounts payable under the contract;

''(B) shall require the organization with a risk-sharing contract to provide (and pay for) written notice in advance of the contract's termination, as well as a description of alternatives for obtaining benefits under this title, to each individual enrolled under this part with the organization; and

''(C)(i) shall require the organization to comply with subsections (a) and (c) of section 1318 of the Public Health Service Act (relating to disclosure of certain financial information) and with the requirement of section 1301(c)(8) of such Act (relating to liability arrangements to protect members);

''(ii) shall require the organization to provide and supply information (described in section 1866(b)(2)(C)(ii)) in the manner such information is required to be provided or supplied under that section;

''(iii) shall require the organization to notify the Secretary of loans and other special financial arrangements which are made between the organization and subcontractors, affiliates, and related parties; and

''(D) shall contain such other terms and conditions not inconsistent with this part (including requiring the organization to provide the Secretary with such information) as the Secretary may find necessary and appropriate.

''(4) PREVIOUS TERMINATIONS.—The Secretary may not enter into a risk-sharing contract with an eligible organization if a previous risk-sharing contract with that organization under this part was terminated at the request of the organization within the preceding 5-year period, except in circumstances which warrant special consideration, as determined by the Secretary.

''(5) NO CONTRACTING AUTHORITY.—The authority vested in the Secretary by this part may be performed without regard to such provisions of law or regulations relating to the making, performance, amendment, or modification of contracts of the United States as the Secretary may determine to be inconsistent with the furtherance of the purpose of this title.

''(6) INTERMEDIATE SANCTIONS.—

''(A) IN GENERAL.—If the Secretary determines that an eligible organization with a contract under this part—

''(i) fails substantially to provide medically necessary items and services that are required (under law or under the contract) to be provided to an individual covered under the contract, if the failure has adversely affected (or has substantial likelihood of adversely affecting) the individual;

''(ii) imposes premiums on individuals enrolled under this part in excess of the premiums permitted;

''(iii) acts to expel or to refuse to re-enroll an individual in violation of the provisions of this part;

''(iv) engages in any practice that would reasonably be expected to have the effect of denying or discouraging enrollment (except as permitted by this part) by eligible individuals with the organization whose medical condition or history indicates a need for substantial future medical services;

''(v) misrepresents or falsifies information that is furnished—

''(I) to the Secretary under this part, or

''(II) to an individual or to any other entity under this part;

''(vi) fails to comply with the requirements of section 1856(b)(5); or

''(vii) in the case of a risk-sharing contract, employs or contracts with any individual or entity that is excluded from participation under this title under section 1128 or 1128A for the provision of health care, utilization review, medical social work, or administrative services or employs or contracts with any entity for the provision (directly or indirectly) through such an excluded individual or entity of such services;

the Secretary may provide, in addition to any other remedies authorized by law, for any of the remedies described in subparagraph (B).

''(B) REMEDIES DESCRIBED.—The remedies described in this subparagraph are—

''(i) civil money penalties of not more than $25,000 for each determination under subparagraph (A) or, with respect to a determination under clause (iv) or (v)(I) of such

subparagraph, of not more than $100,000 for each such determination, plus, with respect to a determination under subparagraph (A)(ii), double the excess amount charged in violation of such subparagraph (and the excess amount charged shall be deducted from the penalty and returned to the individual concerned), and plus, with respect to a determination under subparagraph (A)(iv), $15,000 for each individual not enrolled as a result of the practice involved,

''(ii) suspension of enrollment of individuals under this part after the date the Secretary notifies the organization of a determination under subparagraph (A) and until the Secretary is satisfied that the basis for such determination has been corrected and is not likely to recur, or

''(iii) suspension of payment to the organization under this part for individuals enrolled after the date the Secretary notifies the organization of a determination under subparagraph (A) and until the Secretary is satisfied that the basis for such determination has been corrected and is not likely to recur.

''(C) In the case of an eligible organization for which the Secretary makes a determination under paragraph (1)(B) the basis of which is not described in subparagraph (A), the Secretary may apply the following intermediate sanctions:

''(i) Civil money penalties of not more than $25,000 for each determination under paragraph (1) if the deficiency that is the basis of the determination has directly adversely affected (or has the substantial likelihood of adversely affecting) an individual covered under the organization's contract.

''(ii) Civil money penalties of not more than $10,000 for each week beginning after the initiation of procedures by the Secretary under paragraph (9) during which the deficiency that is the basis of a determination under paragraph (1) exists.

''(iii) Suspension of enrollment of individuals under this section after the date the Secretary notifies the organization of a determination under paragraph (1) and until the Secretary is satisfied that the deficiency that is the basis for the determination has been corrected and is not likely to recur.

''(D) The provisions of section 1128A (other than subsections (a) and (b)) shall apply to a civil money penalty under subparagraph (A) or (B) in the same manner as they apply to a civil money penalty or proceeding under section 1128(a).

''(7) UTILIZATION AND PEER REVIEW ORGANIZATION.—

''(A) IN GENERAL.—Each risk-sharing contract with an eligible organization under this part shall provide that the organization will maintain a written agreement with a utilization and quality control peer review organization (which has a contract with the Secretary under part B of title XI for the area in which the eligible organization is located) or with an entity selected by the Secretary under section 1154(a)(4)(C) under which the review organization will perform functions under section 1154(a)(4)(B) and section 1154(a)(14) (other than those performed under contracts described in section 1866(a)(1)(F)) with respect to services, furnished by the eligible organization, for which payment may be made under this title.

''(B) COST OF AGREEMENT.—For purposes of payment under this title, the cost of such agreement to the eligible organization shall be considered a cost incurred by a provider of services in providing covered services under this title and shall be paid directly by the Secretary to the review organization on behalf of such eligible organization in accordance with a schedule established by the Secretary.

''(C) SOURCE OF PAYMENTS.—Such payments—

''(i) shall be transferred in appropriate proportions from the Federal Hospital Insurance Trust Fund and from the Supplementary Medical Insurance Trust Fund, without regard to amounts appropriated in advance in appropriation Acts, in the same manner as transfers are made for payment for services provided directly to beneficiaries, and

''(ii) shall not be less in the aggregate for such organizations for a fiscal year than the amounts the Secretary determines to be sufficient to cover the costs of such organizations' conducting activities described in subparagraph (A) with respect to such eligible organizations under part B of title XI.

''(8) PHYSICIAN INCENTIVE PLAN.—

''(A) IN GENERAL.—Each contract with an eligible organization under this part shall provide that the organization may not operate any physician incentive plan (as defined in subparagraph (B)) unless the following requirements are met:

''(i) No specific payment is made directly or indirectly under the plan to a physician or physician group as an inducement to reduce or limit medically necessary services provided with respect to a specific individual enrolled with the organization.

''(ii) If the plan places a physician or physician group at substantial financial risk (as determined by the Secretary) for services not provided by the physician or physician group, the organization—

''(I) provides stop-loss protection for the physician or group that is adequate and appropriate, based on standards developed by the Secretary that take into account the number of physicians placed at such substantial financial risk in the group or under the plan and the number of individuals enrolled with the organization who receive services from the physician or the physician group, and

''(II) conducts periodic surveys of both individuals enrolled and individuals previously enrolled with the organization to determine the degree of access of such individuals to services provided by the organization and satisfaction with the quality of such services.

''(iii) The organization provides the Secretary with descriptive information regarding the plan, sufficient to permit the Secretary to determine whether the plan is in compliance with the requirements of this subparagraph.

''(B) PHYSICIAN INCENTIVE PLAN DEFINED.—In this paragraph, the term 'physician incentive plan' means any compensation arrangement between an eligible organization and a physician or physician group that may directly or indirectly have the effect of reducing or limiting services provided with respect to individuals enrolled with the organization.

''(9) The Secretary may terminate a contract with an eligible organization under this section or may impose the intermediate sanctions described in paragraph (6) on the organization in accordance with formal investigation and compliance procedures established by the Secretary under which—

''(A) the Secretary first provides the organization with the reasonable opportunity to develop and implement a corrective action plan to correct the deficiencies that were the basis of the Secretary's determination under paragraph (1) and the organization fails to develop or implement such a plan;

''(B) in deciding whether to impose sanctions, the Secretary considers aggravating factors such as whether an entity has a history of deficiencies or has not taken action to correct deficiencies the Secretary has brought to their attention;

''(C) there are no unreasonable or unnecessary delays between the finding of a deficiency and the imposition of sanctions; and

''(D) the Secretary provides the organization with reasonable notice and opportunity for hearing (including the right to appeal an initial decision) before imposing any sanction or terminating the contract.

(e) SERVICES NOT FURNISHED BY ORGANIZATION.—

''(1) PARTICIPATING PHYSICIAN.—In the case of physicians' services or renal dialysis services described in paragraph (2) which are furnished by a participating physician or provider of services or renal dialysis facility to an individual enrolled with an eligible organization under this part and enrolled under part B, the applicable participation agreement is deemed to provide that the physician or provider of services or renal dialysis facility will accept as payment in full from the eligible organization the amount that would be payable to the physician or provider of services or renal dialysis facility under part B and from the individual under such part, if the individual were not enrolled with an eligible organization under this part.

''(2) NONPARTICIPATING PHYSICIAN.—In the case of physicians' services described in paragraph (3) which are furnished by a nonparticipating physician, the limitations on actual charges for such services otherwise applicable under part B (to services furnished by individuals not enrolled with an eligible organization under this part) shall apply in the same manner as such limitations apply to services furnished to individuals not enrolled with such an organization.

''(3) SERVICES DESCRIBED.—The physicians' services or renal dialysis services described in this paragraph are physicians' services or renal dialysis services which are furnished to an enrollee of an eligible organization under this part by a physician, provider of services, or renal dialysis facility who is not under a contract with the organization.

''(4) EXCEPTION FOR EMERGENCY SERVICES.—In the case of emergency services described in section 1855(e)(2), which are furnished by a provider that does not have a contractual relationship with the organization, the organization shall be required to reimburse the provider for the reasonable costs of providing such services.

''PAYMENT TO ELIGIBLE ORGANIZATIONS

''SEC. 1857. (a) MONTHLY PAYMENTS IN ADVANCE TO ORGANIZATION WITH RISK-SHARING CONTRACTS.—

''(1) ANNOUNCEMENT.—The Secretary shall annually determine, and shall announce (in a manner intended to provide notice to interested parties) not later than September 7 before the calendar year concerned—

''(A) a per capita rate of payment for each class of individuals who are enrolled under this part with an eligible organization which has entered into a risk-sharing contract and who are entitled to benefits under part A and enrolled under part B, and

''(B) a per capita rate of payment for each class of individuals who are so enrolled with such an organization and who are enrolled under part B only.

(2) IN GENERAL.—

''(A) MONTHLY PAYMENT.—In the case of an eligible organization with a risk-sharing contract, the Secretary shall make monthly payments in advance and in accordance with the rate determined under subparagraph (B) and except as provided in section 1856(b)(2), to the organization for each individual enrolled with the organization under this part.

''(B) METHOD OF DETERMINING PAYMENT.—

''(i) 1997.—For 1997, the modified per capita rate of payment for each class defined under clause (iii) shall be equal to the annual per capita rate of payment for such class which

would have been determined under section 1876(a)(1)(C) for 1996 if—

''(I) the applicable geographic area were the payment area; and

''(II) 50 percent of any payments attributable to sections 1886(d)(5)(B), 1886(h), and 1886(d)(5)(F) (relating to IME, GME, and DSH payments) were not taken into account, increased by 7 percent (to reflect the projected per capita rate of growth in private health care expenditures)..

''(ii) SUCCEEDING YEARS.—

''(I) IN GENERAL.—For 1998 and each succeeding calendar year, the modified per capita rate of payment for each class defined under clause (iii) shall be equal to the modified per capita rate of payment determined for such area for the preceding year, increased by 7 percent (to reflect the projected per capita rate of growth in private health care expenditures).

''(II) PHASE-OUT OF SPECIAL PAYMENTS.—In applying this clause for 1998, the modified per capita rate of payment for each such class for 1997 shall be the amount that would have been determined for 1997 if clause (i)(II) had been applied by substituting '100 percent' for '50 percent'.

''(iii) CLASSES.—The Secretary shall define appropriate classes of members, based on age, disability status, and such other factors as the Secretary determines to be appropriate, so as to ensure actuarial equivalence. The Secretary may add to, modify, or substitute for such classes, if such changes will improve the determination of actuarial equivalence and not later then January 1, 1997, the Secretary shall implement risk-adjusters that were not in effect under section 1876 (as in effect on December 31, 1996.

''(iv) ADJUSTMENTS.—The Secretary shall adjust modified per capita rates of payment for a payment area under this subparagraph such that—

''(I) the portion of such rate attributable to part B shall not result in a modified per capita rate of payment for an area that is less than 85 percent of portion of the weighted average of the modified per capita rates determined under clause (i) or (ii) attributable to part B services for all payment areas for 1996; and

''(II) such rate reflects the cost of providing the benefits described in section 1853(a)(1) to enrollees.

Such adjustments shall be made to ensure that total payments under this subsection to eligible organizations do not exceed the amount that would have been paid under this subsection in the absence of such adjustments.

''(3) PAYMENTS ONLY TO ELIGIBLE ORGANIZATIONS.—Subject to paragraph (6) and section 1853(a)(2), if an individual is enrolled under this part with an eligible organization having a risk-sharing contract, only the eligible organization shall be entitled to receive payments from the Secretary under this title for services furnished to the individual.

''(4) RETROACTIVE ADJUSTMENT.—

''(A) IN GENERAL.—The amount of payment under this subsection may be retroactively adjusted to take into account any difference between the actual number of individuals enrolled in the plan under this part and the number of such individuals estimated to be so enrolled in determining the amount of the advance payment.

''(B) SPECIAL RULE FOR CERTAIN ENROLLEES.—

''(i) IN GENERAL.—Subject to clause (ii), the Secretary may make retroactive adjustments under subparagraph (A) to take into account individuals enrolled during the period beginning on the date on which the individual enrolls with an eligible organization (which has a risk-sharing contract under this part) under a health benefit plan operated, sponsored, or contributed to by the individual's employer or former employer (or the employer or former employer of the individual's spouse) and ending on the date on which the individual is enrolled in the plan under this part, except that for purposes of making such retroactive adjustments under this clause, such period may not exceed 90 days.

''(ii) EXPLANATION.—No adjustment may be made under clause (ii) with respect to any individual who does not certify that the organization provided the individual with the explanation described in section 1855(b) at the time the individual enrolled with the organization.

''(5) NOTICE OF PROPOSED CHANGES.—

''(A) IN GENERAL.—At least 45 days before making the announcement under paragraph (1) for a year the Secretary shall provide for notice to eligible organizations of proposed changes to be made in the methodology or benefit coverage assumptions from the methodology and assumptions used in the previous announcement and shall provide such organizations an opportunity to comment on such proposed changes.

''(B) EXPLANATION.—In each announcement made under paragraph (1) for a year, the Secretary shall include an explanation of the assumptions (including any benefit coverage assumptions) and changes in methodology used in the announcement in sufficient detail so that eligible organizations can compute per capita rates of payment for classes of individuals located in each payment area which is in whole or in part within the service area of such an organization.

''(6) INPATIENT OF HOSPITAL AT TIME OF ENROLLMENT.—A risk-sharing contract under this part shall provide that in the case of an individual who is receiving inpatient hospital services from a subsection (d) hospital (as defined in section 1886(d)(1)(B)) as of the effective date of the individual's—

''(A) enrollment with an eligible organization under this part—

''(i) payment for such services until the date of the individual's discharge shall be made under this title as if the individual were not enrolled with the organization,

''(ii) the organization shall not be financially responsible for payment for such services until the date after the date of the individual's discharge, and

''(iii) the organization shall nonetheless be paid the full amount otherwise payable to the organization under this part; or

''(B) termination of enrollment with an eligible organization under this part—

''(i) the organization shall be financially responsible for payment for such services after such date and until the date of the individual's discharge,

''(ii) payment for such services during the stay shall not be made under section 1886(d), and

''(iii) the organization shall not receive any payment with respect to the individual under this part during the period the individual is not enrolled.

''(b) REASONABLE COST CONTRACT.—With respect to any eligible organization which has entered into a reasonable cost reimbursement contract, payments shall be made to such plan in accordance with section 1856(c) rather than subsection (a).

''(c) PAYMENT FROM TRUST FUNDS.—The payment to an eligible organization under this part for individuals enrolled under this part with the organization and entitled to benefits under part A and enrolled under part B shall be made from the Federal Hospital Insurance Trust Fund and the Federal Supplementary Medical Insurance Trust Fund. The portion of that payment to the organization for a month to be paid by each trust fund shall be determined as follows:

''(1) In regard to expenditures by eligible organizations having risk-sharing contracts, the allocation shall be determined each year by the Secretary based on the relative weight that benefits from each fund contribute to the adjusted average per capita cost.

''(2) In regard to expenditures by eligible organizations operating under a reasonable cost reimbursement contract, the initial allocation shall be based on the plan's most recent budget, such allocation to be adjusted, as needed, after cost settlement to reflect the distribution of actual expenditures.

The remainder of that payment shall be paid by the former trust fund.

''(d) TESTING THE USE OF COMPETITIVE PRICING PRIOR TO IMPLEMENTATION.—

''(1) IN GENERAL.—Not later than January 1, 1997, the Secretary shall implement alternative payment methodologies for determining the monthly rate that will be paid to eligible organizations with risk-sharing contracts in payment areas designated by the Secretary in accordance with paragraph (2). Such alternative payment methodologies shall be based on competitive price and include a method that determines rates based on the commercial, competitively determined rates of the organizations.

''(2) CRITERIA FOR SELECTION.—The Secretary shall develop criteria for designating payment areas, determining the minimum number of bidders necessary to effectively implement and test alternative payment methodologies, and utilizing any additional health status adjusters that may be necessary to implement such methodologies. The criteria for designating payment areas shall provide that the Secretary designate relatively high and low payment areas, relatively high and low market penetration areas, and urban and rural areas.

''(3) BIDS.—Each eligible organization desiring to enter into a risk-sharing contract under this part shall place a bid on the benefits covered under section 1853(a)(1)(A) under a methodology implemented under this paragraph. The premium structure included in the bid shall consist of enrollee cost-sharing amounts and the monthly amount to be paid from the Federal Hospital Insurance Trust Fund and Federal Supplementary Medical Insurance Trust Fund under this section. Each organization shall be required to adhere to the premium structure included in the organization's bid. An organization may offer additional benefits at a separately determined price. An organization shall not be prevented from entering into a contract under this section solely based on the level of the organization's premium bid.

''(4) REQUIRED PARTICIPATION.—

''(A) IN GENERAL.—Subject to subparagraph (B), each eligible organization that desires to enter into a risk-sharing contract under this part in a payment area designated under this subsection shall receive payment under this part in accordance with this subsection, instead of subsection (a).

''(B) EXCEPTION.—The Secretary may, at the Secretary's discretion, permit an eligible organization to receive payment under this title (without regard to this part).

''(5) PROHIBITION OF REASONABLE COST CONTRACTS.—The Secretary may prohibit the use of reasonable cost contracts in payment areas designated under this subsection.

''(6) AGGREGATE PAYMENTS.—Aggregate payments under this subsection across payment areas under this subsection shall not exceed the amount that would have, in the absence of this subsection, been paid under subsection (a) to such organization for individuals enrolled under this part. Payments to eligible organizations with risk-sharing

contracts in a single payment area may exceed the amount described in the preceding sentence but may not exceed 100 percent of the adjusted average per capita cost (as defined in subsection (a)(1)(B)(ii)) that would have, in the absence of this subsection, been determined for all individuals enrolled under this part.

''(7) TRANSITION RULES.—The Secretary shall develop transition rules for payment areas in which risk-sharing plan enrollees pay minimal or no premiums in order to prevent substantial increases in premiums as a result of an alternative payment methodology implemented under this subsection.

''(8) REPORT.—Not later then January 1, 2000, the Secretary shall report to Congress on specific recommendations for a new payment methodology under this part to be based on the results of the alternate methodologies implemented under this subsection.

''(e) PARTIAL CAPITATION DEMONSTRATION.—The Secretary shall conduct a demonstration project on the alternative partial risk-sharing arrangements between the Secretary and health care providers. Not later then December 31, 1998, the Secretary shall report to the Congress on the administrative feasibility of such partial capitation methods and the information necessary to implement such methods.

''PROVIDER-SPONSORED NETWORKS

''SEC. 1858. (a) PROVIDER-SPONSORED NETWORK DEFINED.—

''(1) IN GENERAL.—In this part, the term 'provider-sponsored network' means a public or private entity is a provider, or group of affiliated providers, that provides a substantial proportion (as defined by the Secretary) of the health care items and services under the contract under this part directly through the provider or affiliated group of providers.

''(2) SUBSTANTIAL PROPORTION.—In defining what is a 'substantial proportion' for purposes of paragraph (1), the Secretary—

''(A) shall take into account the need for such an organization to assume responsibility for a substantial proportion of services in order to assure financial stability and the practical difficulties in such an organization integrating a very wide range of service providers; and

''(B) may vary such proportion based upon relevant differences among organizations, such as their location in an urban or rural area.

''(3) AFFILIATION.—For purposes of this subsection, a provider is 'affiliated' with another provider if, through contract, ownership, or otherwise—

''(A) one provider, directly or indirectly, controls, is controlled by, or is under common control with the other,

''(B) each provider is a participant in a lawful combination under which each provider shares, directly or indirectly, substantial financial risk in connection with their operations,

''(C) both providers are part of a controlled group of corporations under section 1563 of the Internal Revenue Code of 1986, or

''(D) both providers are part of an affiliated service group under section 414 of such Code.

''(4) CONTROL.—for purposes of paragraph (3), control is presumed to exist if one party, directly or indirectly, owns, controls, or holds the power to vote, or proxies for, not less than 51 percent of the voting rights or governance rights of another.

''(b) CERTIFICATION PROCESS FOR PROVIDER-SPONSORED NETWORKS.—

''(1) FEDERAL ACTION ON CERTIFICATION.—If—

''(A) a State fails to complete action on a licensing application of an eligible organization that is a provider sponsored network within 90 days of receipt of the completed application, or

''(B) a State denies a licensing application and the Secretary determines that the State's licensing standards or review process create an unreasonable barrier to market entry,

the Secretary shall evaluate such application pursuant to the procedures established under paragraph (2).

''(2) FEDERAL CERTIFICATION PROCEDURES.—

''(A) IN GENERAL.—The Secretary shall establish a process for certification of an eligible organization that is a provider sponsored network) and its sponsor as meeting the requirements of this part in cases described in paragraph (1).

''(B) REQUIREMENTS.—Such process shall—

''(i) set forth the standards for certification,

''(ii) provide that final action will be taken on an application for certification within 120 business days of receipt of the completed application,

''(iii) provide that State law and regulations shall apply to the extent they have not been found to be an unreasonable barrier to market entry under paragraph (1)(A)(ii), and

''(iv) require any person receiving a certificate to provide the Secretary with all reasonable information in order to ensure compliance with the certification.

Not later then 5 business days after receipt of an application under this subsection, the Secretary shall notify the applicant as to whether the application includes all information necessary to process the application.is received by the Secretary.

''(C) EFFECT OF CERTIFICATIONS.—

''(i) IN GENERAL.—A certificate under this subsection shall be issued for not more than 36 months and may not be renewed, unless the Secretary determines that the State's laws and regulations provide an unreasonable barrier to market entry.

''(ii) COORDINATION WITH STATE.—A person receiving a certificate under this section shall continue to seek State licensure under paragraph (1) during the period the certificate is in effect.

''(D) STATE STANDARDS.—During the first 24 months after the issuance of the Federal rules relating to the Federal certification process established under this paragraph, a State may apply to the Secretary to demonstrate that the State's licensure standards and process are consistent with Federal standards, incorporate appropriate flexibility to reflect the deliver system of provider-sponsored networks, and do not present an unreasonable barrier to market entry. If the Secretary approves the State licensure standards and process under this subparagraph, a provider sponsored network in such a State shall be required to obtain State licenses (as well as meet all other applicable Federal standards).

''(3) REPORT.—Not later then December 31, 1999, the Secretary shall report to Congress on the Federal certification system under paragraph (2), including an analysis of State efforts to adopt licensing standards and review processes that take into account the fact that provider-sponsored networks provide services directly to enrollees through affiliated providers.''.

(b) CONFORMING AMENDMENTS.—

(1) TERMINATION OF SECTION 1876.—Section 1876 (42 U.S.C. 1395mm) is repealed.

(2) GME ADJUSTMENT.—Section 1886(h) (42 U.S.C. 1395ww(h)) is amended by inserting '', including all days attributable to patients enrolled in an eligible organization with a risk-sharing contract under part C'' after ''part A''.

SEC. 7004. PROVISIONS RELATING TO MEDICARE SUPPLEMENTAL POLICIES.

Section 1882(s) (42 U.S.C. 1395ss(s)) is amended—

(1) in paragraph (3), by striking ''paragraphs (1) and (2)'' and inserting ''paragraph (1), (2), or (3)'',

(2) by redesignating paragraph (3) as paragraph (4), and

(3) by inserting after paragraph (2) the following new paragraph:

''(3) Each issuer of a medicare supplemental policy shall have an open enrollment period (which shall be the period specified for each geographic area by the Secretary under section 1852(b)(1)), of at least 30 days duration every year, during which the issuer may not deny or condition the issuance or effectiveness of a medicare supplemental policy, or discriminate in the pricing of the policy because of age, health status, claims experience, past or anticipated receipt of health care, or presence of a medical condition. The policy may not exclude benefits relating to the existence of any preexisting condition. The Secretary may require enrollment and disenrollment through a third party designated under section 1876(c)(3)(B). Each issuer of a medicare supplemental policy shall have an additional open enrollment period which shall be the period specified in section 1852(b)(4).''.

SEC. 7005. SPECIAL RULE FOR CALCULATION OF PAYMENT RATES FOR 1996.

(a) IN GENERAL.—

(1) IN GENERAL.—Notwithstanding any other provision of law, the per capita rate under section 1876 of the Social Security Act (42 U.S.C. 1395ww) for 1996 for any class for a geographic area shall be equal to the amount determined for such class for such area in 1995, increased by 7 percent (to reflect the projected per capita rate of growth in private health care expenditures).

(2) FLOOR.—The Secretary shall adjust a per capita rate of payment for a geographic area determined under this subsection for a class such that the portion of such rate attributable to part B shall not be less than 85 percent of the weighted average of the portion of the per capita rates attributable to part B services for such class determined under this subsection for all geographic areas. Such adjustments shall be made to ensure that total payments under this subsection to eligible organizations do not exceed the amount that would have been paid under this subsection in the absence of such adjustments.

(b) PUBLICATION.—The Secretary shall publish the rates determined under subsection (a) no later than 30 days after the date of the enactment of this Act.

(c) REPORT.—Not later then July 1, 1996, the Prospective Payment Assessment Commission and the Physician Payment Review Commission shall jointly report to Congress on geographically-based variations in payments to eligible organizations with a risk-sharing contract under section 1876 of the Social Security Act (42 U.S.C. 1395mm).

(d) EFFECTIVE DATE.—This section shall apply on and after the date of the enactment of this Act.

SEC. 7006. GRADUATE MEDICAL EDUCATION AND DISPROPORTIONATE SHARE PAYMENT ADJUSTMENTS TO HOSPITALS PROVIDING SERVICES TO ENROLLEES IN ELIGIBLE ORGANIZATIONS.

Section 1886 (42 U.S.C. 1395ww) is amended by adding at the end the following new subsection:

''(j) GRADUATE MEDICAL EDUCATION AND DISPROPORTIONATE SHARE PAYMENT ADJUSTMENTS FOR MEDICARE CHOICE.—

''(1) IN GENERAL.—For discharges occurring on or after January 1, 1997, a subsection (d)

hospital that is a qualified provider shall receive payment for each discharge of an individual enrolled under part C with an eligible organization as follows:

''(A) For a qualified provider that qualifies for the indirect medical education adjustment under subsection (d)(5)(B), payment shall be made on a per discharge basis for each individual enrolled in an eligible organization with a risk-sharing contract who receives inpatient care at that provider as though such provider was receiving the applicable percentage of the amount such provider would receive as direct payment under this title on the basis of a diagnosis related group.

''(B) For a qualified provider that qualifies for the disproportionate share adjustment under subsection (d)(5)(F), payment shall be made on a per discharge basis for each individual enrolled in an eligible organization with a risk-sharing contract who receives inpatient care at that provider as though such provider was receiving the applicable percentage of the amount such provider would receive as direct payment under this title on the basis of a diagnosis related group.

''(C) For a qualified provider that qualifies for payment for direct graduate medical education under subsection (h), payment shall be made by counting as medicare inpatient days the applicable percentage of those days attributable to individuals enrolled in an eligible organization with a risk-sharing contract when determining the provider's medicare patient load.

''(2) QUALIFIED PROVIDER.—For purposes of paragraph (1), the term 'qualified provider' means a provider that—

''(A) qualifies for any or all payments under subsection (d)(5)(B), (d)(5)(F) or (h); and

''(B) provides inpatient services either as an eligible organization or under a contract with an eligible organization, to individuals enrolled with an eligible organization under part C.

''(3) APPLICABLE PERCENTAGE.—For purposes of paragraph (1), the applicable percentage is—

''(A) for calendar year 1997, 50 percent; and

''(B) for calendar years after 1997, 100 percent.''.

SEC. 7007. EFFECTIVE DATE.

Except as otherwise specifically provided, the amendments made by this title shall apply with respect to services furnished under a contract on or after January 1, 1997.

CHAPTER 2—PROVISIONS RELATING TO QUALITY IMPROVEMENT AND DISTRIBUTION OF INFORMATION

SEC. 7011. QUALITY REPORT CARDS.

Title XVIII (42 U.S.C. 1395 et seq.), as amended by section 7002, is amended by inserting after section 1805 the following new section:

''QUALITY REPORT CARDS

''SEC. 1806. (a) DISTRIBUTION OF QUALITY REPORT CARDS.—Beginning with calendar year 1997, the Secretary shall include a quality report card with the comparative materials distributed under section 1852(c)(2). The quality report card shall contain information designed to assist medicare beneficiaries in choosing eligible organizations including, as appropriate, the performance measures developed under subsection (b).

''(b) DEVELOPMENT OF PERFORMANCE MEASURES.—

''(1) DELEGATION.—

''(A) IN GENERAL.—The Secretary, through the Administrator of the Health Care Financing Administration, shall, in cooperation with nonprofit organizations—

''(i) develop standardized performance measures for eligible organizations and providers which are designed to achieve the purposes described in subparagraph (B); and

''(ii) examine the feasibility of using risk adjusters to validate the performance measures developed.

''(B) PURPOSES DESCRIBED.—The purposes described in this subparagraph are as follows:

''(i) To develop a quality report card for medicare beneficiaries that will assist such beneficiaries' decisionmaking regarding health care and treatment by allowing the beneficiaries to compare quality information.

''(ii) To establish performance measures that will assist eligible organizations and providers in providing high quality health care.

''(iii) To provide information to eligible organizations and providers regarding such organizations' and providers' performance and health care processes.

''(C) PERFORMANCE MEASURES DESCRIBED.—The performance measures developed under subparagraph (A) may include the following:

''(i) The number of members of an eligible organization who disenroll from the organization, and to the extent possible, the reasons for such disenrollment.

''(ii) Outcomes of care.

''(iii) Population health status.

''(iv) Appropriateness of care.

''(v) Consumer satisfaction for general and subgroup populations.

''(vi) Access to care, including access to emergency care, waiting time for scheduled appointments, and provider location convenience.

''(vii) Prevention of diseases, disorders, disabilities, injuries, and other health conditions.

''(D) ONGOING BASIS.—Development of performance measures and risk adjusters shall be done on an ongoing basis.

''(2) COLLECTION OF DATA.—

''(A) VALIDITY PREREQUISITE.—The performance measures developed under this subsection shall not be disseminated to eligible organizations and providers before the validity of such performance measures is established.

''(B) COLLECTION SCHEDULE.—Beginning 6 months after the first dissemination of the performance measures to eligible organizations, data regarding specific performance measures shall be collected from the eligible organizations on a regular rotating basis that coincides with data collection requirements for private sector health care systems.

''(C) COMPLIANCE.—Each eligible organization shall disclose performance measure data as requested. The Administrator of the Health Care Financing Administration or an entity designated by the Secretary shall audit eligible organizations for compliance with the data collection requirements and shall enforce any noncompliance in accordance with regulations promulgated by the Secretary.

''(c) DEFINITIONS.—For purposes of this section—

''(1) the term 'eligible organization' means an organization with a contract under part C;

''(2) the term 'medicare beneficiary' means an individual entitled to benefits under part A or enrolled under part B; and

''(3) the term 'provider' means hospitals, physicians, nursing homes, and providers of ancillary services to medicare beneficiaries.''.

CHAPTER 3—PROVISIONS TO STRENGTHEN RURAL AND UNDER-SERVED AREAS

SEC. 7021. RURAL REFERRAL CENTERS.

(a) PERMANENT GRANDFATHERING OF RURAL REFERRAL CENTER STATUS.—Section 1886(d)(5)(C) (42 U.S.C. 1395ww(d)(5)(C)) is amended by adding at the end the following new clause:

''(iii) Notwithstanding any other provision of law, any hospital that was classified as a rural referral center under clause (i) on September 30, 1991, shall continue to be classified or, as applicable, shall be reclassified, as a rural referral center and such classification or reclassification shall be effective on and after October 1, 1991, with respect to payments under this title.''.

(b) GRADUATED AREA WAGE INDEX FOR RURAL REFERRAL CENTERS.—Section 1886(d)(10)(D) (42 U.S.C. 1395ww(d)(10)(D)) is amended by adding at the end the following new clauses:

''(iv) Notwithstanding section 412.230(e)(iii) of title 42, Code of Federal Regulations (relating to criteria for use of an area's wage index)—

''(I) in the case of an eligible hospital that pays an average hourly wage that is equal to or greater than 104 percent and less than 108 percent of the average hourly wage of the hospitals in the area in which the hospital is located, the wage index of such hospital shall be equal to the sum of—

''(aa) the wage index of the area in which the hospital is located; and

''(bb) 66 percent of the difference between the higher wage index area which the hospital would receive if it was reclassified (if the hospital's average hourly wage was 108 percent or more of the average hourly wage of hospitals in the area in which the hospital is located in accordance with the provisions of section 1886(d)(8)(C)) and the amount determined under item (aa); and

''(II) in the case of an eligible hospital that pays an average hourly wage that is equal to or greater than 100 percent and less than 104 percent of the average hourly wage of the hospitals in the area in which the hospital is located, the wage index of such hospital shall be determined under subclause (I) as if the reference to '66 percent' in such subclause were a reference to '33 percent'.

''(v) For purposes of clause (iv), the term 'eligible hospital' means a hospital that is classified as a rural referral center under paragraph (5)(C)(i) that would be reclassified to a higher area wage index if the hospital's average hourly wage was 108 percent or more of the average hourly wage in the area in which the hospital is located and meets all other applicable Federal standards.''.

(c) BUDGET NEUTRALITY.—Notwithstanding any other provision of law, for cost reporting periods beginning on or after October 1, 1995, the Secretary of Health and Human Services shall provide for such equal proportional adjustment in payments under section 1886 of the Social Security Act (42 U.S.C. 1395ww) to subsection (d) hospitals and subsection (d) Puerto Rico hospitals (as defined under such section) as may be necessary to assure that the aggregate payments to such hospitals under such section are not increased or decreased by reason of the amendments made by subsections (a) and (b).

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to cost reporting periods beginning on or after October 1, 1995.

SEC. 7022. MEDICARE-DEPENDENT, SMALL, RURAL HOSPITAL PAYMENT EXTENSION.

(a) SPECIAL TREATMENT EXTENDED.—

(1) PAYMENT METHODOLOGY.—Section 1886(d)(5)(G)(i) (42 U.S.C. 1395ww(d)(5)(G)) is amended—

(A) in clause (i), by striking ''October 1, 1994,'' and inserting ''October 1, 1994, or beginning on or after September 1, 1995, and before October 1, 2000,''; and

(B) in clause (ii)(II), by striking ''October 1, 1994'' and inserting ''October 1, 1994, or beginning on or after September 1, 1995, and before October 1, 2000,''.

(2) EXTENSION OF TARGET AMOUNT.—Section 1886(b)(3)(D) (42 U.S.C. 1395ww(b)(3)(D)) is amended—

(A) in the matter preceding clause (i), by striking ''September 30, 1994,'' and inserting ''September 30, 1994, and for cost reporting periods beginning on or after September 1, 1995, and before October 1, 2000,'';

(B) in clause (ii), by striking ''and'' at the end;

(C) in clause (iii), by striking the period at the end and inserting '', and''; and

(D) by adding at the end the following new clause:

''(iv) with respect to discharges occurring during September 1995 through fiscal year 1999, the target amount for the preceding year increased by the applicable percentage increase under subparagraph (B)(iv).''.

(3) PERMITTING HOSPITALS TO DECLINE RECLASSIFICATION.—Section 13501(e)(2) of OBRA–93 (42 U.S.C. 1395ww note) is amended by striking ''or fiscal year 1994'' and inserting '', fiscal year 1994, fiscal year 1995, fiscal year 1996, fiscal year 1997, fiscal year 1998, or fiscal year 1999''.

(4) TECHNICAL CORRECTION.—Section 1886(d)(5)(G)(i) (42 U.S.C. 1395ww(d)(5)(G)(i)), as in effect before the amendment made by paragraph (1), is amended by striking all that follows the first period.

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall apply with respect to discharges occurring on or after September 1, 1995.

SEC. 7023. PROPAC RECOMMENDATIONS ON URBAN MEDICARE DEPENDENT HOSPITALS.

Section 1886(e)(3)(A) (42 U.S.C. 1395ww(e)(3)(A)) is amended by adding at the end the following new sentence: ''The Commission shall, beginning in 1996, report its recommendations to Congress on an appropriate update to be used for urban hospitals with a high proportion of medicare patient days and on actions to ensure that medicare beneficiaries served by such hospitals retain the same access and quality of care as medicare beneficiaries nationwide.''.

SEC. 7024. PAYMENTS TO PHYSICIAN ASSISTANTS AND NURSE PRACTITIONERS FOR SERVICES FURNISHED IN OUTPATIENT OR HOME SETTINGS.

(a) COVERAGE IN OUTPATIENT OR HOME SETTINGS FOR PHYSICIAN ASSISTANTS AND NURSE PRACTITIONERS.—Section 1861(s)(2)(K) (42 U.S.C. 1395x(s)(2)(K)) is amended—

(1) in clause (i)—

(A) by striking ''or'' at the end of subclause (II); and

(B) by inserting ''or (IV) in an outpatient or home setting as defined by the Secretary'' following ''shortage area,''; and

(2) in clause (ii)—

(A) by striking ''in a skilled'' and inserting ''in (I) a skilled''; and

(B) by inserting '', or (II) in an outpatient or home setting (as defined by the Secretary),'' after ''(as defined in section 1919(a))''.

(b) PAYMENTS TO PHYSICIAN ASSISTANTS AND NURSE PRACTITIONERS IN OUTPATIENT OR HOME SETTINGS.—

(1) IN GENERAL.—Section 1833(r)(1) (42 U.S.C. 1395*l*(r)(1)) is amended—

(A) by inserting ''services described in section 1861(s)(2)(K)(ii)(II) (relating to nurse practitioner services furnished in outpatient or home settings), and services described in section 1861(s)(2)(K)(i)(IV) (relating to physician assistant services furnished in an outpatient or home setting'' after ''rural area),''; and

(B) by striking ''or clinical nurse specialist'' and inserting ''clinical nurse specialist, or physician assistant''.

(2) CONFORMING AMENDMENT.—Section 1842(b)(6)(C) (42 U.S.C. 1395u(b)(6)(C)) is amended by striking ''clauses (i), (ii), or (iv)'' and inserting ''subclauses (I), (II), or (III) of clause (i), clause (ii)(I), or clause (iv)''.

(c) PAYMENT UNDER THE FEE SCHEDULE TO PHYSICIAN ASSISTANTS AND NURSE PRACTITIONERS IN OUTPATIENT OR HOME SETTINGS.—

(1) PHYSICIAN ASSISTANTS.—Section 1842(b)(12) (42 U.S.C. 1395u(b)(12)) is amended by adding at the end the following new subparagraph:

''(C) With respect to services described in clauses (i)(IV), (ii)(II), and (iv) of section 1861(s)(2)(K) (relating to physician assistants and nurse practitioners furnishing services in outpatient or home settings)—

''(i) payment under this part may only be made on an assignment-related basis; and

''(ii) the amounts paid under this part shall be equal to 80 percent of (I) the lesser of the actual charge or 85 percent of the fee schedule amount provided under section 1848 for the same service provided by a physician who is not a specialist; or (II) in the case of services as an assistant at surgery, the lesser of the actual charge or 85 percent of the amount that would otherwise be recognized if performed by a physician who is serving as an assistant at surgery.''.

(2) CONFORMING AMENDMENT.—Section 1842(b)(12)(A) (42 U.S.C. 1395u(b)(12)(A)) is amended in the matter preceding clause (i) by striking ''(i), (ii),'' and inserting ''subclauses (I), (II), or (III) of clause (i), or subclause (I) of clause (ii)''.

(3) TECHNICAL AMENDMENT.—Section 1842(b)(12)(A) (42 U.S.C. 1395u(b)(12)(A)) is amended in the matter preceding clause (i) by striking ''a physician assistants'' and inserting ''physician assistants''.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to services furnished on or after October 1, 1995.

SEC. 7025. IMPROVING HEALTH CARE ACCESS AND REDUCING HEALTH CARE COSTS THROUGH TELEMEDICINE.

(a) IN GENERAL.—Title XVII of the Public Health Service Act (42 U.S.C. 300u et seq.) is amended—

(1) in the title heading by striking out ''AND HEALTH PROMOTION'' and inserting '', HEALTH PROMOTION AND TELEMEDICINE DEVELOPMENT'';

(2) by inserting after the title heading the following:

''PART A—HEALTH INFORMATION AND HEALTH PROMOTION'';

and

(3) by adding at the end thereof the following new part:

''PART B—TELEMEDICINE DEVELOPMENT

''SEC. 1711. GRANT PROGRAM FOR PROMOTING THE DEVELOPMENT OF RURAL TELEMEDICINE NETWORKS.

''(a) ESTABLISHMENT.—The Secretary shall establish a program to award grants to eligible entities in accordance with this subsection to promote the development of rural telemedicine networks.

''(b) GRANTS FOR DEVELOPMENT OF RURAL TELEMEDICINE.—The Secretary of Health and Human Services, acting through the Office of Rural Health Policy, shall award grants to eligible entities that have applications approved under subsection (d) for the purpose of expanding access to health care services for individuals in rural areas through the use of telemedicine. Grants shall be awarded under this section to—

''(1) encourage the initial development of rural telemedicine networks;

''(2) expand existing networks;

''(3) link existing networks together; or

''(4) link such networks to existing fiber optic telecommunications systems.

''(c) ELIGIBLE ENTITY DEFINED.—For the purposes of this section the term 'eligible entity' means hospitals and other health care providers operating in a health care network of community-based providers that includes at least three of the following—

''(1) community or migrant health centers;

''(2) local health departments;

''(3) community mental health centers;

''(4) nonprofit hospitals;

''(5) private practice health professionals, including rural health clinics; or

''(6) other publicly funded health or social services agencies.

''(d) APPLICATION.—To be eligible to receive a grant under this section an eligible entity shall prepare and submit to the Secretary an application at such time, in such manner and containing such information as the Secretary may require, including a description of—

''(1) the need of the entity for the grant;

''(2) the use to which the entity would apply any amounts received under such grant;

''(3) the source and amount of non-Federal funds that the entity will pledge for the project funded under the grant;

''(4) the long-term viability of the project and evidence of the providers commitment to the network.

''(e) PREFERENCE IN AWARDING GRANTS.—In awarding grants under this section, the Secretary shall give preference to applicants that—

''(1) are health care providers operating in rural health care networks or that propose to form such networks with the majority of the providers in such networks being located in a medically undeserved area or health professional shortage area;

''(2) can demonstrate broad geographic coverage in the rural areas of the State, or States in which the applicant is located; and

''(3) propose to use funds received under the grant to develop plans for, or to establish, telemedicine systems that will link rural hospitals and rural health care providers to other hospitals and health care providers;

''(4) will use the amounts provided under the grant for a range of health care applications and to promote greater efficiency in the use of health care resources;

''(5) demonstrate the long term viability of projects through use of local matching funds (in cash or in-kind); and

''(6) demonstrate financial, institutional, and community support and the long range viability of the network.

''(f) USE OF AMOUNTS.—Amounts received under a grant awarded under this section shall be utilized for the development of telemedicine networks. Such amounts may be used to cover the costs associated with the development of telemedicine networks and the acquisition of telemedicine equipment and modifications or improvements of telecommunications facilities, including—

''(1) the development and acquisition through lease or purchase of computer hardware and software, audio and visual equipment, computer network equipment, modification or improvements to telecommunications transmission facilities, telecommunications terminal equipments, interactive video equipment, data terminal equipment, and other facilities and equipment that would further the purposes of this section;

''(2) the provision of technical assistance and instruction for the development and use of such programming equipment or facilities;

''(3) the development and acquisition of instructional programming;

''(4) the development of projects for teaching or training medical students, residents, and other health professions students in rural training sites about the application of telemedicine;

''(5) transmission costs, maintenance of equipment, and compensation of specialists and referring practitioners;

''(6) the development of projects to use telemedicine to facilitate collaboration between health care providers; and

''(7) such other uses that are consistent with achieving the purposes of this section as approved by the Secretary.

''(g) PROHIBITED USE OF AMOUNTS.—Amounts received under a grant awarded under this section shall not be used for—

''(1) expenditures to purchase or lease equipment to the extent the expenditures would exceed more than 60 percent of the total grant funds; or

''(2) expenditures for indirect costs (as determined by the Secretary) to the extent the expenditures would exceed more than 10 percent of the total grant funds.

''(h) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as may be necessary to carry out this section.

''(i) DEFINITION.—For the purposes of this section, the term 'rural health care network' means a group of rural hospitals or other rural health care providers (including clinics, physicians and non-physicians primary care providers) that have entered into a relationship with each other or with nonrural hospitals and health care providers for the purpose of strengthening the delivery of health care services in rural areas or specifically to improve their patients' access to telemedicine services. At least 75 percent of hospitals and other health care providers participating in the network shall be located in rural areas.

''(j) REGULATIONS ON REIMBURSEMENT OF TELEMEDICINE.—Not later than July 1, 1996, the Secretary, in consultation with the Office of Rural Health and the Health Care Financing Administration, shall develop and submit to Congress a recommendation on a methodology for determining payments under title XVIII of the Social Security Act for telemedicine services.''.

SEC. 7026. ESTABLISHMENT OF RURAL HEALTH OUTREACH GRANT PROGRAM.

Title III of the Public Health Service Act (42 U.S.C. 241 et seq.) is amended by adding at the end thereof the following new part:

''PART O—RURAL HEALTH OUTREACH GRANTS

''SEC. 399O. RURAL HEALTH OUTREACH GRANT PROGRAM.

''(a) IN GENERAL.—The Secretary may make grants to demonstrate the effectiveness of outreach to populations in rural areas that do not normally seek or do not have access to health or mental health services. Grants shall be awarded to enhance linkages, integration, and cooperation in order to provide health or mental health services, to enhance services, or increase access to or utilization of health or mental health services.

''(b) MISSION OF THE OUTREACH PROJECTS.—Projects funded under subsection (a) should be designed to facilitate the integration and coordination of services in or among rural communities in order to address the needs of populations living in rural or frontier communities.

''(c) COMPOSITION OF PROGRAM.—

''(1) CONSORTIUM ARRANGEMENT.—To be eligible to participate in the grant program established under subsection (a), an applicant entity shall be a consortium of three or more separate and distinct entities formed to carry out an outreach project under subsection (b).

''(2) CERTAIN REQUIREMENTS.—A consortium under paragraph (1) shall be composed of three or more public or private nonprofit health care or social service providers. Consortium members may include local health departments, community or migrant health centers, community mental health centers, hospitals or private practices, or other publicly funded health or social service agencies.

''(d) AUTHORIZATION OF APPROPRIATIONS.—For the purpose of carrying out this section, there are authorized to be appropriated $30,000,000 for fiscal year 1996, and such sums as may be necessary for each of the fiscal years 1997 through 2000.''.

SEC. 7027. MEDICARE RURAL HOSPITAL FLEXIBILITY PROGRAM.

(a) MEDICARE RURAL HOSPITAL FLEXIBILITY PROGRAM.—Section 1820 (42 U.S.C. 1395i–4) is amended to read as follows:

''MEDICARE RURAL HOSPITAL FLEXIBILITY PROGRAM

''SEC. 1820. (a) PURPOSE.—The purpose of this section is to—

''(1) ensure access to health care services for rural communities by allowing hospitals to be designated as critical access hospitals if such hospitals limit the scope of available inpatient acute care services;

''(2) provide more appropriate and flexible staffing and licensure standards;

''(3) enhance the financial security of critical access hospitals by requiring that medicare reimburse such facilities on a reasonable cost basis; and

''(4) promote linkages between critical access hospitals designated by the State under this section and broader programs supporting the development of and transition to integrated provider networks.

''(b) ESTABLISHMENT.—Any State that submits an application in accordance with subsection (c) may establish a medicare rural hospital flexibility program described in subsection (d).

''(c) APPLICATION.—A State may establish a medicare rural hospital flexibility program described in subsection (d) if the State submits to the Secretary at such time and in such form as the Secretary may require an application containing—

''(1) assurances that the State—

''(A) has developed, or is in the process of developing, a State rural health care plan that—

''(i) provides for the creation of one or more rural health networks (as defined in subsection (e)) in the State,

''(ii) promotes regionalization of rural health services in the State, and

''(iii) improves access to hospital and other health services for rural residents of the State;

''(B) has developed the rural health care plan described in subparagraph (A) in consultation with the hospital association of the State, rural hospitals located in the State, and the State Office of Rural Health (or, in the case of a State in the process of developing such plan, that assures the Secretary that the State will consult with its State hospital association, rural hospitals located in the State, and the State Office of Rural Health in developing such plan);

''(2) assurances that the State has designated (consistent with the rural health care plan described in paragraph (1)(A)), or is in the process of so designating, rural nonprofit or public hospitals or facilities located in the State as critical access hospitals; and

''(3) such other information and assurances as the Secretary may require.

''(d) MEDICARE RURAL HOSPITAL FLEXIBILITY PROGRAM DESCRIBED.—

''(1) IN GENERAL.—A State that has submitted an application in accordance with subsection (c), may establish a medicare rural hospital flexibility program that provides that—

''(A) the State shall develop at least one rural health network (as defined in subsection (e)) in the State; and

''(B) at least one facility in the State shall be designated as a critical access hospital in accordance with paragraph (2).

''(2) STATE DESIGNATION OF FACILITIES.—

''(A) IN GENERAL.—A State may designate one or more facilities as a critical access hospital in accordance with subparagraph (B).

''(B) CRITERIA FOR DESIGNATION AS CRITICAL ACCESS HOSPITAL.—A State may designate a facility as a critical access hospital if the facility—

''(i) is located in a county (or equivalent unit of local government) in a rural area (as defined in section 1886(d)(2)(D)) that—

''(I) is located more than a 35-mile drive from a hospital, or another facility described in this subsection, or

''(II) is certified by the State as being a necessary provider of health care services to residents in the area; and

''(ii) makes available 24-hour emergency care services that a State determines are necessary for ensuring access to emergency care services in each area served by a critical access hospital;

''(iii) provides not more than 15 acute care inpatient beds (meeting such standards as the Secretary may establish) for providing inpatient care for a period not to exceed 96 hours (unless a longer period is required because transfer to a hospital is precluded because of inclement weather or other emergency conditions), except that a peer review organization or equivalent entity may, on request, waive the 96-hour restriction on a case-by-case basis;

''(iv) meets such staffing requirements as would apply under section 1861(e) to a hospital located in a rural area, except that—

''(I) the facility need not meet hospital standards relating to the number of hours during a day, or days during a week, in which the facility must be open and fully staffed, except insofar as the facility is required to make available emergency care services as determined under clause (ii) and must have nursing services available on a 24-hour basis, but need not otherwise staff the facility except when an inpatient is present,

''(II) the facility may provide any services otherwise required to be provided by a full-time, on site dietitian, pharmacist, laboratory technician, medical technologist, and radiological technologist on a part-time, off site basis under arrangements as defined in section 1861(w)(1), and

''(III) the inpatient care described in clause (iii) may be provided by a physician's assistant, nurse practitioner, or clinical nurse specialist subject to the oversight of a physician who need not be present in the facility; and

''(v) meets the requirements of subparagraph (I) of paragraph (2) of section 1861(aa).

''(3) DEEMED TO HAVE ESTABLISHED A PROGRAM.—A State that received a grant under this section on or before December 31, 1995, and the State of Montana shall be deemed to have established a program under this subsection.

''(e) RURAL HEALTH NETWORK DEFINED.—

''(1) IN GENERAL.—For purposes of this section, the term 'rural health network' means, with respect to a State, an organization consisting of—

''(A) at least 1 facility that the State has designated or plans to designate as a critical access hospital, and

''(B) at least 1 hospital that furnishes acute care services.

''(2) AGREEMENTS.—

''(A) IN GENERAL.—Each critical access hospital that is a member of a rural health network shall have an agreement with respect to each item described in subparagraph (B) with at least 1 hospital that is a member of the network.

''(B) ITEMS DESCRIBED.—The items described in this subparagraph are the following:

''(i) Patient referral and transfer.

''(ii) The development and use of communications systems including (where feasible)—

''(I) telemetry systems, and

''(II) systems for electronic sharing of patient data.

''(iii) The provision of emergency and nonemergency transportation among the facility and the hospital.

''(C) CREDENTIALING AND QUALITY ASSURANCE.—Each critical access hospital that is a member of a rural health network shall have an agreement with respect to credentialing and quality assurance with at least 1—

''(i) hospital that is a member of the network;

''(ii) peer review organization or equivalent entity; or

''(iii) other appropriate and qualified entity identified in the State rural health care plan.

''(f) CERTIFICATION BY THE SECRETARY.—The Secretary shall certify a facility as a critical access hospital if the facility—

''(1) is located in a State that has established a medicare rural hospital flexibility program in accordance with subsection (d);

''(2) is designated as a critical access hospital by the State in which it is located; and

''(3) meets such other criteria as the Secretary may require.

''(g) PERMITTING MAINTENANCE OF SWING BEDS.—Nothing in this section shall be construed to prohibit a critical access hospital from entering into an agreement with the Secretary under section 1883 to use the beds designated for inpatient cases pursuant to subsection (d)(2)(A)(iii) for extended care services.

''(h) GRANTS.—

''(1) MEDICARE RURAL HOSPITAL FLEXIBILITY PROGRAM.—The Secretary may award grants to States that have submitted applications in accordance with subsection (c) for—

''(A) engaging in activities relating to planning and implementing a rural health care plan;

''(B) engaging in activities relating to planning and implementing rural health networks; and

''(C) designating facilities as critical access hospitals.

''(2) RURAL EMERGENCY MEDICAL SERVICES.—

''(A) IN GENERAL.—The Secretary may award grants to States that have submitted applications in accordance with subparagraph (B) for the establishment or expansion of a program for the provision of rural emergency medical services.

''(B) APPLICATION.—An application is in accordance with this subparagraph if the State submits to the Secretary at such time and in such form as the Secretary may require an application containing the assurances described in subparagraphs (A)(ii), (A)(iii), and (B) of subsection (c)(1) and paragraph (3) of such subsection.

''(i) GRANDFATHERING OF CERTAIN FACILITIES.—

''(1) IN GENERAL.—Any medical assistance facility operating in Montana and any rural primary care hospital designated by the Secretary under this section prior to the date of the enactment of the Rural Health Improvement Act of 1995 shall be deemed to have been certified by the Secretary under subsection (f) as a critical access hospital if such facility or hospital is otherwise eligible to be designated by the State as a critical access hospital under subsection (d).

''(2) CONTINUATION OF MEDICAL ASSISTANCE FACILITY AND RURAL PRIMARY CARE HOSPITAL TERMS.—Notwithstanding any other provision of this title, with respect to any medical assistance facility or rural primary care hospital described in paragraph (1), any reference in this title to a 'critical access hospital' shall be deemed to be a reference to a 'medical assistance facility' or 'rural primary care hospital'.

''(j) WAIVER OF CONFLICTING PART A PROVISIONS.—The Secretary is authorized to waive such provisions of this part and part C as are necessary to conduct the program established under this section.

''(k) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated from the Federal Hospital Insurance Trust Fund for making grants to all States under subsection (h), $25,000,000 in each of the fiscal years 1996 through 2000.''.

(b) REPORT ON ALTERNATIVE TO 96-HOUR RULE.—Not later than January 1, 1996, the Administrator of the Health Care Financing Administration shall submit to the Congress a report on the feasibility of, and administrative requirements necessary to establish an alternative for certain medical diagnoses (as determined by the Administrator) to the 96-hour limitation for inpatient care in critical access hospitals required by section 1820(d)(2)(B)(iii).

(c) PART A AMENDMENTS RELATING TO RURAL PRIMARY CARE HOSPITALS AND CRITICAL ACCESS HOSPITALS.—

(1) DEFINITIONS.—Section 1861(mm) (42 U.S.C. 1395x(mm)) is amended to read as follows:

''CRITICAL ACCESS HOSPITAL; CRITICAL ACCESS HOSPITAL SERVICES

''(mm)(1) The term 'critical access hospital' means a facility certified by the Secretary as a critical access hospital under section 1820(f).

''(2) The term 'inpatient critical access hospital services' means items and services, furnished to an inpatient of a critical access hospital by such facility, that would be inpatient hospital services if furnished to an inpatient of a hospital by a hospital.''.

(2) COVERAGE AND PAYMENT.—(A) Section 1812(a)(1) (42 U.S.C. 1395d(a)(1)) is amended by striking ''or inpatient rural primary care hospital services'' and inserting ''or inpatient critical access hospital services''.

(B) Section 1814 (42 U.S.C. 1395f) is amended—

(i) on subsection (a)(8)—

(I) by striking ''rural primary care hospital'' each place it appears and inserting ''critical access hospital''; and

(II) by striking ''72'' and inserting ''96'';

(ii) in subsection (b), by striking ''other than a rural primary care hospital providing inpatient rural primary care hospital services,'' and inserting ''other than a critical access hospital providing inpatient critical access hospital services,''; and

(iii) by amending subsection (*l*) to read as follows:

''(l) PAYMENT FOR INPATIENT CRITICAL ACCESS HOSPITAL SERVICES.—The amount of payment under this part for inpatient critical access hospital services is the reasonable costs of the critical access hospital in providing such services.''.

(3) TREATMENT OF CRITICAL ACCESS HOSPITALS AS PROVIDERS OF SERVICES.—(A) Section 1861(u) (42 U.S.C. 1395x(u)) is amended by striking ''rural primary care hospital'' and inserting ''critical access hospital''.

(B) The first sentence of section 1864(a) (42 U.S.C. 1395aa(a)) is amended by striking ''a rural primary care hospital'' and inserting ''a critical access hospital''.

(4) CONFORMING AMENDMENTS.—(A) Section 1128A(b)(1) (42 U.S.C. 1320a–7a(b)(1)) is amended by striking ''rural primary care hospital'' each place it appears and inserting ''critical access hospital''.

(B) Section 1128B(c) (42 U.S.C. 1320a–7b(c)) is amended by striking ''rural primary care hospital'' and inserting ''critical access hospital''.

(C) Section 1134 (42 U.S.C. 1320b–4) is amended by striking ''rural primary care hospitals'' each place it appears and inserting ''critical access hospitals''.

(D) Section 1138(a)(1) (42 U.S.C. 1320b–8(a)(1)) is amended—

(i) in the matter preceding subparagraph (A), by striking ''rural primary care hospital'' and inserting ''critical access hospital''; and

(ii) in the matter preceding clause (i) of subparagraph (A), by striking ''rural primary care hospital'' and inserting ''critical access hospital''.

(E) Section 1816(c)(2)(C) (42 U.S.C. 1395h(c)(2)(C)) is amended by striking ''rural primary care hospital'' and inserting ''critical access hospital''.

(F) Section 1833 (42 U.S.C. 1395l) is amended—

(i) in subsection (h)(5)(A)(iii), by striking ''rural primary care hospital'' and inserting ''critical access hospital'';

(ii) in subsection (i)(1)(A), by striking ''rural primary care hospital'' and inserting ''critical access hospital'';

(iii) in subsection (i)(3)(A), by striking ''rural primary care hospital services'' and inserting ''critical access hospital services'';

(iv) in subsection (l)(5)(A), by striking ''rural primary care hospital'' each place it appears and inserting ''critical access hospital''; and

(v) in subsection (l)(5)(B), by striking ''rural primary care hospital'' each place it appears and inserting ''critical access hospital''.

(G) Section 1835(c) (42 U.S.C. 1395n(c)) is amended by striking ''rural primary care hospital'' each place it appears and inserting ''critical access hospital''.

(H) Section 1842(b)(6)(A)(ii) (42 U.S.C. 1395u(b)(6)(A)(ii)) is amended by striking ''rural primary care hospital'' and inserting ''critical access hospital''.

(I) Section 1861 (42 U.S.C. 1395x) is amended—

(i) in the last sentence of subsection (e), by striking ''rural primary care hospital'' and inserting ''critical access hospital'';

(ii) in subsection (v)(1)(S)(ii)(III), by striking ''rural primary care hospital'' and inserting ''critical access hospital'';

(iii) in subsection (w)(1), by striking ''rural primary care hospital'' and inserting ''critical access hospital''; and

(iv) in subsection (w)(2), by striking ''rural primary care hospital'' each place it appears and inserting ''critical access hospital''.

(J) Section 1862(a)(14) (42 U.S.C. 1395y(a)(14)) is amended by striking ''rural primary care hospital'' each place it appears and inserting ''critical access hospital''.

(K) Section 1866(a)(1) (42 U.S.C 1395cc(a)(1)) is amended—

(i) in subparagraph (F)(ii), by striking ''rural primary care hospitals'' and inserting ''critical access hospitals'';

(ii) in subparagraph (H), in the matter preceding clause (i), by striking ''rural primary care hospitals'' and ''rural primary care hospital services'' and inserting ''critical access hospitals'' and ''critical access hospital services'', respectively;

(iii) in subparagraph (I), in the matter preceding clause (i), by striking ''rural primary care hospital'' and inserting ''critical access hospital''; and

(iv) in subparagraph (N)—

(I) in the matter preceding clause (i), by striking ''rural primary hospitals'' and inserting ''critical access hospitals'', and

(II) in clause (i), by striking ''rural primary care hospital'' and inserting ''critical access hospital''.

(L) Section 1866(a)(3) (42 U.S.C 1395cc(a)(3)) is amended—

(i) by striking ''rural primary care hospital'' each place it appears in subparagraphs (A) and (B) and inserting ''critical access hospital''; and

(ii) in subparagraph (C)(ii)(II), by striking ''rural primary care hospitals'' each place it appears and inserting ''critical access hospitals''.

(M) Section 1867(e)(5) (42 U.S.C. 1395dd(e)(5)) is amended by striking ''rural primary care hospital'' and inserting ''critical access hospital''.

(d) PAYMENT CONTINUED TO DESIGNATED EACHs.—Section 1886(d)(5)(D) (42 U.S.C. 1395ww(d)(5)(D)) is amended—

(1) in clause (iii)(III), by inserting ''as in effect or designated by the State on January 1, 1996'' before the period at the end; and

(2) in clause (v)—

(A) by inserting ''as in effect or designated by the State on January 1, 1996'' after ''1820(i)(1)''; and

(B) by striking ''1820(g)'' and inserting ''1820(e)''.

(e) PART B AMENDMENTS RELATING TO CRITICAL ACCESS HOSPITALS.—

(1) COVERAGE.—(A) Section 1861(mm) (42 U.S.C. 1395x(mm)) as amended by subsection (d)(1), is amended by adding at the end the following new paragraph:

''(3) The term 'outpatient critical access hospital services' means medical and other health services furnished by a critical access hospital on an outpatient basis.''.

(B) Section 1832(a)(2)(H) (42 U.S.C. 1395k(a)(2)(H)) is amended by striking ''rural primary care hospital services'' and inserting ''critical access hospital services''.

(2) PAYMENT.—(A) Section 1833(a) (42 U.S.C. 1395l(a)) is amended in paragraph (6), by striking ''outpatient rural primary care hospital services'' and inserting ''outpatient critical access services''.

(B) Section 1834(g) (42 U.S.C. 1395m(g)) is amended to read as follows:

''(g) PAYMENT FOR OUTPATIENT CRITICAL ACCESS HOSPITAL SERVICES.—

''(1) IN GENERAL.—The amount of payment for outpatient critical access hospital services provided in a critical access hospital under this part shall be determined by one of the 2 following methods, as elected by the critical access hospital:

''(A) REASONABLE COST.—The amount of payment under this part for outpatient critical access hospital services is the reasonable costs of the critical access hospital in providing such services.

''(B) ALL-INCLUSIVE RATE.—With respect to both facility services and professional medical services, there shall be paid amounts equal to the costs which are reasonable and related to the cost of furnishing such services or which are based on such other tests of reasonableness as the Secretary may prescribe in regulations, less the amount the hospital may charge as described in clause (i) of section 1866(a)(2)(A), but in no case may the payment for such services (other than for items and services described in section 1861(s)(10)(A)) exceed 80 percent of such costs.

The amount of payment shall be determined under either method without regard to the amount of the customary or other charge.''.

(f) SWING BEDS.—Section 1883 (42 U.S.C. 1395tt) is amended by adding at the end the following new subsection:

''(g) Nothing in this section shall prohibit the Secretary from entering into an agreement with a critical access hospital.''.

(g) EFFECTIVE DATE.—The amendments made by this section shall apply to services furnished on or after January 1, 1996.

SEC. 7028. PARITY FOR RURAL HOSPITALS FOR DISPROPORTIONATE SHARE PAYMENTS.

(a) DISPROPORTIONATE SHARE ADJUSTMENT PERCENTAGE.—Section 1886(d)(5)(F)(iv) (42 U.S.C. 1395ww(d)(5)(F)(iv)) is amended—

(1) in subclause (I), by inserting ''or rural'' after ''urban'',

(2) in subclause (II), by inserting ''or rural'' after ''urban'',

(3) by striking subclause (III) and redesignating subclauses (IV), (V), and (VI), as subclauses (III), (IV), and (V), respectively,

(4) in subclause (III), as redesignated, by striking ''10 percent'' and inserting ''15 percent'',

(5) in subclause (IV), as redesignated, to read as follows:

''(IV) is located in a rural area, is classified as a rural referral center under subparagraph (C), is not classified as a sole community hospital under subparagraph (D) and—

''(aa) has 100 or more beds, is equal to the percent determined in accordance with the applicable formula described in clause (vii), or

''(bb) has less than 100 beds, is equal to 5 percent; or'', and

(6) in subclause (V), as redesignated, by striking ''10 percent'' and inserting ''15 percent''.

(b) SERVES A SIGNIFICANTLY DISPROPORTIONATE NUMBER OF LOW-INCOME PATIENTS.—Section 1886(d)(5)(F)(v) (42 U.S.C. 1395ww(d)(5)(F)(v)) is amended by striking subclauses (II) through (IV) and inserting the following subclauses:

''(II) 20 percent, if the hospital is located in a rural area and has 100 or more beds,

''(III) 40 percent, if the hospital is located in a rural area and has less than 100 beds,

''(IV) 20 percent, if the hospital is located in a rural area and is classified as a sole community hospital under subparagraph (D),

''(V) 15 percent, if the hospital is located in a rural area, is classified as a rural referral center, is not classified as a sole community hospital under subparagraph (D), and has 100 or more beds, or

''(VI) 40 percent, if the hospital is located in a rural area, is classified as a rural referral center, is not classified as a sole community hospital under subparagraph (D), and has less than 100 beds.''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to discharges occurring on or after October 1, 1995.

CHAPTER 4—GENERAL PROGRAM IMPROVEMENTS AND REFORM

SEC. 7031. INCREASED FLEXIBILITY IN CONTRACTING FOR MEDICARE CLAIMS PROCESSING.

(a) CARRIERS TO INCLUDE ENTITIES THAT ARE NOT INSURANCE COMPANIES.—

(1) Section 1842(a) (42 U.S.C. 1395u(a)) is amended in the matter preceding paragraph (1) by striking ''with carriers'' and inserting ''with agencies and organizations (hereafter in this section referred to as 'carriers')''.

(2) Section 1842(f) (42 U.S.C. 1395u(f)) is repealed.

(b) CHOICE OF FISCAL INTERMEDIARIES BY PROVIDERS OF SERVICES; SECRETARIAL FLEXIBILITY IN ASSIGNING FUNCTIONS TO INTERMEDIARIES AND CARRIERS.—

(1) Section 1816(a) (42 U.S.C. 1395h(a)) to read as follows:

''(a)(1) The Secretary may enter into contracts with agencies or organizations to perform any or all of the following functions, or parts of those functions (or, to the extent provided in a contract, to secure performance thereof by other organizations):

''(A) Determination (subject to the provisions of section 1878 and to such review by the Secretary as may be provided for by the contracts) the amount of the payments required pursuant to this part to be made to providers of services.

''(B) Making payments described in subparagraph (A).

''(C) Provision of consultative services to institutions or agencies to enable them to establish and maintain fiscal records necessary for purposes of this part and otherwise to qualify as providers of services.

''(D) Serving as a center for, and communicate to individuals entitled to benefits under this part and to providers of services, any information or instructions furnished to the agency or organization by the Secretary, and serve as a channel of communication from individuals entitled to benefits under this part and from providers of services to the Secretary.

''(E) Making such audits of the records of providers of services as may be necessary to ensure that proper payments are made under this part.

''(F) Performance of the functions described under subsection (d).

''(G) Performance of such other functions as are necessary to carry out the purposes of this part.

''(2) As used in this title and title XI, the term 'fiscal intermediary' means an agency or organization with a contract under this section.''.

(2) Subsections (d) and (e) of section 1816 (42 U.S.C. 1395h) are amended to read as follows:

''(d) Each provider of services shall have a fiscal intermediary that—

''(1) acts as a single point of contact for the provider of services under this part,

''(2) makes its services sufficiently available to meet the needs of the provider of services, and

''(3) is responsible and accountable for arranging the resolution of issues raised under this part by the provider of services.

''(e)(1)(A) The Secretary shall, at least every 5 years, permit each provider of services (other than a home health agency or a hospice program) to choose an agency or organization (from at least 3 proposed by the Secretary, of which at least 1 shall have an office in the geographic area of the provider of services, except as provided by subparagraph (B)(ii)(II)) as the fiscal intermediary under subsection (d) for that provider of services. If a contract with that fiscal intermediary is discontinued, the Secretary shall permit the provider of services to choose under the same conditions from 3 other agencies or organizations.

''(B)(i) The Secretary, in carrying out subparagraph (A), shall permit a group of hospitals (or a group of another class of providers other than home health agencies or hospice programs) under common ownership by, or control of, a particular entity to choose one agency or organization (from at least 3 proposed by the Secretary) as the fiscal intermediary under subsection (d) for all the providers in that group if the conditions specified in clause (ii) are met.

''(ii) The conditions specified in this clause are that—

''(I) the group includes all the providers of services of that class that are under common ownership by, or control of, that particular entity, and

''(II) all the providers of services in that group agree that none of the agencies or organizations proposed by the Secretary is required to have an office in any particular geographic area.

''(2) The Secretary, in evaluating the performance of a fiscal intermediary, shall solicit comments from providers of services.''.

(3)(A) Section 1816(b)(1)(A) (42 U.S.C. 1395h(b)(1)(A)) is amended by striking ''after applying the standards, criteria, and procedures'' and inserting ''after evaluating the

ability of the agency or organization to fulfill the contract performance requirements''.

(B) The first sentence of section 1816(f)(1) (42 U.S.C. 1395h(f)(1)) is amended—

(i) by striking ''develop standards, criteria, and procedures'' and inserting '', after public notice and opportunity for comment, develop contract performance requirements'', and

(ii) by striking '', and the Secretary shall establish standards and criteria with respect to the efficient and effective administration of this part''.

(C) The second sentence of section 1842(b)(2)(A) (42 U.S.C. 1395u(b)(2)(A)) is amended to read as follows: ''The Secretary shall, after public notice and opportunity for comment, develop contract performance requirements for the efficient and effective performance of contract obligations under this section.''.

(D) Section 1842(b)(2)(A) (42 U.S.C. 1395u(b)(2)(A)) is amended by striking the third sentence.

(E) Section 1842(b)(2)(B) (42 U.S.C. 1395u(b)(2)(B)) is amended in the matter preceding clause (i) by striking ''establish standards'' and inserting ''develop contract performance requirements''.

(F) Section 1842(b)(2)(D) (42 U.S.C. 1395u(b)(2)(D)) is amended by striking ''standards and criteria'' each place it appears and inserting ''contract performance requirements''.

(4)(A) Section 1816(b) (42 U.S.C. 1395h(b)) is amended in the matter preceding paragraph (1) by striking ''an agreement'' and inserting ''a contract''.

(B) Paragraphs (1)(B) and (2)(A) of section 1816(b) (42 U.S.C. 1395h(b)) are each amended by striking ''agreement'' and inserting ''contract''.

(C) The first sentence of section 1816(c)(1) (42 U.S.C. 1395h(c)(1)) is amended by striking ''An agreement'' and inserting ''A contract''.

(D) The last sentence of section 1816(c)(1) (42 U.S.C. 1395h(c)(1)) is amended by striking ''an agreement'' and inserting ''a contract''.

(E) Section 1816(c)(2)(A) (42 U.S.C. 1395h(c)(2)(A)) is amended in the matter preceding clause (i) by striking ''agreement'' and inserting ''contract''.

(F) Section 1816(c)(3)(A) (42 U.S.C. 1395h(c)(3)(A)) is amended by striking ''agreement'' and inserting ''contract''.

(G) The first sentence of section 1816(f)(1) (42 U.S.C. 1395h(f)(1)) is amended by striking ''an agreement'' and inserting ''a contract''.

(H) Section 1816(h) (42 U.S.C. 1395h(h)) is amended—

(i) by striking ''An agreement'' and inserting ''A contract'', and

(ii) by striking ''the agreement'' each place it appears and inserting ''the contract''.

(I) Section 1816(i)(1) (42 U.S.C. 1395h(i)(1)) is amended by striking ''an agreement'' and inserting ''a contract''.

(J) Section 1816(j) (42 U.S.C. 1395h(j)) is amended by striking ''An agreement'' and inserting ''A contract''.

(K) Section 1816(k) (42 U.S.C. 1395h(k)) is amended by striking ''An agreement'' and inserting ''A contract''.

(L) Section 1842(a) (42 U.S.C. 1395u(a)) is amended in the matter preceding paragraph (1) is amended by striking ''agreements'' and inserting ''contracts''.

(M) Section 1842(h)(3)(A) (42 U.S.C. 1395u(h)(3)(A)) is amended by striking ''an agreement'' and inserting ''a contract''.

(5) Section 1816(f)(1) (42 U.S.C. 1395h(f)(1)) is amended by striking the second sentence.

(6)(A) Section 1816(c)(2)(A) (42 U.S.C. 1395h(c)(2)(A)) is amended in the matter preceding clause (i) by inserting ''that provides for making payments under this part'' after ''this section''.

(B) Section 1816(c)(3)(A) (42 U.S.C. 1395h(c)(3)(A)) is amended by inserting ''that provides for making payments under this part'' after ''this section''.

(C) Section 1816(k) (42 U.S.C. 1395h(k)) is amended by inserting ''(as appropriate)'' after ''submit''.

(D) Section 1842(a) (42 U.S.C. 1395u(a)) is amended in the matter preceding paragraph (1) by striking ''some or all of the following functions'' and inserting ''any or all of the following functions, or parts of those functions''.

(E) The first sentence of section 1842(b)(2)(C) (42 U.S.C. 1395u(b)(2)(C)) is amended by inserting ''(as appropriate)'' after ''carriers''.

(F) Section 1842(b)(3) (42 U.S.C. 1395u(b)(3)) is amended in the matter preceding subparagraph (A) by inserting ''(as appropriate)'' after ''contract''.

(G) Section 1842(b)(7)(A) (42 U.S.C. 1395u(b)(7)(A)) is amended in the matter preceding clause (i) by striking ''the carrier'' and inserting ''a carrier''.

(H) Section 1842(b)(11)(A) (42 U.S.C. 1395u(b)(11)(A)) is amended in the matter preceding clause (i) by inserting ''(as appropriate)'' after ''each carrier''.

(I) Section 1842(h)(2) (42 U.S.C. 1395u(h)(2)) is amended in the first sentence by inserting ''(as appropriate)'' after ''shall''.

(J) Section 1842(h)(5)(A) (42 U.S.C. 1395u(h)(5)(A)) is amended by inserting ''(as appropriate)'' after ''carriers''.

(7)(A) Section 1816(c)(2)(C) (42 U.S.C. 1395h(c)(2)(C)) is amended by striking ''hospital, rural primary care hospital, skilled nursing facility, home health agency, hospice program, comprehensive outpatient rehabilitation facility, or rehabilitation agency'' and inserting ''provider of services''.

(B) Section 1816(j) (42 U.S.C. 1395h(j)) is amended in the matter preceding paragraph (1) by striking ''for home health services, extended care services, or post-hospital extended care services''.

(8) Section 1842(a)(3) (42 U.S.C. 1395u(a)(3)) is amended by inserting ''(to and from individuals enrolled under this part and to and from physicians and other entities that furnish items and services)'' after ''communication''.

(c) ELIMINATION OF SPECIAL PROVISIONS FOR TERMINATIONS OF CONTRACTS.—

(1) Section 1816(b) (42 U.S.C. 1395h(b)) is amended in the matter preceding paragraph (1) is amended by striking ''or renew''.

(2) The last sentence of section 1816(c)(1) (42 U.S.C. 1395h(c)(1)) is amended by striking ''or renewing''.

(3) Section 1816(f)(1) (42 U.S.C. 1395h(f)(1)) is amended—

(A) by striking '', renew, or terminate'', and

(B) by striking '', whether the Secretary should assign or reassign a provider of services to an agency or organization,''.

(4) Section 1816(g) (42 U.S.C. 1395h(g)) is repealed.

(5) The last sentence of section 1842(b)(2)(A) (42 U.S.C. 1395u(b)(2)(A)) is amended by striking ''or renewing''.

(6) Section 1842(b) (42 U.S.C. 1395u(b)) is amended by striking paragraph (5).

(d) REPEAL OF FISCAL INTERMEDIARY REQUIREMENTS THAT ARE NOT COST-EFFECTIVE.—Section 1816(f)(2) (42 U.S.C. 1395h(f)(2)) is amended to read as follows:

''(2) The contract performance requirements developed under paragraph (1) shall include, with respect to claims for services furnished under this part by any provider of services other than a hospital, whether such agency or organization is able to process 75 percent of reconsiderations within 60 days and 90 percent of reconsiderations within 90 days.''.

(e) REPEAL OF COST REIMBURSEMENT REQUIREMENTS.—

(1) The first sentence of section 1816(c)(1) (42 U.S.C. 1395h(c)(1)) is amended—

(A) by striking the comma after ''appropriate'' and inserting ''and'', and

(B) by striking ''subsection (a)''and all that follows through the period and inserting ''subsection (a).''.

(2) Section 1816(c)(1) (42 U.S.C. 1395h(c)(1)) is further amended by striking the second and third sentences.

(3) The first sentence of section 1842(c)(1) (42 U.S.C. 1395u(c)(1)) is amended—

(A) by striking ''shall provide'' the first place it appears and inserting ''may provide'', and

(B) by striking ''this part'' and all that follows through the period and inserting ''this part.''.

(4) Section 1842(c)(1) (42 U.S.C. 1395u(c)(1)) is further amended by striking the second and third sentences.

(5) Section 2326(a) of the Deficit Reduction Act of 1984 is repealed.

(f) COMPETITION REQUIRED FOR NEW CONTRACTS AND IN CASES OF POOR PERFORMANCE.—

(1) Section 1816(c) (42 U.S.C. 1395h(c)) is amended by adding at the end the following new paragraph:

''(4)(A) A contract with a fiscal intermediary under this section may be renewed from term to term without regard to any provision of law requiring competition if the fiscal intermediary has met or exceeded the performance requirements established in the current contract.

''(B) Functions may be transferred among fiscal intermediaries without regard to any provision of law requiring competition.''.

(2) Section 1842(b)(1) (42 U.S.C. 1395u(b)(1)) is amended to read as follows:

''(b)(1)(A) A contract with a carrier under subsection (a) may be renewed from term to term without regard to any provision of law requiring competition if the carrier has met or exceeded the performance requirements established in the current contract.

''(B) Functions may be transferred among carriers without regard to any provision of law requiring competition.''.

(g) WAIVER OF COMPETITIVE REQUIREMENTS FOR INITIAL CONTRACTS.—

(1) Contracts that have periods that begin during the 1-year period that begins on the first day of the fourth calendar month that begins after the date of enactment of this Act may be entered into under section 1816(a) of the Social Security Act (42 U.S.C. 1395h(a)) without regard to any provision of law requiring competition.

(2) The amendments made by subsection (f) apply to contracts that have periods beginning after the end of the 1-year period specified in paragraph (1).

(h) EFFECTIVE DATES.—

(1) The amendments made by subsection (c) apply to contracts that have periods ending on, or after, the end of the third calendar month that begins after the date of enactment of this Act.

(2) The amendments made by subsections (a), (b), (d), and (e) apply to contracts that have periods beginning after the third calendar month that begins after the date of enactment of this Act.

SEC. 7032. EXPANSION OF CENTERS OF EXCELLENCE.

(a) IN GENERAL.—The Secretary of Health and Human Services (hereafter referred to as the ''Secretary'') shall use a competitive process to contract with centers of excellence for cataract surgery and coronary artery bypass surgery, and any other appropriate services designated by the Secretary. Payment under title XVIII of the Social Security Act will be made for services subject to such contracts on the basis of negotiated or all-inclusive rates as follows:

(1) The center shall cover services provided in an urban area (as defined in section 1886(d)(2)(D) of the Social Security Act) for years beginning with fiscal year 1996.

(2) The amount of payment made by the Secretary to the center under title XVIII of the Social Security Act for services covered under the contract shall be less than the aggregate amount of the payments that the Secretary would have made to the center for such services had the contract not been in effect.

(3) The Secretary shall make payments to the center on such a basis for the following services furnished to individuals entitled to benefits under such title:

(A) Facility, professional, and related services relating to cataract surgery.

(B) Coronary artery bypass surgery and related services.

(b) REBATE OF PORTION OF SAVINGS.—In the case of any services provided under a contract conducted under subsection (a), the Secretary shall make a payment to each individual to whom such services are furnished (at such time and in such manner as the Secretary may provide) in an amount equal to 10 percent of the amount by which—

(1) the amount of payment that would have been made by the Secretary under title XVIII of the Social Security Act to the center for such services if the services had not been provided under the contract, exceeds

(2) the amount of payment made by the Secretary under such title to the center for such services.

(c) INFORMATION.—The Secretary shall include in the annual notice mailed under section 1804 of the Social Security Act (42 U.S.C. 1395b–2) information regarding the availability of centers of excellence under this section and notification that an individual may be directed to local centers of excellence by calling the toll-free number established under subsection (b) of such section.

SEC. 7033. SELECTIVE CONTRACTING.

(a) IN GENERAL.—The Secretary of Health and Human Services (hereafter referred to as the ''Secretary'') may selectively contract with specialized programs that manage chronic diseases, complex acute care needs, and the needs of disabled medicare beneficiaries. Payment under title XVIII of the Social Security Act will be made for services subject to such contracts subject to such contracts on the basis of negotiated rates. The Secretary shall ensure that such contracts do not limit access to services in rural and undesirable areas.

(b) BASIS OF CONTRACTS.—The Secretary shall enter into contracts under subsection (a) on the basis of objective measures of quality, service, and cost.

(c) INNOVATIONS.—A specialized program with a contract under this section may use alternatives to inpatient or institutional care and may use specialized networks of caregivers.

(d) NO REQUIREMENT TO OBTAIN SERVICES FROM PROGRAMS.—No medicare beneficiary shall be required to receive health care services from a specialized program with a contract under this section.

CHAPTER 5—REDUCTION OF WASTE, FRAUD, AND ABUSE

Subchapter A—Improving Coordination, Communication, and Enforcement

PART I—MEDICARE ANTI-FRAUD AND ABUSE PROGRAM

SEC. 7041. MEDICARE ANTI-FRAUD AND ABUSE PROGRAM.

(a) FINDINGS AND STATEMENT OF PURPOSE.—

(1) FINDINGS.—The Congress finds that—

(A) a significant amount of funds expended on the medicare program under title XVIII of the Social Security Act (42 U.S.C. 1395 et seq.) are lost to fraud, medically unnecessary services, and other abuse;

(B) the Office of Inspector General of the Department of Health and Human Services (hereinafter referred to as the Inspector General) and the Attorney General is effective in combating fraud and abuse under the medicare program and returning misspent funds to the Federal Treasury at a rate many times the amount invested in Inspector General and Attorney General activities; and

(C) the investigations, audits, and other activities of the Inspector General and the Attorney General have been severely curtailed by budget constraints, particularly the limits imposed by the ceilings on discretionary spending.

(2) PURPOSE.—It is the purpose of this Act to ensure a continued and adequate source of funding for the medicare anti-fraud and abuse activities of the Inspector General and the Attorney General.

(b) ESTABLISHMENT OF PROGRAM.—Title XI (42 U.S.C. 1301 et seq.) is amended by adding at the end the following new part:

SEC. . FRAUD AND ABUSE CONTROL PROGRAM.

(a) ESTABLISHMENT OF PROGRAM.—Title XI (42 U.S.C. 1301 et seq.) is amended by inserting after section 1128B the following new section:

''FRAUD AND ABUSE CONTROL PROGRAM

''SEC. 1128C. (a) ESTABLISHMENT OF PROGRAM.—

''(1) IN GENERAL.—Not later than January 1, 1996, the Secretary, acting through the Office of the Inspector General of the Department of Health and Human Services, and the Attorney General shall establish a program—

''(A) to coordinate Federal, State, and local law enforcement programs to control fraud and abuse with respect to the delivery of and payment for health care in the United States,

''(B) to conduct investigations, audits, evaluations, and inspections relating to the delivery of and payment for health care in the United States,

''(C) to facilitate the enforcement of the provisions of sections 1128, 1128A, and 1128B and other statutes applicable to health care fraud and abuse, and

''(D) to provide for the modification and establishment of safe harbors and to issue interpretative rulings and special fraud alerts pursuant to section 1128D.

''(2) COORDINATION WITH HEALTH PLANS.—In carrying out the program established under paragraph (1), the Secretary and the Attorney General shall consult with, and arrange for the sharing of data with representatives of health plans.

''(3) GUIDELINES.—

''(A) IN GENERAL.—The Secretary and the Attorney General shall issue guidelines to carry out the program under paragraph (1). The provisions of sections 553, 556, and 557 of title 5, United States Code, shall not apply in the issuance of such guidelines.

''(B) INFORMATION GUIDELINES.—

''(i) IN GENERAL.—Such guidelines shall include guidelines relating to the furnishing of information by health plans, providers, and others to enable the Secretary and the Attorney General to carry out the program (including coordination with health plans under paragraph (2)).

''(ii) CONFIDENTIALITY.—Such guidelines shall include procedures to assure that such information is provided and utilized in a manner that appropriately protects the confidentiality of the information and the privacy of individuals receiving health care services and items.

''(iii) QUALIFIED IMMUNITY FOR PROVIDING INFORMATION.—The provisions of section 1157(a) (relating to limitation on liability) shall apply to a person providing information to the Secretary or the Attorney General in conjunction with their performance of duties under this section.

''(4) ENSURING ACCESS TO DOCUMENTATION.—The Inspector General of the Department of Health and Human Services is authorized to exercise such authority described in paragraphs (3) through (9) of section 6 of the Inspector General Act of 1978 (5 U.S.C. App.) as necessary with respect to the activities under the fraud and abuse control program established under this subsection.

''(5) AUTHORITY OF INSPECTOR GENERAL.—Nothing in this Act shall be construed to diminish the authority of any Inspector General, including such authority as provided in the Inspector General Act of 1978 (5 U.S.C. App.).

''(b) ADDITIONAL USE OF FUNDS BY INSPECTOR GENERAL.—

''(1) REIMBURSEMENTS FOR INVESTIGATIONS.—The Inspector General of the Department of Health and Human Services is authorized to receive and retain for current use reimbursement for the costs of conducting investigations and audits and for monitoring compliance plans when such costs are ordered by a court, voluntarily agreed to by the payer, or otherwise.

''(2) CREDITING.—Funds received by the Inspector General under paragraph (1) as reimbursement for costs of conducting investigations shall be deposited to the credit of the appropriation from which initially paid, or to appropriations for similar purposes currently available at the time of deposit, and shall remain available for obligation for 1 year from the date of the deposit of such funds.

''(c) HEALTH PLAN DEFINED.—For purposes of this section, the term 'health plan' means a plan or program that provides health benefits, whether directly, through insurance, or otherwise, and includes—

''(1) a policy of health insurance;

''(2) a contract of a service benefit organization; and

''(3) a membership agreement with a health maintenance organization or other prepaid health plan.''.

(b) ESTABLISHMENT OF HEALTH CARE FRAUD AND ABUSE CONTROL ACCOUNT IN FEDERAL HOSPITAL INSURANCE TRUST FUND.—Section 1817 (42 U.S.C. 1395i) is amended by adding at the end the following new subsection:

''(k) HEALTH CARE FRAUD AND ABUSE CONTROL ACCOUNT.—

''(1) ESTABLISHMENT.—There is hereby established in the Trust Fund an expenditure account to be known as the 'Health Care Fraud and Abuse Control Account' (in this subsection referred to as the 'Account').

''(2) APPROPRIATED AMOUNTS TO TRUST FUND.—

''(A) IN GENERAL.—There are hereby appropriated to the Trust Fund—

''(i) such gifts and bequests as may be made as provided in subparagraph (B);

''(ii) such amounts as may be deposited in the Trust Fund as provided in sections 7141(b) and 7142(c) of the Balanced Budget Reconciliation Act of 1995, and title XI; and

''(iii) such amounts as are transferred to the Trust Fund under subparagraph (C).

''(B) AUTHORIZATION TO ACCEPT GIFTS.—The Trust Fund is authorized to accept on behalf of the United States money gifts and bequests made unconditionally to the Trust Fund, for the benefit of the Account or any activity financed through the Account.

''(C) TRANSFER OF AMOUNTS.—The Managing Trustee shall transfer to the Trust Fund, under rules similar to the rules in section 9601 of the Internal Revenue Code of 1986, an amount equal to the sum of the following:

''(i) Criminal fines recovered in cases involving a Federal health care offense (as defined in section 982(a)(6)(B) of title 18, United States Code).

''(ii) Civil monetary penalties and assessments imposed in health care cases, including amounts recovered under titles XI, XVIII, and XXI, and chapter 38 of title 31, United States Code (except as otherwise provided by law).

''(iii) Amounts resulting from the forfeiture of property by reason of a Federal health care offense.

''(iv) Penalties and damages obtained and otherwise creditable to miscellaneous receipts of the general fund of the Treasury obtained under sections 3729 through 3733 of title 31, United States Code (known as the False Claims Act), in cases involving claims related to the provision of health care items and services (other than funds awarded to a relator, for restitution or otherwise authorized by law).

''(3) APPROPRIATED AMOUNTS TO ACCOUNT.—

''(A) IN GENERAL.—There are hereby appropriated to the Account from the Trust Fund such sums as the Secretary and the Attorney General certify are necessary to carry out the purposes described in subparagraph (B), to be available without further appropriation, in an amount—

''(i) with respect to activities of the Office of the Inspector General of the Department of Health and Human Services and the Federal Bureau of Investigations in carrying out such purposes, not less than—

''(I) for fiscal year 1996, $110,000,000,

''(II) for fiscal year 1997, $140,000,000,

''(III) for fiscal year 1998, $160,000,000,

''(IV) for fiscal year 1999, $185,000,000,

''(V) for fiscal year 2000, $215,000,000,

''(VI) for fiscal year 2001, $240,000,000, and

''(VII) for fiscal year 2002, $270,000,000; and

''(ii) with respect to all activities (including the activities described in clause (i)) in carrying out such purposes, not more than—

''(I) for fiscal year 1996, $200,000,000, and

''(II) for each of the fiscal years 1997 through 2002, the limit for the preceding fiscal year, increased by 15 percent; and

''(iii) for each fiscal year after fiscal year 2002, within the limits for fiscal year 2002 as determined under clauses (i) and (ii).

''(B) USE OF FUNDS.—The purposes described in this subparagraph are as follows:

''(i) GENERAL USE.—To cover the costs (including equipment, salaries and benefits, and travel and training) of the administration and operation of the health care fraud and abuse control program established under section 1128C(a), including the costs of—

''(I) prosecuting health care matters (through criminal, civil, and administrative proceedings);

''(II) investigations;

''(III) financial and performance audits of health care programs and operations;

''(IV) inspections and other evaluations; and

''(V) provider and consumer education regarding compliance with the provisions of title XI.

''(ii) USE BY STATE MEDICAID FRAUD CONTROL UNITS FOR INVESTIGATION REIMBURSEMENTS.—To reimburse the various State medicaid fraud control units upon request to the Secretary for the costs of the activities authorized under section 2134(b).

''(4) ANNUAL REPORT.—The Secretary and the Attorney General shall submit jointly an annual report to Congress on the amount of revenue which is generated and disbursed, and the justification for such disbursements, by the Account in each fiscal year.''.

SEC. 7042. APPLICATION OF CERTAIN HEALTH ANTI-FRAUD AND ABUSE SANCTIONS TO FRAUD AND ABUSE AGAINST FEDERAL HEALTH PROGRAMS.

(a) CRIMES.—

(1) SOCIAL SECURITY ACT.—Section 1128B (42 U.S.C. 1320a–7b) is amended as follows:

(A) In the heading, by striking ''MEDICARE OR STATE HEALTH CARE PROGRAMS'' and inserting ''FEDERAL HEALTH CARE PROGRAMS''.

(B) In subsection (a)(1), by striking ''a program under title XVIII or a State health care program (as defined in section 1128(h))'' and inserting ''a Federal health care program''.

(C) In subsection (a)(5), by striking ''a program under title XVIII or a State health care program'' and inserting ''a Federal health care program''.

(D) In the second sentence of subsection (a)—

(i) by striking ''a State plan approved under title XIX'' and inserting ''a Federal health care program''; and

(ii) by striking ''the State may at its option (notwithstanding any other provision of that title or of such plan)'' and inserting ''the administrator of such program may at its option (notwithstanding any other provision of such program)''.

(E) In subsection (b)—

(i) by striking ''and willfully'' each place it appears;

(ii) by striking ''$25,000'' each place it appears and inserting ''$50,000'';

(iii) by striking ''title XVIII or a State health care program'' each place it appears and inserting ''Federal health care program'';

(iv) in paragraph (1) in the matter preceding subparagraph (A), by striking ''kind—'' and inserting ''kind with intent to be influenced—'';

(v) in paragraph (1)(A), by striking ''in return for referring'' and inserting ''to refer'';

(vi) in paragraph (1)(B), by striking ''in return for purchasing, leasing, ordering, or arranging for or recommending'' and inserting ''to purchase, lease, order, or arrange for or recommend'';

(vii) in paragraph (2) in the matter proceeding subparagraph (A), by striking ''to induce such person'' and inserting ''with intent to influence such person'';

(viii) by adding at the end of paragraphs (1) and (2) the following sentence: ''A violation exists under this paragraph if one or more purposes of the remuneration is unlawful under this paragraph.'';

(ix) by redesignating paragraph (3) as paragraph (4);

(x) in paragraph (4) (as redesignated), by striking ''Paragraphs (1) and (2)'' and inserting ''Paragraphs (1), (2), and (3)''; and

(xi) by inserting after paragraph (2) the following new paragraph:

''(3)(A) The Attorney General may bring an action in the district courts to impose upon any person who carries out any activity in violation of this subsection a civil penalty of not less than $25,000 and not more than $50,000 for each such violation, plus three times the total remuneration offered, paid, solicited, or received.

''(B) A violation exists under this paragraph if one or more purposes of the remuneration is unlawful, and the damages shall be the full amount of such remuneration.

''(C) Section 3731 of title 31, United States Code, and the Federal Rules of Civil Procedure shall apply to actions brought under this paragraph.

''(D) The provisions of this paragraph do not affect the availability of other criminal and civil remedies for such violations.''.

(F) In subsection (c), by inserting ''(as defined in section 1128(h))'' after ''a State health care program''.

(G) By adding at the end the following new subsections:

''(f) For purposes of this section, the term 'Federal health care program' means—

''(1) any plan or program that provides health benefits, whether directly, through insurance, or otherwise, which is funded, in whole or in part, by the United States Government; or

''(2) any State health care program, as defined in section 1128(h).

''(g)(1) The Secretary and Administrator of the departments and agencies with a Federal health care program may conduct an investigation or audit relating to violations of this section and claims within the jurisdiction of other Federal departments or agencies if the following conditions are satisfied:

''(A) The investigation or audit involves primarily claims submitted to the Federal health care programs of the department or agency conducting the investigation or audit.

''(B) The Secretary or Administrator of the department or agency conducting the investigation or audit gives notice and an opportunity to participate in the investigation or audit to the Inspector General of the department or agency with primary jurisdiction over the Federal health care programs to which the claims were submitted.

''(2) If the conditions specified in paragraph (1) are fulfilled, the Inspector General of the department or agency conducting the investigation or audit may exercise all powers granted under the Inspector General Act of 1978 with respect to the claims submitted to the other departments or agencies to the same manner and extent as provided in that Act with respect to claims submitted to such departments or agencies.''.

(2) IDENTIFICATION OF COMMUNITY SERVICE OPPORTUNITIES.—Section 1128B (42 U.S.C. 1320a–7b) is further amended by adding at the end the following new subsection:

''(h) The Secretary may—

''(1) in consultation with State and local health care officials, identify opportunities for the satisfaction of community service obligations that a court may impose upon the conviction of an offense under this section, and

''(2) make information concerning such opportunities available to Federal and State law enforcement officers and State and local health care officials.''.

(b) EFFECTIVE DATE.—The amendments made by this section shall take effect on January 1, 1996.

SEC. 7043. HEALTH CARE FRAUD AND ABUSE PROVIDER GUIDANCE.

(a) SOLICITATION AND PUBLICATION OF MODIFICATIONS TO EXISTING SAFE HARBORS AND NEW SAFE HARBORS.—

(1) IN GENERAL.—

(A) SOLICITATION OF PROPOSALS FOR SAFE HARBORS.—Not later than January 1, 1996, and not less than annually thereafter, the Secretary shall publish a notice in the Federal Register soliciting proposals, which will be accepted during a 60-day period, for—

(i) modifications to existing safe harbors issued pursuant to section 14(a) of the Medicare and Medicaid Patient and Program Protection Act of 1987 (42 U.S.C. 1320a–7b note);

(ii) additional safe harbors specifying payment practices that shall not be treated as a criminal offense under section 1128B(b) of the Social Security Act (42 U.S.C. 1320a–7b(b)) and shall not serve as the basis for an exclusion under section 1128(b)(7) of such Act (42 U.S.C. 1320a–7(b)(7));

(iii) interpretive rulings to be issued pursuant to subsection (b); and

(iv) special fraud alerts to be issued pursuant to subsection (c).

(B) PUBLICATION OF PROPOSED MODIFICATIONS AND PROPOSED ADDITIONAL SAFE HARBORS.—After considering the proposals described in clauses (i) and (ii) of subparagraph (A), the Secretary, in consultation with the Attorney General, shall publish in the Federal Register proposed modifications to existing safe harbors and proposed additional safe harbors, if appropriate, with a 60-day comment period. After considering any public comments received during this period, the Secretary shall issue final rules modifying the existing safe harbors and establishing new safe harbors, as appropriate.

(C) REPORT.—The Inspector General of the Department of Health and Human Services (in this section referred to as the ''Inspector General'') shall, in an annual report to Congress or as part of the year-end semiannual report required by section 5 of the Inspector General Act of 1978 (5 U.S.C. App.), describe the proposals received under clauses (i) and (ii) of subparagraph (A) and explain which proposals were included in the publication described in subparagraph (B), which proposals were not included in that publication, and the reasons for the rejection of the proposals that were not included.

(2) CRITERIA FOR MODIFYING AND ESTABLISHING SAFE HARBORS.—In modifying and establishing safe harbors under paragraph (1)(B), the Secretary may consider the extent to which providing a safe harbor for the specified payment practice may result in any of the following:

(A) An increase or decrease in access to health care services.

(B) An increase or decrease in the quality of health care services.

(C) An increase or decrease in patient freedom of choice among health care providers.

(D) An increase or decrease in competition among health care providers.

(E) An increase or decrease in the ability of health care facilities to provide services in medically underserved areas or to medically underserved populations.

(F) An increase or decrease in the cost to Federal health care programs (as defined in section 1128B(f) of the Social Security Act (42 U.S.C. 1320a–7b(f)).

(G) An increase or decrease in the potential overutilization of health care services.

(H) The existence or nonexistence of any potential financial benefit to a health care professional or provider which may vary based on their decisions of—

(i) whether to order a health care item or service; or

(ii) whether to arrange for a referral of health care items or services to a particular practitioner or provider.

(I) Any other factors the Secretary deems appropriate in the interest of preventing fraud and abuse in Federal health care programs (as so defined).

(b) INTERPRETIVE RULINGS.—

(1) IN GENERAL.—

(A) REQUEST FOR INTERPRETIVE RULING.—Any person may present, at any time, a request to the Inspector General for a statement of the Inspector General's current interpretation of the meaning of a specific aspect of the application of sections 1128A and 1128B of the Social Security Act (42 U.S.C. 1320a–7a and 1320a–7b) (in this section referred to as an ''interpretive ruling'').

(B) ISSUANCE AND EFFECT OF INTERPRETIVE RULING.—

(i) IN GENERAL.—If appropriate, the Inspector General shall in consultation with the Attorney General, issue an interpretive ruling not later than 120 days after receiving a request described in subparagraph (A). Interpretive rulings shall not have the force of law and shall be treated as an interpretive rule within the meaning of section 553(b) of title 5, United States Code. All interpretive rulings issued pursuant to this clause shall be published in the Federal Register or otherwise made available for public inspection.

(ii) REASONS FOR DENIAL.—If the Inspector General does not issue an interpretive ruling in response to a request described in subparagraph (A), the Inspector General shall notify the requesting party of such decision not later than 120 days after receiving such a request and shall identify the reasons for such decision.

(2) CRITERIA FOR INTERPRETIVE RULINGS.—

(A) IN GENERAL.—In determining whether to issue an interpretive ruling under paragraph (1)(B), the Inspector General may consider—

(i) whether and to what extent the request identifies an ambiguity within the language of the statute, the existing safe harbors, or previous interpretive rulings; and

(ii) whether the subject of the requested interpretive ruling can be adequately addressed by interpretation of the language of the statute, the existing safe harbor rules, or previous interpretive rulings, or whether the request would require a substantive ruling (as defined in section 552 of title 5, United States Code) not authorized under this subsection.

(B) NO RULINGS ON FACTUAL ISSUES.—The Inspector General shall not give an interpretive ruling on any factual issue, including the intent of the parties or the fair market value of particular leased space or equipment.

(c) SPECIAL FRAUD ALERTS.—

(1) IN GENERAL.—

(A) REQUEST FOR SPECIAL FRAUD ALERTS.—Any person may present, at any time, a request to the Inspector General for a notice which informs the public of practices which the Inspector General considers to be suspect or of particular concern under section 1128B(b) of the Social Security Act (42 U.S.C. 1320a–7b(b)) (in this subsection referred to as a ''special fraud alert'').

(B) ISSUANCE AND PUBLICATION OF SPECIAL FRAUD ALERTS.—Upon receipt of a request described in subparagraph (A), the Inspector General shall investigate the subject matter of the request to determine whether a special fraud alert should be issued. If appropriate, the Inspector General shall issue a special fraud alert in response to the request. All special fraud alerts issued pursuant to this subparagraph shall be published in the Federal Register.

(2) CRITERIA FOR SPECIAL FRAUD ALERTS.—In determining whether to issue a special fraud alert upon a request described in paragraph (1), the Inspector General may consider—

(A) whether and to what extent the practices that would be identified in the special fraud alert may result in any of the consequences described in subsection (a)(2); and

(B) the volume and frequency of the conduct that would be identified in the special fraud alert.

SEC. 7044. MEDICARE/MEDICAID BENEFICIARY PROTECTION PROGRAM.

(a) ESTABLISHMENT OF PROGRAM.—Not later than January 1, 1996, the Secretary (through the Administrator of the Health Care Financing Administration and the Inspector General of the Department of Health and Human Services) shall establish the Medicare/Medicaid Beneficiary Protection Program. Under such program the Secretary shall—

(1) educate medicare and medicaid beneficiaries regarding—

(A) medicare and medicaid program coverage;

(B) fraudulent and abusive practices;

(C) medically unnecessary health care items and services; and

(D) substandard health care items and services;

(2) identify and publicize fraudulent and abusive practices with respect to the delivery of health care items and services; and

(3) establish a procedure for the reporting of fraudulent and abusive health care providers, practitioners, claims, items, and services to appropriate law enforcement and payer agencies.

(b) RECOGNITION AND PUBLICATION OF CONTRIBUTIONS.—The program established by the Secretary under this section shall recognize and publicize significant contributions made by individual health care patients toward the combating of health care fraud and abuse.

(c) DISSEMINATION OF INFORMATION.—The Secretary shall provide for the broad dissemination of information regarding the Medicare/Medicaid Beneficiary Protection Program.

PART II—REVISIONS TO CURRENT SANCTIONS FOR FRAUD AND ABUSE

SEC. 7051. MANDATORY EXCLUSION FROM PARTICIPATION IN MEDICARE AND STATE HEALTH CARE PROGRAMS.

(a) INDIVIDUAL CONVICTED OF FELONY RELATING TO HEALTH CARE FRAUD.—

(1) IN GENERAL.—Section 1128(a) (42 U.S.C. 1320a–7(a)) is amended by adding at the end the following new paragraph:

''(3) FELONY CONVICTION RELATING TO HEALTH CARE FRAUD.—Any individual or entity that has been convicted after the date of the enactment of the Medicare Improvement and Solvency Protection Act of 1995, under Federal or State law, in connection with the delivery of a health care item or service or with respect to any act or omission in a health care program (other than those specifically described in paragraph (1)) operated by or financed in whole or in part by any Federal, State, or local government agency, of a criminal offense consisting of a felony relating to fraud, theft, embezzlement, breach of fiduciary responsibility, or other financial misconduct.''.

(2) CONFORMING AMENDMENT.—Paragraph (1) of section 1128(b) (42 U.S.C. 1320a–7(b)) is amended to read as follows:

''(1) CONVICTION RELATING TO FRAUD.—Any individual or entity that has been convicted after the date of the enactment of the Medicare Improvement and Solvency Protection Act of 1995, under Federal or State law—

''(A) of a criminal offense consisting of a misdemeanor relating to fraud, theft, embezzlement, breach of fiduciary responsibility, or other financial misconduct—

''(i) in connection with the delivery of a health care item or service, or

''(ii) with respect to any act or omission in a health care program (other than those specifically described in subsection (a)(1)) operated by or financed in whole or in part by any Federal, State, or local government agency; or

''(B) of a criminal offense relating to fraud, theft, embezzlement, breach of fiduciary responsibility, or other financial misconduct with respect to any act or omission in a program (other than a health care program) operated by or financed in whole or in part by any Federal, State, or local government agency.''.

(b) INDIVIDUAL CONVICTED OF FELONY RELATING TO CONTROLLED SUBSTANCE.—

(1) IN GENERAL.—Section 1128(a) (42 U.S.C. 1320a–7(a)), as amended by subsection (a), is amended by adding at the end the following new paragraph:

''(4) FELONY CONVICTION RELATING TO CONTROLLED SUBSTANCE.—Any individual or entity that has been convicted after the date of the enactment of the Medicare Improvement and Solvency Protection Act of 1995, under

Federal or State law, of a criminal offense consisting of a felony relating to the unlawful manufacture, distribution, prescription, or dispensing of a controlled substance.''.

(2) CONFORMING AMENDMENT.—Section 1128(b)(3) (42 U.S.C. 1320a–7(b)(3)) is amended—

(A) in the heading, by striking ''CONVICTION'' and inserting ''MISDEMEANOR CONVICTION''; and

(B) by striking ''criminal offense'' and inserting ''criminal offense consisting of a misdemeanor''.

SEC. 7052. ESTABLISHMENT OF MINIMUM PERIOD OF EXCLUSION FOR CERTAIN INDIVIDUALS AND ENTITIES SUBJECT TO PERMISSIVE EXCLUSION FROM MEDICARE AND STATE HEALTH CARE PROGRAMS.

Section 1128(c)(3) (42 U.S.C. 1320a–7(c)(3)) is amended by adding at the end the following new subparagraphs:

''(D) In the case of an exclusion of an individual or entity under paragraph (1), (2), or (3) of subsection (b), the period of the exclusion shall be 3 years, unless the Secretary determines in accordance with published regulations that a shorter period is appropriate because of mitigating circumstances or that a longer period is appropriate because of aggravating circumstances.

''(E) In the case of an exclusion of an individual or entity under subsection (b)(4) or (b)(5), the period of the exclusion shall not be less than the period during which the individual's or entity's license to provide health care is revoked, suspended, or surrendered, or the individual or the entity is excluded or suspended from a Federal or State health care program.

''(F) In the case of an exclusion of an individual or entity under subsection (b)(6)(B), the period of the exclusion shall be not less than 1 year.''.

SEC. 7053. PERMISSIVE EXCLUSION OF INDIVIDUALS WITH OWNERSHIP OR CONTROL INTEREST IN SANCTIONED ENTITIES.

Section 1128(b) (42 U.S.C. 1320a–7(b)) is amended by adding at the end the following new paragraph:

''(15) INDIVIDUALS CONTROLLING A SANCTIONED ENTITY.—Any individual who has a direct or indirect ownership or control interest of 5 percent or more, or an ownership or control interest (as defined in section 1124(a)(3)) in, or who is an officer or managing employee (as defined in section 1126(b)) of, an entity—

''(A) that has been convicted of any offense described in subsection (a) or in paragraph (1), (2), or (3) of this subsection; or

''(B) that has been excluded from participation under a program under title XVIII or under a State health care program.''.

SEC. 7054. SANCTIONS AGAINST PRACTITIONERS AND PERSONS FOR FAILURE TO COMPLY WITH STATUTORY OBLIGATIONS.

(a) MINIMUM PERIOD OF EXCLUSION FOR PRACTITIONERS AND PERSONS FAILING TO MEET STATUTORY OBLIGATIONS.—

(1) IN GENERAL.—The second sentence of section 1156(b)(1) (42 U.S.C. 1320c–5(b)(1)) is amended by striking ''may prescribe)'' and inserting ''may prescribe, except that such period may not be less than 1 year)''.

(2) CONFORMING AMENDMENT.—Section 1156(b)(2) (42 U.S.C. 1320c–5(b)(2)) is amended by striking ''shall remain'' and inserting ''shall (subject to the minimum period specified in the second sentence of paragraph (1)) remain''.

(b) REPEAL OF ''UNWILLING OR UNABLE'' CONDITION FOR IMPOSITION OF SANCTION.—Section 1156(b)(1) (42 U.S.C. 1320c–5(b)(1)) is amended—

(1) in the second sentence, by striking ''and determines'' and all that follows through ''such obligations,''; and

(2) by striking the third sentence.

SEC. 7055. SANCTIONS AGAINST PROVIDERS FOR EXCESSIVE FEES OR PRICES.

Section 1128(b)(6)(A) (42 U.S.C. 1320a–7(b)(6)(A)) is amended—

(1) by inserting ''(as specified by the Secretary in regulations)'' after ''substantially in excess of such individual's or entity's usual charges''; and

(2) striking ''(or, in applicable cases, substantially in excess of such individual's or entity's costs)'' and inserting '', costs or fees''.

SEC. 7056. APPLICABILITY OF THE BANKRUPTCY CODE TO PROGRAM SANCTIONS.

(a) EXCLUSION OF INDIVIDUALS AND ENTITIES FROM PARTICIPATION IN FEDERAL HEALTH CARE PROGRAMS.—Section 1128 (42 U.S.C. 1320a–7) is amended by adding at the end the following new subsection:

''(j) APPLICABILITY OF BANKRUPTCY PROVISIONS.—An exclusion imposed under this section is not subject to the automatic stay imposed under section 362 of title 11, United States Code.''.

(b) CIVIL MONETARY PENALTIES.—Section 1128A(a) (42 U.S.C. 1320a–7a(a)) is amended by adding at the end the following sentence: ''An exclusion imposed under this subsection is not subject to the automatic stay imposed under section 362 of title 11, United States Code, and any penalties and assessments imposed under this section shall be nondischargeable under the provisions of such title.''.

(c) OFFSET OF PAYMENTS TO INDIVIDUALS.—Section 1892(a)(4) (42 U.S.C. 1395ccc(a)(4)) is amended by adding at the end the following sentence: ''An exclusion imposed under paragraph (2)(C)(ii) or paragraph (3)(B) is not subject to the automatic stay imposed under section 362 of title 11, United States Code.''

SEC. 7057. AGREEMENTS WITH PEER REVIEW ORGANIZATIONS FOR MEDICARE COORDINATED CARE ORGANIZATIONS.

(a) DEVELOPMENT OF MODEL AGREEMENT.—Not later than July 1, 1996, the Secretary shall develop a model of the agreement that an eligible organization with a risk-sharing contract under part C of title XVIII of the Social Security Act must enter into with an entity providing peer review services with respect to services provided by the organization under section 1856(d)(7)(A) of such Act, as added by section 7003(a).

(b) REPORT BY GAO.—

(1) STUDY.—The Comptroller General of the United States shall conduct a study of the costs incurred by eligible organizations with risk-sharing contracts under part C of title XVIII of the Social Security Act of complying with the requirement of entering into a written agreement with an entity providing peer review services with respect to services provided by the organization, together with an analysis of how information generated by such entities is used by the Secretary to assess the quality of services provided by such eligible organizations.

(2) REPORT TO CONGRESS.—Not later than July 1, 1998, the Comptroller General shall submit a report to the Committee on Ways and Means and the Committee on Commerce of the House of Representatives and the Committee on Finance and the Special Committee on Aging of the Senate on the study conducted under paragraph (1).

SEC. 7058. EFFECTIVE DATE.

The amendments made by this chapter shall take effect January 1, 1996.

PART III—ADMINISTRATIVE AND MISCELLANEOUS PROVISIONS

SEC. 7061. ESTABLISHMENT OF THE HEALTH CARE FRAUD AND ABUSE DATA COLLECTION PROGRAM.

(a) GENERAL PURPOSE.—Not later than January 1, 1996, the Secretary shall establish a national health care fraud and abuse data collection program for the reporting of final adverse actions (not including settlements in which no findings of liability have been made) against health care providers, suppliers, or practitioners as required by subsection (b), with access as set forth in subsection (c).

(b) REPORTING OF INFORMATION.—

(1) IN GENERAL.—Each government agency and health plan shall report any final adverse action (not including settlements in which no findings of liability have been made) taken against a health care provider, supplier, or practitioner.

(2) INFORMATION TO BE REPORTED.—The information to be reported under paragraph (1) includes:

(A) The name and TIN (as defined in section 7701(a)(41) of the Internal Revenue Code of 1986) of any health care provider, supplier, or practitioner who is the subject of a final adverse action.

(B) The name (if known) of any health care entity with which a health care provider, supplier, or practitioner is affiliated or associated.

(C) The nature of the final adverse action and whether such action is on appeal.

(D) A description of the acts or omissions and injuries upon which the final adverse action was based, and such other information as the Secretary determines by regulation is required for appropriate interpretation of information reported under this section.

(3) CONFIDENTIALITY.—In determining what information is required, the Secretary shall include procedures to assure that the privacy of individuals receiving health care services is appropriately protected.

(4) TIMING AND FORM OF REPORTING.—The information required to be reported under this subsection shall be reported regularly (but not less often than monthly) and in such form and manner as the Secretary prescribes. Such information shall first be required to be reported on a date specified by the Secretary.

(5) TO WHOM REPORTED.—The information required to be reported under this subsection shall be reported to the Secretary.

(c) DISCLOSURE AND CORRECTION OF INFORMATION.—

(1) DISCLOSURE.—With respect to the information about final adverse actions (not including settlements in which no findings of liability have been made) reported to the Secretary under this section respecting a health care provider, supplier, or practitioner, the Secretary shall, by regulation, provide for—

(A) disclosure of the information, upon request, to the health care provider, supplier, or licensed practitioner, and

(B) procedures in the case of disputed accuracy of the information.

(2) CORRECTIONS.—Each Government agency and health plan shall report corrections of information already reported about any final adverse action taken against a health care provider, supplier, or practitioner, in such form and manner that the Secretary prescribes by regulation.

(d) ACCESS TO REPORTED INFORMATION.—

(1) AVAILABILITY.—The information in this database shall be available to Federal and State government agencies, health plans, and the public pursuant to procedures that the Secretary shall provide by regulation.

(2) FEES FOR DISCLOSURE.—The Secretary may establish or approve reasonable fees for

the disclosure of information in this database (other than with respect to requests by Federal agencies). The amount of such a fee may be sufficient to recover the full costs of carrying out the provisions of this section, including reporting, disclosure, and administration. Such fees shall be available to the Secretary or, in the Secretary's discretion to the agency designated under this section to cover such costs.

(e) PROTECTION FROM LIABILITY FOR REPORTING.—No person or entity shall be held liable in any civil action with respect to any report made as required by this section, without knowledge of the falsity of the information contained in the report.

(f) DEFINITIONS AND SPECIAL RULES.—For purposes of this section:

(1)(A) The term ''final adverse action'' includes:

(i) Civil judgments against a health care provider or practitioner in Federal or State court related to the delivery of a health care item or service.

(ii) Federal or State criminal convictions related to the delivery of a health care item or service.

(iii) Actions by Federal or State agencies responsible for the licensing and certification of health care providers, suppliers, and licensed health care practitioners, including—

(I) formal or official actions, such as revocation or suspension of a license (and the length of any such suspension), reprimand, censure or probation,

(II) any other loss of license, or the right to apply for or renew a license of the provider, supplier, or practitioner, whether by operation of law, voluntary surrender, nonrenewability, or otherwise, or

(III) any other negative action or finding by such Federal or State agency that is publicly available information.

(iv) Exclusion from participation in Federal or State health care programs.

(v) Any other adjudicated actions or decisions that the Secretary shall establish by regulation.

(B) The term does not include any action with respect to a malpractice claim.

(2) The terms ''licensed health care practitioner'', ''licensed practitioner'', and ''practitioner'' mean, with respect to a State, an individual who is licensed or otherwise authorized by the State to provide health care services (or any individual who, without authority holds himself or herself out to be so licensed or authorized).

(3) The term ''health care provider'' means a provider of services as defined in section 1861(u) of the Social Security Act (42 U.S.C. 1395x(u)), and any person or entity, including a health maintenance organization, group medical practice, or any other entity listed by the Secretary in regulation, that provides health care services.

(4) The term ''supplier'' means a supplier of health care items and services described in section 1819(a) and (b), and section 1861 of the Social Security Act (42 U.S.C. 1395i–3(a) and (b), and 1395x).

(5) The term ''Government agency'' shall include:

(A) The Department of Justice.

(B) The Department of Health and Human Services.

(C) Any other Federal agency that either administers or provides payment for the delivery of health care services, including, but not limited to the Department of Defense and the Veterans' Administration.

(D) State law enforcement agencies.

(E) State medicaid fraud and abuse units.

(F) Federal or State agencies responsible for the licensing and certification of health care providers and licensed health care practitioners.

(6) The term ''health plan'' means a plan or program that provides health benefits, whether directly, through insurance, or otherwise, and includes—

(A) a policy of health insurance;

(B) a contract of a service benefit organization;

(C) a membership agreement with a health maintenance organization or other prepaid health plan; and

(D) an employee welfare benefit plan or a multiple employer welfare plan (as such terms are defined in section 3 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1002).

(7) For purposes of paragraph (1), the existence of a conviction shall be determined under section 1128(i) of the Social Security Act.

(g) CONFORMING AMENDMENT.—Section 1921(d) (42 U.S.C. 1396r–2(d)) is amended by inserting ''and section 7061 of the Medicare Improvement and Solvency Protection Act of 1995'' after ''section 422 of the Health Care Quality Improvement Act of 1986''.

SEC. 7062. INSPECTOR GENERAL ACCESS TO ADDITIONAL PRACTITIONER DATA BANK.

Section 427 of the Health Care Quality Improvement Act of 1986 (42 U.S.C. 11137) is amended—

(1) in subsection (a), by adding at the end the following sentence: ''Information reported under this part shall also be made available, upon request, to the Inspector General of the Departments of Health and Human Services, Defense, and Labor, the Office of Personnel Management, and the Railroad Retirement Board.''; and

(2) by amending subsection (b)(4) to read as follows:

''(4) FEES.—The Secretary may impose fees for the disclosure of information under this part sufficient to recover the full costs of carrying out the provisions of this part, including reporting, disclosure, and administration, except that a fee may not be imposed for requests made by the Inspector General of the Department of Health and Human Services. Such fees shall remain available to the Secretary (or, in the Secretary's discretion, to the agency designated in section 424(b)) until expended.''.

SEC. 7063. CORPORATE WHISTLEBLOWER PROGRAM.

Title XI (42 U.S.C. 1301 et seq.) is amended by inserting after section 1128B the following new section:

''CORPORATE WHISTLEBLOWER PROGRAM

''SEC. 1128C. (a) ESTABLISHMENT OF PROGRAM.—The Secretary, through the Inspector General of the Department of Health and Human Services, shall establish a procedure whereby corporations, partnerships, and other legal entities specified by the Secretary, may voluntarily disclose instances of unlawful conduct and seek to resolve liability for such conduct through means specified by the Secretary.

''(b) LIMITATION.—No person may bring an action under section 3730(b) of title 31, United States Code, if, on the date of filing—

''(1) the matter set forth in the complaint has been voluntarily disclosed to the United States by the proposed defendant and the defendant has been accepted into the voluntary disclosure program established pursuant to subsection (a); and

''(2) any new information provided in the complaint under such section does not add substantial grounds for additional recovery beyond those encompassed within the scope of the voluntary disclosure.''.

PART IV—CIVIL MONETARY PENALTIES

SEC. 7071. SOCIAL SECURITY ACT CIVIL MONETARY PENALTIES.

(a) GENERAL CIVIL MONETARY PENALTIES.—Section 1128A (42 U.S.C. 1320a–7a) is amended as follows:

(1) In the third sentence of subsection (a), by striking ''programs under title XVIII'' and inserting ''Federal health care programs (as defined in section 1128B(b)(f))''.

(2) In subsection (f)—

(A) by redesignating paragraph (3) as paragraph (4); and

(B) by inserting after paragraph (2) the following new paragraph:

''(3) With respect to amounts recovered arising out of a claim under a Federal health care program (as defined in section 1128B(f)), the portion of such amounts as is determined to have been paid by the program shall be repaid to the program, and the portion of such amounts attributable to the amounts recovered under this section by reason of the amendments made by the Medicare Improvement and Solvency Protection Act of 1995 (as estimated by the Secretary) shall be deposited into the general fund of the Treasury.''.

(3) In subsection (i)—

(A) in paragraph (2), by striking ''title V, XVIII, XIX, or XX of this Act'' and inserting ''a Federal health care program (as defined in section 1128B(f))'';

(B) in paragraph (4), by striking ''a health insurance or medical services program under title XVIII or XIX of this Act'' and inserting ''a Federal health care program (as so defined)''; and

(C) in paragraph (5), by striking ''title V, XVIII, XIX, or XX'' and inserting ''a Federal health care program (as so defined)''.

(4) By adding at the end the following new subsection:

''(m)(1) For purposes of this section, with respect to a Federal health care program not contained in this Act, references to the Secretary in this section shall be deemed to be references to the Secretary or Administrator of the department or agency with jurisdiction over such program and references to the Inspector General of the Department of Health and Human Services in this section shall be deemed to be references to the Inspector General of the applicable department or agency.

''(2)(A) The Secretary and Administrator of the departments and agencies referred to in paragraph (1) may include in any action pursuant to this section, claims within the jurisdiction of other Federal departments or agencies as long as the following conditions are satisfied:

''(i) The case involves primarily claims submitted to the Federal health care programs of the department or agency initiating the action.

''(ii) The Secretary or Administrator of the department or agency initiating the action gives notice and an opportunity to participate in the investigation to the Inspector General of the department or agency with primary jurisdiction over the Federal health care programs to which the claims were submitted.

''(B) If the conditions specified in subparagraph (A) are fulfilled, the Inspector General of the department or agency initiating the action is authorized to exercise all powers granted under the Inspector General Act of 1978 with respect to the claims submitted to the other departments or agencies to the same manner and extent as provided in that Act with respect to claims submitted to such departments or agencies.''.

(b) EXCLUDED INDIVIDUAL RETAINING OWNERSHIP OR CONTROL INTEREST IN PARTICIPATING ENTITY.—Section 1128A(a) (42 U.S.C. 1320a–7a(a)) is amended—

(1) by striking ''or'' at the end of paragraph (1)(D);

(2) by striking '', or'' at the end of paragraph (2) and inserting a semicolon;

(3) by striking the semicolon at the end of paragraph (3) and inserting ''; or''; and

(4) by inserting after paragraph (3) the following new paragraph:

''(4) in the case of a person who is not an organization, agency, or other entity, is excluded from participating in a program under title XVIII or a State health care program in accordance with this subsection or under section 1128 and who, at the time of a violation of this subsection, retains a direct or indirect ownership or control interest of 5 percent or more, or an ownership or control interest (as defined in section 1124(a)(3)) in, or who is an officer or managing employee (as defined in section 1126(b)) of, an entity that is participating in a program under title XVIII or a State health care program;''.

(c) EMPLOYER BILLING FOR SERVICES FURNISHED, DIRECTED, OR PRESCRIBED BY AN EXCLUDED EMPLOYEE.—Section 1128A(a)(1) (42 U.S.C. 1320a–7a(a)(1)) is amended—

(1) by striking ''or'' at the end of subparagraph (C);

(2) by striking ''; or'' at the end of subparagraph (D) and inserting '', or''; and

(3) by adding at the end the following new subparagraph:

''(E) is for a medical or other item or service furnished, directed, or prescribed by an individual who is an employee or agent of the person during a period in which such employee or agent was excluded from the program under which the claim was made on any of the grounds for exclusion described in subparagraph (D);''.

(d) CIVIL MONEY PENALTIES FOR ITEMS OR SERVICES FURNISHED, DIRECTED, OR PRESCRIBED BY AN EXCLUDED INDIVIDUAL.—Section 1128A(a)(1)(D) (42 U.S.C. 1320a–7a(a)(1)(D)) is amended by inserting '', directed, or prescribed'' after ''furnished''.

(e) MODIFICATIONS OF AMOUNTS OF PENALTIES AND ASSESSMENTS.—Section 1128A(a) (42 U.S.C. 1320a–7a(a)), as amended by subsection (b), is amended in the matter following paragraph (4)—

(1) by striking ''$2,000'' and inserting ''$10,000'';

(2) by inserting ''; in cases under paragraph (4), $10,000 for each day the prohibited relationship occurs'' after ''false or misleading information was given''; and

(3) by striking ''twice the amount'' and inserting ''3 times the amount''.

(f) CLAIM FOR ITEM OR SERVICE BASED ON INCORRECT CODING OR MEDICALLY UNNECESSARY SERVICES.—Section 1128A(a)(1) (42 U.S.C. 1320a–7a(a)(1)) is amended—

(1) in subparagraph (A) by striking ''claimed,'' and inserting ''claimed, including any person who engages in a pattern or practice of presenting or causing to be presented a claim for an item or service that is based on a code that the person knows or has reason to know will result in a greater payment to the person than the code the person knows or has reason to know is applicable to the item or service actually provided,'';

(2) in subparagraph (C), by striking ''or'' at the end;

(3) in subparagraph (D), by striking ''; or'' and inserting '', or''; and

(4) by inserting after subparagraph (D) the following new subparagraph:

''(E) is for a medical or other item or service that a person knows or has reason to know is not medically necessary; or''.

(g) PERMITTING SECRETARY TO IMPOSE CIVIL MONETARY PENALTY.—Section 1128A(b) (42 U.S.C. 1320a–7a(a)) is amended by adding the following new paragraph:

''(3) Any person (including any organization, agency, or other entity, but excluding a beneficiary as defined in subsection (i)(5)) who the Secretary determines has violated section 1128B(b) of this title shall be subject to a civil monetary penalty of not more than $10,000 for each such violation. In addition, such person shall be subject to an assessment of not more than twice the total amount of the remuneration offered, paid, solicited, or received in violation of section 1128B(b). The total amount of remuneration subject to an assessment shall be calculated without regard to whether some portion thereof also may have been intended to serve a purpose other than one proscribed by section 1128B(b).''.

(h) SANCTIONS AGAINST PRACTITIONERS AND PERSONS FOR FAILURE TO COMPLY WITH STATUTORY OBLIGATIONS.—Section 1156(b)(3) (42 U.S.C. 1320c–5(b)(3)) is amended by striking ''the actual or estimated cost'' and inserting ''up to $10,000 for each instance''.

(i) PROHIBITION AGAINST OFFERING INDUCEMENTS TO INDIVIDUALS ENROLLED UNDER PROGRAMS OR PLANS.—

(1) OFFER OF REMUNERATION.—Section 1128A(a) (42 U.S.C. 1320a–7a(a)) is amended—

(A) by striking ''or'' at the end of paragraph (1)(D);

(B) by striking '', or'' at the end of paragraph (2) and inserting a semicolon;

(C) by striking the semicolon at the end of paragraph (3) and inserting ''; or''; and

(D) by inserting after paragraph (3) the following new paragraph:

''(4) offers to or transfers remuneration to any individual eligible for benefits under title XVIII of this Act, or under a State health care program (as defined in section 1128(h)) that such person knows or should know is likely to influence such individual to order or receive from a particular provider, practitioner, or supplier any item or service for which payment may be made, in whole or in part, under title XVIII, or a State health care program;''.

(2) REMUNERATION DEFINED.—Section 1128A(i) (42 U.S.C. 1320a–7a(i)) is amended by adding the following new paragraph:

''(6) The term 'remuneration' includes the waiver of coinsurance and deductible amounts (or any part thereof), and transfers of items or services for free or for other than fair market value. The term 'remuneration' does not include—

''(A) the waiver of coinsurance and deductible amounts by a person, if—

''(i) the waiver is not offered as part of any advertisement or solicitation;

''(ii) the person does not routinely waive coinsurance or deductible amounts; and

''(iii) the person—

''(I) waives the coinsurance and deductible amounts after determining in good faith that the individual is in financial need;

''(II) fails to collect coinsurance or deductible amounts after making reasonable collection efforts; or

''(III) provides for any permissible waiver as specified in section 1128B(b)(3) or in regulations issued by the Secretary;

''(B) differentials in coinsurance and deductible amounts as part of a benefit plan design as long as the differentials have been disclosed in writing to all beneficiaries, third party payors, and providers, to whom claims are presented and as long as the differentials meet the standards as defined in regulations promulgated by the Secretary not later than 180 days after the date of the enactment of the Medicare Improvement and Solvency Protection Act of 1995; or

''(C) incentives given to individuals to promote the delivery of preventive care as determined by the Secretary in regulations so promulgated.''.

(j) EFFECTIVE DATE.—The amendments made by this section shall take effect January 1, 1996.

PART V—CHAPTER 5—AMENDMENTS TO CRIMINAL LAW

SEC. 7081. HEALTH CARE FRAUD.

(a) FINES AND IMPRISONMENT FOR HEALTH CARE FRAUD VIOLATIONS.—Chapter 63 of title 18, United States Code, is amended by adding at the end the following new section:

''§ 1347. Health care fraud

''(a) Whoever knowingly and willfully executes, or attempts to execute, a scheme or artifice—

''(1) to defraud any health plan or other person, in connection with the delivery of or payment for health care benefits, items, or services; or

''(2) to obtain, by means of false or fraudulent pretenses, representations, or promises, any of the money or property owned by, or under he custody or control of, any health plan, or person in connection with the delivery of or payment for health care benefits, items, or services;

shall be fined under this title or imprisoned not more than 10 years, or both. If the violation results in serious bodily injury (as defined in section 1365(g)(3) of this title), such person may be imprisoned for any term of years.

''(b) For purposes of this section, the term 'health plan' has the same meaning given such term in section 7061(f)(6) of the Medicare Improvement and Solvency Protection Act of 1995.''.

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 63 of title 18, United States Code, is amended by adding at the end the following:

''1347. Health care fraud.''.

SEC. 7082. FORFEITURES FOR FEDERAL HEALTH CARE OFFENSES.

Section 982(a) of title 18, United States Code, is amended by adding after paragraph (5) the following new paragraph:

''(6)(A) The court, in imposing sentence on a person convicted of a Federal health care offense, shall order the person to forfeit property, real or personal, that constitutes or is derived, directly or indirectly, from proceeds traceable to the commission of the offense.

''(B) For purposes of this paragraph, the term 'Federal health care offense' means a violation of, or a criminal conspiracy to violate—

''(i) section 1347 of this title;

''(ii) section 1128B of the Social Security Act;

''(iii) sections 287, 371, 664, 666, 1001, 1027, 1341, 1343, 1920, or 1954 of this title if the violation or conspiracy relates to health care fraud; and

''(iv) section 501 or 511 of the Employee Retirement Income Security Act of 1974, if the violation or conspiracy relates to health care fraud.''.

SEC. 7083. INJUNCTIVE RELIEF RELATING TO FEDERAL HEALTH CARE OFFENSES.

(a) IN GENERAL.—Section 1345(a)(1) of title 18, United States Code, is amended—

(1) by striking ''or'' at the end of subparagraph (A);

(2) by inserting ''or'' at the end of subparagraph (B); and

(3) by adding at the end the following new subparagraph:

''(C) committing or about to commit a Federal health care offense (as defined in section 982(a)(6)(B) of this title);''.

(b) FREEZING OF ASSETS.—Section 1345(a)(2) of title 18, United States Code, is amended by inserting ''or a Federal health care offense (as defined in section 982(a)(6)(B))'' after ''title)''.

SEC. 7084. GRAND JURY DISCLOSURE.

Section 3322 of title 18, United States Code, is amended—

(1) by redesignating subsections (c) and (d) as subsections (d) and (e), respectively; and

(2) by inserting after subsection (b) the following new subsection:

''(c) A person who is privy to grand jury information concerning a Federal health care offense (as defined in section 982(a)(6)(B))—

''(1) received in the course of duty as an attorney for the Government; or

''(2) disclosed under rule 6(e)(3)(A)(ii) of the Federal Rules of Criminal Procedure;

may disclose that information to an attorney for the Government to use in any investigation or civil proceeding relating to health care fraud.''.

SEC. 7085. FALSE STATEMENTS.

(a) IN GENERAL.—Chapter 47, of title 18, United States Code, is amended by adding at the end the following new section:

''§ 1035. False statements relating to health care matters

''(a) Whoever, in any matter involving a health plan, knowingly and willfully falsifies, conceals, or covers up by any trick, scheme, or device a material fact, or makes any false, fictitious, or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious, or fraudulent statement or entry, shall be fined under this title or imprisoned not more than 5 years, or both.

''(b) For purposes of this section, the term 'health plan' has the same meaning given such term in section 7061(f)(6) of the Medicare Improvement and Solvency Protection Act of 1995.''.

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 47 of title 18, United States Code, in amended by adding at the end the following:

''1035. False statements relating to health care matters.''.

SEC. 7086. OBSTRUCTION OF CRIMINAL INVESTIGATIONS, AUDITS, OR INSPECTIONS OF FEDERAL HEALTH CARE OFFENSES.

(a) IN GENERAL.—Chapter 73 of title 18, United States Code, is amended by adding at the end the following new section:

''§ 1518. Obstruction of criminal investigations, audits, or inspections of Federal health care offenses

''(a) IN GENERAL.—Whoever willfully prevents, obstructs, misleads, delays or attempts to prevent, obstruct, mislead, or delay the communication of information or records relating to a Federal health care offense to a Federal agent or employee involved in an investigation, audit, inspection, or other activity related to such an offense, shall be fined under this title or imprisoned not more than 5 years, or both.

''(b) FEDERAL HEALTH CARE OFFENSE.—As used in this section the term 'Federal health care offense' has the same meaning given such term in section 982(a)(6)(B) of this title.

''(c) CRIMINAL INVESTIGATOR.—As used in this section the term 'criminal investigator' means any individual duly authorized by a department, agency, or armed force of the United States to conduct or engage in investigations for prosecutions for violations of health care offenses.''.

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 73 of title 18, United States Code, is amended by adding at the end the following:

''1518. Obstruction of criminal investigations, audits, or inspections of Federal health care offenses.''.

SEC. 7087. THEFT OR EMBEZZLEMENT.

(a) IN GENERAL.—Chapter 31 of title 18, United States Code, is amended by adding at the end the following new section:

''§ 669. Theft or embezzlement in connection with health care

''(a) IN GENERAL.—Whoever willfully embezzles, steals, or otherwise without authority willfully and unlawfully converts to the use of any person other than the rightful owner, or intentionally misapplies any of the moneys, funds, securities, premiums, credits, property, or other assets of a health plan, shall be fined under this title or imprisoned not more than 10 years, or both.

''(b) HEALTH PLAN.—As used in this section the term 'health plan' has the same meaning given such term in section 7061(f)(6) of the Medicare Improvement and Solvency Protection Act of 1995.''.

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 31 of title 18, United States Code, is amended by adding at the end the following:

''669. Theft or embezzlement in connection with health care.''.

SEC. 7088. LAUNDERING OF MONETARY INSTRUMENTS.

Section 1956(c)(7) of title 18, United States Code, is amended by adding at the end the following new subparagraph:

''(F) Any act or activity constituting an offense involving a Federal health care offense as that term is defined in section 982(a)(6)(B) of this title.''.

SEC. 7089. AUTHORIZED INVESTIGATIVE DEMAND PROCEDURES.

(a) IN GENERAL.—Chapter 233 of title 18, United States Code, is amended by adding after section 3485 the following new section:

''§ 3486. Authorized investigative demand procedures

''(a) AUTHORIZATION.—

''(1) In any investigation relating to functions set forth in paragraph (2), the Attorney General or designee may issue in writing and cause to be served a subpoena compelling production of any records (including any books, papers, documents, electronic media, or other objects or tangible things), which may be relevant to an authorized law enforcement inquiry, that a person or legal entity may possess or have care, custody, or control. A custodian of records may be required to give testimony concerning the production and authentication of such records. The production of records may be required from any place in any State or in any territory or other place subject to the jurisdiction of the United States at any designated place; except that such production shall not be required more than 500 miles distant from the place where the subpoena is served. Witnesses summoned under this section shall be paid the same fees and mileage that are paid witnesses in the courts of the United States. A subpoena requiring the production of records shall describe the objects required to be produced and prescribe a return date within a reasonable period of time within which the objects can be assembled and made available.

''(2) Investigative demands utilizing an administrative subpoena are authorized for any investigation with respect to any act or activity constituting or involving health care fraud, including a scheme or artifice—

''(A) to defraud any health plan or other person, in connection with the delivery of or payment for health care benefits, items, or services; or

''(B) to obtain, by means of false or fraudulent pretenses, representations, or promises, any of the money or property owned by, or under the custody or control or, any health plan, or person in connection with the delivery of or payment for health care benefits, items, or services.

''(b) SERVICE.—A subpoena issued under this section may be served by any person designated in the subpoena to serve it. Service upon a natural person may be made by personal delivery of the subpoena to such person. Service may be made upon a domestic or foreign association which is subject to suit under a common name, by delivering the subpoena to an officer, to a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process. The affidavit of the person serving the subpoena entered on a true copy thereof by the person serving it shall be proof of service.

''(c) ENFORCEMENT.—In the case of contumacy by or refusal to obey a subpoena issued to any person, the Attorney General may invoke the aid of any court of the United States within the jurisdiction of which the investigation is carried on or of which the subpoenaed person is an inhabitant, or in which such person carries on business or may be found, to compel compliance with the subpoena. The court may issue an order requiring the subpoenaed person to appear before the Attorney General to produce records, if go ordered, or to give testimony touching the matter under investigation. Any failure to obey the order of the court may be punished by the court as a contempt thereof. All process in any such case may be served in any judicial district in which such person may be found.

''(d) IMMUNITY FROM CIVIL LIABILITY.—Notwithstanding any Federal, State, or local law, any person, including officers, agents, and employees, receiving a subpoena under this section, who complies in good faith with the subpoena and thus produces the materials sought, shall not be liable in any court of any State or the United States to any customer or other person for such production or for nondisclosure of that production to the customer.

''(e) USE IN ACTION AGAINST INDIVIDUALS.—

''(1) Health information about an individual that is disclosed under this section may not be used in, or disclosed to any person for use in, any administrative, civil, or criminal action or investigation directed against the individual who is the subject of the information unless the action or investigation arises out of and is directly related to receipt of health care or payment for health care or action involving a fraudulent claim related to health; or if authorized by an appropriate order of a court of competent jurisdiction, granted after application showing good cause therefore.

''(2) In assessing good cause, the court shall weigh the public interest and the need for disclosure against the injury to the patient, to the physician-patient relationship, and to the treatment services.

''(3) Upon the granting of such order, the court, in determining the extent to which any disclosure of all or any part of any record is necessary, shall impose appropriate safeguards against unauthorized disclosure.

''(f) HEALTH PLAN.—As used in this section the term 'health plan' has the same meaning given such term in section 7061(f)(6) of the Medicare Improvement and Solvency Protection Act of 1995.''.

(b) CLERICAL AMENDMENT.—The table of sections for chapter 223 of title 18, United States Code, is amended by inserting after the item relating to section 3485 the following new item:

''3486. Authorized investigative demand procedures.''.

(c) CONFORMING AMENDMENT.—Section 1510(b)(3)(B) of title 18, United States Code, is amended by inserting ''or a Department of Justice subpoena (issued under section 3486),'' after ''subpoena''.

PART VI—STATE HEALTH CARE FRAUD CONTROL UNITS

SEC. 7091. STATE HEALTH CARE FRAUD CONTROL UNITS.

(a) EXTENSION OF CONCURRENT AUTHORITY TO INVESTIGATE AND PROSECUTE FRAUD IN OTHER FEDERAL PROGRAMS.—Section 1903(q)(3) (42 U.S.C. 1396b(q)(3)) is amended—

(1) by inserting ''(A)'' after ''in connection with''; and

(2) by striking ''title.'' and inserting ''title; and (B) in cases where the entity's function is also described by subparagraph (A), and upon the approval of the relevant Federal agency, any aspect of the provision of health care services and activities of providers of such services under any Federal health care program (as defined in section 1128B(b)(1)).''.

(b) EXTENSION OF AUTHORITY TO INVESTIGATE AND PROSECUTE PATIENT ABUSE IN NON-MEDICAID BOARD AND CARE FACILITIES.—Section 1903(q)(4) (42 U.S.C. 1396b(q)(4)) is amended to read as follows:

''(4)(A) The entity has—

''(i) procedures for reviewing complaints of abuse or neglect of patients in health care facilities which receive payments under the State plan under this title;

''(ii) at the option of the entity, procedures for reviewing complaints of abuse or neglect of patients residing in board and care facilities; and

''(iii) procedures for acting upon such complaints under the criminal laws of the State or for referring such complaints to other State agencies for action.

''(B) For purposes of this paragraph, the term 'board and care facility' means a residential setting which receives payment from or on behalf of two or more unrelated adults who reside in such facility, and for whom one or both of the following is provided:

''(i) Nursing care services provided by, or under the supervision of, a registered nurse, licensed practical nurse, or licensed nursing assistant.

''(ii) Personal care services that assist residents with the activities of daily living, including personal hygiene, dressing, bathing, eating, toileting, ambulation, transfer, positioning, self-medication, body care, travel to medical services, essential shopping, meal preparation, laundry, and housework.''.

PART VII—MEDICARE/MEDICAID BILLING ABUSE PREVENTION

SEC. 7101. UNIFORM MEDICARE/MEDICAID APPLICATION PROCESS.

Not later than 1 year after the date of the enactment of this Act, the Secretary shall establish procedures and a uniform application form for use by any individual or entity that seeks to participate in the programs under titles XVIII and XIX of the Social Security Act (42 U.S.C. 1395 et seq.; 42 U.S.C. 1396 et seq.). The procedures established shall include the following:

(1) Execution of a standard authorization form by all individuals and entities prior to submission of claims for payment which shall include the social security number of the beneficiary and the TIN (as defined in section 7701(a)(41) of the Internal Revenue Code of 1986) of any health care provider, supplier, or practitioner providing items or services under the claim.

(2) Assumption of responsibility and liability for all claims submitted.

(3) A right of access by the Secretary to provider records relating to items and services rendered to beneficiaries of such programs.

(4) Retention of source documentation.

(5) Provision of complete and accurate documentation to support all claims for payment.

(6) A statement of the legal consequences for the submission of false or fraudulent claims for payment.

SEC. 7102. STANDARDS FOR UNIFORM CLAIMS.

(a) ESTABLISHMENT OF STANDARDS.—Not later than 1 year after the date of the enactment of this Act, the Secretary shall establish standards for the form and submission of claims for payment under the medicare program under title XVIII of the Social Security Act (42 U.S.C. 1395 et seq.) and the medicaid program under title XIX of such Act (42 U.S.C. 1396 et seq.).

(b) ENSURING PROVIDER RESPONSIBILITY.—In establishing standards under subsection (a), the Secretary, in consultation with appropriate agencies including the Department of Justice, shall include such methods of ensuring provider responsibility and accountability for claims submitted as necessary to control fraud and abuse.

(c) USE OF ELECTRONIC MEDIA.—The Secretary shall develop specific standards which govern the submission of claims through electronic media in order to control fraud and abuse in the submission of such claims.

SEC. 7103. UNIQUE PROVIDER IDENTIFICATION CODE.

(a) ESTABLISHMENT OF SYSTEM.—Not later than 1 year after the date of the enactment of this Act, the Secretary shall establish a system which provides for the issuance of a unique identifier code for each individual or entity furnishing items or services for which payment may be made under title XVIII or XIX of the Social Security (42 U.S.C. 1395 et seq.; 1396 et seq.), and the notation of such unique identifier codes on all claims for payment.

(b) APPLICATION FEE.—The Secretary shall require an individual applying for a unique identifier code under subsection (a) to submit a fee in an amount determined by the Secretary to be sufficient to cover the cost of investigating the information on the application and the individual's suitability for receiving such a code.

SEC. 7104. USE OF NEW PROCEDURES.

No payment may be made under either title XVIII or XIX of the Social Security Act (42 U.S.C. 1395 et seq.; 42 U.S.C. 1396 et seq.) for any item or service furnished by an individual or entity unless the requirements of sections 7102 and 7103 are satisfied.

SEC. 7105. REQUIRED BILLING, PAYMENT, AND COST LIMIT CALCULATION TO BE BASED ON SITE WHERE SERVICE IS FURNISHED.

(a) CONDITIONS OF PARTICIPATION.—Section 1891 (42 U.S.C. 1395bbb) is amended by adding at the end the following new subsection:

''(g) A home health agency shall submit claims for payment of home health services under this title only on the basis of the geographic location at which the service is furnished, as determined by the Secretary.''.

(b) WAGE ADJUSTMENT.—Section 1861(v)(1)(L)(iii) (42 U.S.C. 1395x(v)(1)(L)(iii)) is amended by striking ''agency is located'' and inserting ''service is furnished''.

Subchapter B—Additional Provisions to Combat Waste, Fraud, and Abuse

PART I—WASTE AND ABUSE REDUCTION

SEC. 7111. PROHIBITING UNNECESSARY AND WASTEFUL MEDICARE PAYMENTS FOR CERTAIN ITEMS.

Notwithstanding any other provision of law, including any regulation or payment policy, the following categories of charges shall not be reimbursable under title XVIII of the Social Security Act:

(1) Tickets to sporting or other entertainment events.

(2) Gifts or donations.

(3) Costs related to team sports.

(4) Personal use of motor vehicles.

(5) Costs for fines and penalties resulting from violations of Federal, State, or local laws.

(6) Tuition or other education fees for spouses or dependents of providers of services, their employees, or contractors.

SEC. 7112. APPLICATION OF COMPETITIVE ACQUISITION PROCESS FOR PART B ITEMS AND SERVICES.

(a) GENERAL RULE.—Part B of title XVIII is amended by inserting after section 1846 the following new section:

''COMPETITION ACQUISITION FOR ITEMS AND SERVICES

''SEC. 1847. (a) ESTABLISHMENT OF BIDDING AREAS.—

''(1) IN GENERAL.—The Secretary shall establish competitive acquisition areas for the purpose of awarding a contract or contracts for the furnishing under this part of the items and services described in subsection (c) on or after January 1, 1996. The Secretary may establish different competitive acquisition areas under this subsection for different classes of items and services under this part.

''(2) CRITERIA FOR ESTABLISHMENT.—The competitive acquisition areas established under paragraph (1) shall—

''(A) initially be within, or be centered around metropolitan statistical areas;

''(B) be chosen based on the availability and accessibility of suppliers and the probable savings to be realized by the use of competitive bidding in the furnishing of items and services in the area; and

''(C) be chosen so as to not reduce access to such items and services to individuals residing in rural and other underserved areas..

''(b) AWARDING OF CONTRACTS IN AREAS.—

''(1) IN GENERAL.—The Secretary shall conduct a competition among individuals and entities supplying items and services under this part for each competitive acquisition area established under subsection (a) for each class of items and services.

''(2) CONDITIONS FOR AWARDING CONTRACT.—The Secretary may not award a contract to any individual or entity under the competition conducted pursuant to paragraph (1) to furnish an item or service under this part unless the Secretary finds that the individual or entity—

''(A) meets quality standards specified by the Secretary for the furnishing of such item or service; and

''(B) offers to furnish a total quantity of such item or service that is sufficient to meet the expected need within the competitive acquisition area and to assure that access to such items (including appropriate customized items) and services to individuals residing in rural and other underserved areas is not reduced.

''(3) CONTENTS OF CONTRACT.—A contract entered into with an individual or entity under the competition conducted pursuant to paragraph (1) shall specify (for all of the items and services within a class)—

''(A) the quantity of items and services the entity shall provide; and

''(B) such other terms and conditions as the Secretary may require.

''(c) SERVICES DESCRIBED.—The items and services to which the provisions of this section shall apply are as follows:

''(1) Durable medical equipment and medical supplies.

''(2) Oxygen and oxygen equipment.

''(3) Such other items and services with respect to which the Secretary determines the use of competitive acquisition under this section to be appropriate and cost-effective.''.

(b) ITEMS AND SERVICES TO BE FURNISHED ONLY THROUGH COMPETITIVE ACQUISITION.—Section 1862(a) (42 U.S.C. 1395y(a)) is amended—

(1) by striking ''or'' at the end of paragraph (14);

(2) by striking the period at the end of paragraph (15) and inserting ''; or''; and

(3) by inserting after paragraph (15) the following new paragraph:

''(16) where such expenses are for an item or service furnished in a competitive acquisition area (as established by the Secretary under section 1847(a)) by an individual or entity other than the supplier with whom the Secretary has entered into a contract under section 1847(b) for the furnishing of such item or service in that area, unless the Secretary finds that such expenses were incurred in a case of urgent need.''.

(c) REDUCTION IN PAYMENT AMOUNTS IF COMPETITIVE ACQUISITION FAILS TO ACHIEVE MINIMUM REDUCTION IN PAYMENTS.—Notwithstanding any other provision of title XVIII of the Social Security Act, if the establishment of competitive acquisition areas under section 1847 of such Act (as added by subsection (a)) and the limitation of coverage for items and services under part B of such title to items and services furnished by providers with competitive acquisition contracts under such section does not result in a reduction, beginning on January 1, 1997, of at least 20 percent (30 percent in the case of oxygen and oxygen equipment) in the projected payment amount that would have applied to an item or service under part B if the item or service had not been furnished through competitive acquisition under such section, the Secretary shall reduce such payment amount by such percentage as the Secretary determines necessary to result in such a reduction.

SEC. 7113. INTERIM REDUCTION IN EXCESSIVE PAYMENTS.

Section 1834(a)(1)(D) (42 U.S.C. 1395m(a)(1)(D)) is amended by adding at the end the following new sentence: ''With respect to services described in section 1847(c) furnished between January 1, 1996, and the date on which competitive acquisition under section 1847 is fully implemented, the Secretary shall reduce the payment amount applied for such services by 10 percent, except that with respect to oxygen and oxygen equipment items, the Secretary shall reduce the payment amount applied for such items by 20 percent.''.

SEC. 7114. REDUCING EXCESSIVE BILLINGS AND UTILIZATION FOR CERTAIN ITEMS.

Section 1834(a)(15) (42 U.S.C. 1395m(a)(15)) is amended by striking ''Secretary may'' both places it appears and inserting ''Secretary shall''.

SEC. 7115. IMPROVED CARRIER AUTHORITY TO REDUCE EXCESSIVE MEDICARE PAYMENTS.

(a) GENERAL RULE.—Section 1834(a)(10)(B) (42 U.S.C. 1395m(a)(10)(B)) is amended by striking ''paragraphs (8) and (9)'' and all that follows through the end of the sentence and inserting ''section 1842(b)(8) to covered items and suppliers of such items and payments under this subsection as such provisions (relating to determinations of grossly excessive payment amounts) apply to items and services and entities and a reasonable charge under section 1842(b)''.

(b) REPEAL OF OBSOLETE PROVISIONS.—

(1) Section 1842(b)(8) (42 U.S.C. 1395u(b)(8)) is amended—

(A) by striking subparagraphs (B) and (C),

(B) by striking ''(8)(A)'' and inserting ''(8)'', and

(C) by redesignating clauses (i) and (ii) as subparagraphs (A) and (B), respectively.

(2) Section 1842(b)(9) (42 U.S.C. 1395u(b)(9)) is repealed.

(c) PAYMENT FOR SURGICAL DRESSINGS.—Section 1834(i) (42 U.S.C. 1395m(i)) is amended by adding at the end the following new paragraph:

''(3) GROSSLY EXCESSIVE PAYMENT AMOUNTS.—Notwithstanding paragraph (1), the Secretary may apply the provisions of section 1842(b)(8) to payments under this subsection.''.

SEC. 7116. EFFECTIVE DATE.

The amendments made by this chapter shall apply to items and services furnished under title XVIII of the Social Security Act on or after January 1, 1996.

PART II—MEDICARE BILLING ABUSE PREVENTION

SEC. 7121. IMPLEMENTATION OF GENERAL ACCOUNTING OFFICE RECOMMENDATIONS REGARDING MEDICARE CLAIMS PROCESSING.

(a) IN GENERAL.—Not later than 90 days after the date of the enactment of this Act, the Secretary shall, by regulation, contract, change order, or otherwise, require medicare carriers to acquire commercial automatic data processing equipment (in this subchapter referred to as ''ADPE'') meeting the requirements of section 7122 to process medicare part B claims for the purpose of identifying billing code abuse.

(b) SUPPLEMENTATION.—Any ADPE acquired in accordance with subsection (a) shall be used as a supplement to any other ADPE used in claims processing by medicare carriers.

(c) STANDARDIZATION.—In order to ensure uniformity, the Secretary may require that medicare carriers that use a common claims processing system acquire common ADPE in implementing subsection (a).

(d) IMPLEMENTATION DATE.—Any ADPE acquired in accordance with subsection (a) shall be in use by medicare carriers not later than 180 days after the date of the enactment of this Act.

SEC. 7122. MINIMUM SOFTWARE REQUIREMENTS.

(a) IN GENERAL.—The requirements described in this section are as follows:

(1) The ADPE shall be a commercial item.

(2) The ADPE shall surpass the capability of ADPE used in the processing of medicare part B claims for identification of code manipulation on the day before the date of the enactment of this Act.

(3) The ADPE shall be capable of being modified to—

(A) satisfy pertinent statutory requirements of the medicare program; and

(B) conform to general policies of the Health Care Financing Administration regarding claims processing.

(b) MINIMUM STANDARDS.—Nothing in this subchapter shall be construed as preventing the use of ADPE which exceeds the minimum requirements described in subsection (a).

SEC. 7123. DISCLOSURE.

(a) IN GENERAL.—Notwithstanding any other provision of law, and except as provided in subsection (b), any ADPE or data related thereto acquired by medicare carriers in accordance with section 7121(a) shall not be subject to public disclosure.

(b) EXCEPTION.—The Secretary may authorize the public disclosure of any ADPE or data related thereto acquired by medicare carriers in accordance with section 7121(a) if the Secretary determines that—

(1) release of such information is in the public interest; and

(2) the information to be released is not protected from disclosure under section 552(b) of title 5, United States Code.

SEC. 7124. REVIEW AND MODIFICATION OF REGULATIONS.

Not later than 30 days after the date of the enactment of this Act, the Secretary shall order a review of existing regulations, guidelines, and other guidance governing medicare payment policies and billing code abuse to determine if revision of or addition to those regulations, guidelines, or guidance is necessary to maximize the benefits to the Federal Government of the use of ADPE acquired pursuant to section 7121.

SEC. 7125. DEFINITIONS.

For purposes of this chapter—

(1) The term ''automatic data processing equipment'' (ADPE) has the same meaning as in section 111(a)(2) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 759(a)(2)).

(2) The term ''billing code abuse'' means the submission to medicare carriers of claims for services that include procedure codes that do not appropriately describe the total services provided or otherwise violate medicare payment policies.

(3) The term ''commercial item'' has the same meaning as in section 4(12) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(12)).

(4) The term ''medicare part B'' means the supplementary medical insurance program authorized under part B of title XVIII of the Social Security Act (42 U.S.C. 1395j–1395w–4).

(5) The term ''medicare carrier'' means an entity that has a contract with the Health Care Financing Administration to determine and make medicare payments for medicare part B benefits payable on a charge basis and to perform other related functions.

(6) The term ''payment policies'' means regulations and other rules that govern billing code abuses such as unbundling, global service violations, double billing, and unnecessary use of assistants at surgery.

(7) The term ''Secretary'' means the Secretary of Health and Human Services.

PART III—REFORMING PAYMENTS FOR AMBULANCE SERVICES

SEC. 7131. REFORMING PAYMENTS FOR AMBULANCE SERVICES.

(a) IN GENERAL.—Section 1834 (42 U.S.C. 1395m) is amended by adding at the end the following new subsection:

''(k) PAYMENT FOR AMBULANCE SERVICES.—

''(1) IN GENERAL.—Notwithstanding any other provision of this part, with respect to ambulance services described in section 1861(s)(7), payment shall be made based on the lesser of—

''(A) the actual charges for the services; or

''(B) the amount determined by a fee schedule developed by the Secretary.

''(2) FEE SCHEDULE.—The fee schedule established under paragraph (1) shall be established on a regional, statewide, or carrier service area basis (as the Secretary may determine to be appropriate) for services performed on or after January 1, 1996.

''(3) SEPARATE PAYMENT LEVELS.—

''(A) IN GENERAL.—In establishing the fee schedule under paragraph (2), the Secretary shall establish separate payment rates for advanced life support and basic life support services. Payment levels shall be restricted to the basic life support level unless the patient's medical condition or other circumstance necessitates (as determined by the Secretary in regulations) the provisions of advanced life support services.

''(B) NONROUTINE BASIS.—The Secretary shall also establish appropriate payment levels for the provision of ambulance services that are provided on a routine or scheduled basis. Such payment levels shall not exceed 80 percent of the applicable rate for unscheduled transports.

''(4) ANNUAL ADJUSTMENT.—

''(A) IN GENERAL.—Except as provided in subparagraph (B), the fee schedules shall be adjusted annually (to become effective on January 1 of each year) by a percentage increase or decrease equal to the percentage increase or decrease in the consumer price index for all urban consumers (United States city average).

''(B) SPECIAL RULE.—Notwithstanding subparagraph (B), the annual adjustment in the fee schedules determined under such subparagraph for each of the years 1996 through

2002 shall be such consumer price index for the year minus 1 percentage point.

''(5) FURTHER ADJUSTMENTS.—The Secretary shall adjust the fee schedule to the extent necessary to ensure that the fee schedule takes into consideration the costs incurred in providing the transportation and associated services as well as technological changes.

''(6) SPECIAL RULE FOR END STAGE RENAL DISEASE BENEFICIARIES.—The Secretary shall direct the carriers to identify end stage renal disease beneficiaries who receive ambulance transports and—

''(A) make no payment for scheduled ambulance transports unless authorized in advance by the carrier; or

''(B) make no additional payment for scheduled ambulance transports for beneficiaries that have utilized ambulance services twice within 4 continuous days, or 7 times within a continuous 15-day period, unless authorized in advance by the carrier; or

''(C) institute other such safeguards as the Secretary may determine are necessary to ensure appropriate utilization of ambulance transports by such beneficiaries.''.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to services furnished under title XVIII of the Social Security Act on and after January 1, 1997.

PART IV—REWARDS FOR INFORMATION

SEC. 7141. REWARDS FOR INFORMATION LEADING TO HEALTH CARE FRAUD PROSECUTION AND CONVICTION.

(a) IN GENERAL.—In special circumstances, the Secretary of Health and Human Services and the Attorney General of the United States may jointly make a payment of up to $10,000 to a person who furnishes information unknown to the Government relating to a possible prosecution for health care fraud.

(b) INELIGIBLE PERSONS.—A person is not eligible for a payment under subsection (a) if—

(1) the person is a current or former officer or employee of a Federal or State government agency or instrumentality who furnishes information discovered or gathered in the course of government employment;

(2) the person knowingly participated in the offense;

(3) the information furnished by the person consists of allegations or transactions that have been disclosed to the public—

(A) in a criminal, civil, or administrative proceeding;

(B) in a congressional, administrative, or General Accounting Office report, hearing, audit, or investigation; or

(C) by the news media, unless the person is the original source of the information; or

(4) in the judgment of the Attorney General, it appears that a person whose illegal activities are being prosecuted or investigated could benefit from the award.

(c) DEFINITIONS.—

(1) HEALTH CARE FRAUD.—For purposes of this section, the term ''health care fraud'' means health care fraud within the meaning of section 1347 of title 18, United States Code.

(2) ORIGINAL SOURCE.—For the purposes of subsection (b)(3)(C), the term ''original source'' means a person who has direct and independent knowledge of the information that is furnished and has voluntarily provided the information to the Government prior to disclosure by the news media.

(d) NO JUDICIAL REVIEW.—Neither the failure of the Secretary of Health and Human Services and the Attorney General to authorize a payment under subsection (a) nor the amount authorized shall be subject to judicial review.

SEC. . INTERMEDIATE SANCTIONS FOR MEDICARE HEALTH MAINTENANCE ORGANIZATIONS.

(a) APPLICATION OF INTERMEDIATE SANCTIONS FOR ANY PROGRAM VIOLATIONS.—

(1) IN GENERAL.—Section 1876(i)(1) (42 U.S.C. 1395mm(i)(1)) is amended by striking ''the Secretary may terminate'' and all that follows and inserting ''in accordance with procedures established under paragraph (9), the Secretary may at any time terminate any such contract or may impose the intermediate sanctions described in paragraph (6)(B) or (6)(C) (whichever is applicable) on the eligible organization if the Secretary determines that the organization—

''(A) has failed substantially to carry out the contract;

''(B) is carrying out the contract in a manner substantially inconsistent with the efficient and effective administration of this section; or

''(C) no longer substantially meets the applicable conditions of subsections (b), (c), (e), and (f).''.

(2) OTHER INTERMEDIATE SANCTIONS FOR MISCELLANEOUS PROGRAM VIOLATIONS.—Section 1876(i)(6) (42 U.S.C. 1395mm(i)(6)) is amended by adding at the end the following new subparagraph:

''(C) In the case of an eligible organization for which the Secretary makes a determination under paragraph (1) the basis of which is not described in subparagraph (A), the Secretary may apply the following intermediate sanctions:

''(i) Civil money penalties of not more than $25,000 for each determination under paragraph (1) if the deficiency that is the basis of the determination has directly adversely affected (or has the substantial likelihood of adversely affecting) an individual covered under the organization's contract.

''(ii) Civil money penalties of not more than $10,000 for each week beginning after the initiation of procedures by the Secretary under paragraph (9) during which the deficiency that is the basis of a determination under paragraph (1) exists.

''(iii) Suspension of enrollment of individuals under this section after the date the Secretary notifies the organization of a determination under paragraph (1) and until the Secretary is satisfied that the deficiency that is the basis for the determination has been corrected and is not likely to recur.''.

(3) PROCEDURES FOR IMPOSING SANCTIONS.—Section 1876(i) (42 U.S.C. 1395mm(i)) is amended by adding at the end the following new paragraph:

''(9) The Secretary may terminate a contract with an eligible organization under this section or may impose the intermediate sanctions described in paragraph (6) on the organization in accordance with formal investigation and compliance procedures established by the Secretary under which—

''(A) the Secretary first provides the organization with the reasonable opportunity to develop and implement a corrective action plan to correct the deficiencies that were the basis of the Secretary's determination under paragraph (1) and the organization fails to develop or implement such a plan;

''(B) in deciding whether to impose sanctions, the Secretary considers aggravating factors such as whether an organization has a history of deficiencies or has not taken action to correct deficiencies the Secretary has brought to the organization's attention;

''(C) there are no unreasonable or unnecessary delays between the finding of a deficiency and the imposition of sanctions; and

''(D) the Secretary provides the organization with reasonable notice and opportunity for hearing (including the right to appeal an initial decision) before imposing any sanction or terminating the contract.''.

(4) CONFORMING AMENDMENTS.—Section 1876(i)(6)(B) (42 U.S.C. 1395mm(i)(6)(B)) is amended by striking the second sentence.

(b) AGREEMENTS WITH PEER REVIEW ORGANIZATIONS.—Section 1876(i)(7)(A) (42 U.S.C. 1395mm(i)(7)(A)) is amended by striking ''an agreement'' and inserting ''a written agreement''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to contract years beginning on or after January 1, 1996.

CHAPTER 6—ESTABLISHMENT OF COMMISSION TO PREPARE FOR THE 21ST CENTURY.

SEC. 7161. ESTABLISHMENT.

(a) ESTABLISHMENT.—There is established a commission to be known as the Medicare Commission To Prepare For The 21st Century (hereafter in this Act referred to as the ''Commission'').

(b) MEMBERSHIP.—

(1) IN GENERAL.—The Commission shall be composed of 7 members appointed by the President and confirmed by the Senate. Not more than 4 members selected by the President shall be members of the same political party.

(2) EXPERTISE.—The membership of the Commission shall include individuals with national recognition for their expertise on health matters.

(3) DATE.—The appointments of the members of the Commission shall be made no later than December 31, 1995.

(c) PERIOD OF APPOINTMENT; VACANCIES.—Members shall be appointed for the life of the Commission. Any vacancy in the Commission shall not affect its powers, but shall be filled in the same manner as the original appointment.

(d) INITIAL MEETING.—No later than 30 days after the date on which all members of the Commission have been appointed, the Commission shall hold its first meeting.

(e) MEETINGS.—The Commission shall meet at the call of the Chairman.

(f) QUORUM.—A majority of the members of the Commission shall constitute a quorum, but a lesser number of members may hold hearings.

(g) CHAIRPERSON.—The President shall designate one person as Chairperson from among its members.

SEC. 7162. DUTIES OF THE COMMISSION.

(a) ANALYSES AND RECOMMENDATIONS.—

(1) IN GENERAL.—The Commission is charged with long-term strategic planning (for years after 2010) for the medicare program. The Commission shall—

(A) review long-term problems and opportunities facing the medicare program within the context of the overall health care system, including an analysis of the long-term financial condition of the medicare trust funds;

(B) analyze potential measures to assure continued adequacy of financing of the medicare program within the context of comprehensive health care reform and to guarantee medicare beneficiaries affordable and high quality health care services that takes into account—

(i) the health needs and financial status of senior citizens and the disabled,

(ii) overall trends in national health care costs,

(iii) the number of Americans without health insurance, and

(iv) the impact of its recommendations on the private sector and on the medicaid program;

(C) consider a range of program improvements, including measures to—

(i) reduce waste, fraud, and abuse,

(ii) improve program efficiency,

(iii) improve quality of care and access, and

(iv) examine ways to improve access to preventive care and primary care services,

(v) improve beneficiary cost consciousness, including an analysis of proposals that would restructure medicare from a defined benefits program to a defined contribution program and other means, and

(vi) measures to maintain a medicare beneficiary's ability to select a health care provider of the beneficiary's choice;

(D) prepare findings on the impact of all proposals on senior citizens' out-of-pocket health care costs and on any special considerations that should be made for seniors that live in rural areas and inner cities;

(E) recognize the uncertainties of long range estimates; and

(F) provide appropriate recommendations to the Secretary of Health and Human Services, the President, and the Congress.

(2) DEFINITION OF MEDICARE TRUST FUNDS.—For purposes of this subsection, the term ''medicare trust funds'' means the Federal Hospital Insurance Trust Fund established under section 1817 of the Social Security Act (42 U.S.C. 1395i) and the Federal Supplementary Medical Insurance Trust Fund established under section 1841 of such Act (42 U.S.C. 1395t).

(b) REPORT.—The Commission shall submit its report to the President and the Congress not later than July 31, 1996.

SEC. 7163. POWERS OF THE COMMISSION.

(a) HEARINGS.—The Commission may hold such hearings, sit and act at such times and places, take such testimony, and receive such evidence as the Commission considers advisable to carry out the purposes of this Act.

(b) INFORMATION FROM FEDERAL AGENCIES.—The Commission may secure directly from any Federal department or agency such information as the Commission considers necessary to carry out the provisions of this Act. Upon request of the Chairman of the Commission, the head of such department or agency shall furnish such information to the Commission.

(c) POSTAL SERVICES.—The Commission may use the United States mails in the same manner and under the same conditions as other departments and agencies of the Federal Government.

SEC. 7164. COMMISSION PERSONNEL MATTERS.

(a) COMPENSATION OF MEMBERS.—

(1) OFFICERS AND EMPLOYEES OF THE FEDERAL GOVERNMENT.—All members of the Commission who are officers or employees of the Federal Government shall serve without compensation in addition to that received for their services as officers or employees of the United States.

(2) PRIVATE CITIZENS OF THE UNITED STATES.—

(A) IN GENERAL.—Subject to subparagraph (B), all members of the Commission who are not officers or employees of the Federal Government shall serve without compensation for their work on the Commission.

(B) TRAVEL EXPENSES.—The members of the Commission who are not officers or employees of the Federal Government shall be allowed travel expenses, including per diem in lieu of subsistence, at rates authorized for employees of agencies under subchapter I of chapter 57 of title 5, United States Code, while away from their homes or regular places of business in the performance of services for the Commission, to the extent funds are available therefor.

(b) STAFF.—

(1) IN GENERAL.—The Chairman of the Commission may, without regard to the civil service laws and regulations, appoint and terminate an executive director and such other additional personnel as may be necessary to enable the Commission to perform its duties. At the request of the Chairman, the Secretary of Health and Human Services shall provide the Commission with any necessary administrative and support services. The employment of an executive director shall be subject to confirmation by the Commission.

(2) COMPENSATION.—The Chairman of the Commission may fix the compensation of the executive director and other personnel without regard to the provisions of chapter 51 and subchapter III of chapter 53 of title 5, United States Code, relating to classification of positions and General Schedule pay rates, except that the rate of pay for the executive director and other personnel may not exceed the rate payable for level V of the Executive Schedule under section 5316 of such title.

(c) DETAIL OF GOVERNMENT EMPLOYEES.—Any Federal Government employee may be detailed to the Commission without reimbursement, and such detail shall be without interruption or loss of civil service status or privilege.

(d) PROCUREMENT OF TEMPORARY AND INTERMITTENT SERVICES.—The Chairman of the Commission may procure temporary and intermittent services under section 3109(b) of title 5, United States Code, at rates for individuals which do not exceed the daily equivalent of the annual rate of basic pay prescribed for level V of the Executive Schedule under section 5316 of such title.

SEC. 7165. TERMINATION OF THE COMMISSION.

The Commission shall terminate 30 days after the date on which the Commission submits its report under section 7702(b).

SEC. 7166. FUNDING FOR THE COMMISSION.

Any expenses of the Commission shall be paid from such funds as may be otherwise available to the Secretary of Health and Human Services.

CHAPTER 7—MEASURES TO IMPROVE THE SOLVENCY OF THE TRUST FUNDS

Subchapter A—Provisions Relating to Part A

PART I—GENERAL PROVISIONS

SEC. 7171. PPS HOSPITAL PAYMENT UPDATE.

Section 1886(b)(3)(B)(i) (42 U.S.C. 1395ww(b)(3)(B)(i)) is amended by striking subclauses (XII) and (XIII) and inserting the following new subclauses:

''(XII) for fiscal year 1997 through 2002, the market basket percentage increase minus 1.0 percentage point for hospitals located in a large urban or other urban area, and the market basket percentage increase minus 0.5 percentage point for hospitals located in a rural area, and

''(XIII) for fiscal year 2003 and each subsequent fiscal year, the market basket percentage increase for hospitals in all areas.''.

SEC. 7172. MODIFICATION IN PAYMENT POLICIES REGARDING GRADUATE MEDICAL EDUCATION.

(a) INDIRECT COSTS OF MEDICAL EDUCATION; APPLICABLE PERCENTAGE.—

(1) IN GENERAL.—Section 1886(d)(5)(B)(ii) (42 U.S.C. 1395ww(d)(5)(B)(ii)) is amended to read as follows:

''(ii) For purposes of clause (i)(II), the indirect teaching adjustment factor is equal to c (((1+r) to the nth power) − 1), where 'r' is the ratio of the hospital's full-time equivalent interns and residents to beds and 'n' equals .405. For discharges occurring on or after—

''(I) May 1, 1986, and before October 1, 1995, 'c' is equal to 1.89; and

''(II) October 1, 1995, 'c' is equal to 1.48.

(2) NO RESTANDARDIZATION OF PAYMENT AMOUNTS REQUIRED.—Section 1886(d)(2)(C)(i) (42 U.S.C. 1395ww(d)(2)(C)(i)) is amended by striking ''of 1985'' and inserting ''of 1985, but not taking into account the amendments made by section 7172(a)(1) of the Medicare Improvement and Solvency Protection Act of 1995''.

(b) LIMITATION ON NUMBER OF RESIDENTS.—

(1) DIRECT GRADUATE MEDICAL EDUCATION.—Section 1886(h)(4) (42 U.S.C. 1395ww(h)(4)) is amended by adding at the end the following new subparagraph:

''(F) LIMITATION ON NUMBER OF RESIDENTS FOR CERTAIN FISCAL YEARS.—Such rules shall provide that for purposes of a cost reporting period beginning on or after October 1, 1995, and on or before September 30, 2002, the number of full-time-equivalent residents (and full-time-equivalent residents who are not primary care residents) determined under this paragraph with respect to an approved medical residency training program may not exceed the number of full-time-equivalent residents (and full-time-equivalent residents who are not primary care residents) with respect to the program as of August 1, 1995. This subparagraph does not apply to any nonphysician postgraduate training program that, under paragraph (5)(A), is an approved medical residency training program.''.

(2) INDIRECT MEDICAL EDUCATION.—Section 1886(d)(5)(B) (42 U.S.C. 1395ww(d)(5)(B)) is amended—

(A) in clause (ii), by striking ''to beds'' and inserting ''to beds (subject to clause (v))''; and

(B) by adding at the end the following new clauses:

''(v) For purposes of this subparagraph, as of July 1, 1996, ''r'' may not exceed the ratio of the number of interns and residents as determined under section 1886(h)(4) with respect to the hospital as of August 1, 1995, to the hospital's number of usable beds as of August 1, 1995.

''(vi) In determining such adjustment with respect to discharges of a hospital occurring on or after October 1, 1995, and on or before September 30, 2002, the number of interns and residents determined under clause (ii) with respect to a hospital may not exceed a number determined by the Secretary by applying rules similar to the rules of subsection (h)(4)(F).''.

SEC. 7173. ELIMINATION OF DSH AND IME FOR OUTLIERS.

(a) INDIRECT MEDICAL EDUCATION ADJUSTMENTS.—Section 1886(d)(5)(B)(i)(I) (42 U.S.C. 1395ww(d)(5)(B)(i)(I)) is amended by striking ''and the amount paid to the hospital under subparagraph (A)''.

(b) DISPROPORTIONATE SHARE ADJUSTMENT.—Section 1886(d)(5)(F)(ii)(I) (42 U.S.C. 1395ww(d)(5)(F)(ii)(I)) is amended by striking ''and the amount paid to the hospital under subparagraph (A) for that discharge''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to discharges occurring on or after October 1, 1995.

SEC. 7174. CAPITAL PAYMENTS FOR PPS INPATIENT HOSPITALS.

Section 1886(g)(1)(A) (42 U.S.C. 1395ww(g)(1)(A)) is amended by—

(1) by striking ''through 1995'' and inserting ''through 2002''; and

(2) by inserting after ''reduction'' the following: ''(or a 15 percent reduction in the case of payments during fiscal years 1996 through 2002)''.

SEC. 7175. TREATMENT OF PPS-EXEMPT HOSPITALS.

(a) REBASING FOR PPS-EXEMPT HOSPITALS.—Section 1886(b)(3)(A) (42 U.S.C. 1395ww(b)(3)(A)) is amended to read as follows:

''(A)(i) Subject to clause (ii), and except as provided in subparagraphs (C), (D), and (E), for purposes of this subsection, the term 'target amount' means—

''(I) with respect to the first 12-month cost reporting period in which this subparagraph is applied to the hospital, the average allowable operating costs of inpatient hospital

services (as defined in subsection (a)(4)) recognized under this title for the hospital for the hospital's 2 most recent 12-month cost reporting periods beginning on or after October 1, 1990, increased in a compounded manner by the applicable percentage increases determined under subparagraph (B)(ii) for the hospital's succeeding cost reporting periods through fiscal year 1996; or

''(II) with respect to a later cost reporting period, the target amount for the preceding cost reporting period, increased by the applicable percentage increase under subparagraph (B)(ii) for that later cost reporting period.

''(ii) Notwithstanding subsection (a), in the case of a hospital (or unit) that did not have a cost reporting period beginning on or before October 1, 1990—

''(I) with respect to cost reporting periods beginning during the hospital's first fiscal year of operation, the amount of payments that may be made under this title with respect to operating costs of inpatient hospital services (as defined in subsection (a)(4)) shall be the reasonable costs for providing such services, except that such amount may not exceed 150 percent of the national average allowable operating costs of inpatient hospital services for a hospital (or unit) of the same grouping as such hospital for the hospital's first fiscal year of operation;

''(II) with respect to cost reporting periods beginning during the hospital's second fiscal year of operation, the amount determined under subclause (I), increased by the market basket percentage increase for such year (determined under subparagraph (B)(iii); and

''(III) with respect to succeeding cost reporting periods, clause (i) shall apply to such hospital except that the 'target amount' for such hospital shall be the average allowable operating costs of inpatient hospital services (as defined in subsection (a)(4)) recognized under this title for the hospital for the hospital's 2 12-month cost reporting periods beginning 1 year after the hospital accepts its first patient.''.

(b) NON-PPS HOSPITAL PAYMENT UPDATE.—Section 1886(b)(3)(B)(ii) (42 U.S.C. 1395ww(b)(3)(B)(ii)) is amended—

(1) in subclause (V)—

(A) by striking ''1997'' and inserting ''1995''; and

(B) by striking ''and'' at the end; and

(2) by striking subclause (VI) and inserting the following subclauses:

''(VI) for fiscal year 1996, the market basket percentage increase minus 2 percentage points for hospitals located in all areas,

''(VII) for fiscal years 1997 through 2002, the market basket percentage increase minus 1.0 percentage point for hospitals located in a large urban or other urban area, and the market basket percentage increase minus 0.5 percentage point for hospitals located in a rural area, and

''(IX) for fiscal year 2003 and each subsequent fiscal year, the market basket percentage increase for hospitals in all areas.''.

(c) EXCEPTIONS AND ADJUSTMENTS.—Section 1886(b)(4)(A)(i) (42 U.S.C. 1395ww(b)(4)(A)(i)) is amended by striking the first sentence and inserting the following: ''The Secretary shall provide for an exemption from, or an exception and adjustment to, the method under his subsection for determining the amount of payment to a hospital with respect to the hospital's 12-month cost reporting period beginning in a fiscal year where the hospital's allowable operating costs of inpatient hospital services recognized under this title for the hospital's 12-month cost reporting period beginning in the preceding fiscal year, exceeds the hospital's target amount (as determined under subparagraph (A)) for such cost reporting period by at least 50 percent.''.

(d) ELIMINATION OF INCENTIVE PAYMENTS.—Section 1886(b)(1) (42 U.S.C. 1395ww(b)(1)) is amended to read as follows:

''(b)(1)(A) Notwithstanding section 1814(b) but subject to the provisions of section 1813 and paragraph (2), if the operating costs of inpatient hospital services (as defined in subsection (a)(4)) of a hospital (other than a subsection (d) hospital, as defined in subsection (d)(1)(B)) for a cost reporting period subject to this paragraph are greater than the target amount by at least 10 percent, the amount of the payment with respect to such operating costs payable under part A on a per discharge or per admission basis (as the case may be) shall be equal to the sum of—

''(i) the target amount, plus

''(ii) an additional amount equal to 50 percent of the amount by which the operating costs exceed 110 percent of the target amount (except that such additional amount may not exceed 20 percent of the target amount) after any exceptions or adjustments are made to such target amount for the cost reporting period.

''(B) In no case may the amount payable under this title (other than on the basis of a DRG prospective payment rate determined under subsection (d)) with respect to operating costs of inpatient hospital services exceed the maximum amount payable with respect to such costs pursuant to subsection (a).''.

(e) FLOORS AND CEILINGS FOR TARGET AMOUNTS.—Section 1886(b)(3)(A) (42 U.S.C. 1395ww(b)(3)(A)), as amended by subsection (a), is amended by adding at the end the following new clauses:

''(ii) Notwithstanding clause (i), in the case of a hospital (or unit thereof)—

''(I) the target amount determined under this subparagraph for such hospital or unit for a cost reporting period beginning during a fiscal year shall not be less than 70 percent of the national mean (weighted by caseload) of the target amounts determined under this paragraph for all hospitals (and units thereof) of such grouping for cost reporting periods beginning during such fiscal year (determined without regard to this clause); and

''(II) such target amount may not be greater than 130 percent of the national mean (weighted by caseload) of the target amounts for such hospitals (and units thereof) of such grouping for cost reporting periods beginning during such fiscal year.''.

(f) EFFECTIVE DATE.—The amendment made by this section shall apply to discharges occurring during cost reporting periods beginning on or after October 1, 1995.

SEC. 7176. PPS-EXEMPT CAPITAL PAYMENTS.

Section 1886(g) (42 U.S.C. 1395ww(g)) is amended by adding at the end the following new paragraph:

''(4) In determining the amount of the payments that may be made under this title with respect to all the capital-related costs of inpatient hospital services furnished during fiscal years 1996 through 2005 of a hospital which is not a subsection (d) hospital or a subsection (d) Puerto Rico hospital, the Secretary shall reduce the amounts of such payments otherwise determined under this title by 15 percent.''.

SEC. 7177. PROHIBITION OF PPS EXEMPTION FOR NEW LONG-TERM HOSPITALS.

Section 1886(d)(1)(B)(iv) (42 U.S.C. 1395ww(d)(1)(B)(iv)) is amended by striking ''25 days'' and inserting ''25 days and which received payment under this section on or before November 30, 1995''.

SEC. 7178. REVISION OF DEFINITION OF TRANSFERS FROM HOSPITALS TO POST-ACUTE FACILITIES.

(a) IN GENERAL.—Section 1886(d)(5)(I) (42 U.S.C. 1395ww(d)(5)(I)) is amended by adding at the end the following new clause:

''(iii) Effective for discharges occurring on or after October 1, 1995, transfer cases (as otherwise defined by the Secretary) shall also include cases in which a patient is transferred from a subsection (d) hospital to a hospital or hospital unit that is not a subsection (d) hospital (under section 1886(d)(1)(B)) or to a skilled nursing facility.''.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to discharges occurring on or after October 1, 1995.

SEC. 7179. DIRECTION OF SAVINGS TO HOSPITAL INSURANCE TRUST FUND.

Section 1841 (42 U.S.C. 1395t) is amended by adding at the end the following new subsection:

''(j) There are hereby appropriated for each fiscal year to the Federal Hospital Insurance Trust Fund amounts equal to the estimated savings to the general fund of the Treasury for such year resulting from the provisions of and amendments made by the Medicare Improvement and Solvency Protection Act of 1995. The Secretary of the Treasury shall from time to time transfer from the general fund of the Treasury to the Federal Hospital Insurance Trust Fund amounts equal to such estimated savings in the form of public-debt obligations issued exclusively to the Federal Hospital Insurance Trust Fund.''.

PART II—SKILLED NURSING FACILITIES

SEC. 7181. PROSPECTIVE PAYMENT FOR SKILLED NURSING FACILITIES.

Section 1888 (42 U.S.C. 1395yy) is amended by adding at the end the following new subsections:

''(e) Notwithstanding any other provision of this title, the Secretary shall, for cost reporting periods beginning on or after October 1, 1996, provide for payment for routine costs of extended care services in accordance with a prospective payment system established by the Secretary, subject to the limitations in subsections (f) through (h).

''(f)(1) The amount of payment under subsection (e) shall be determined on a per diem basis.

''(2) The Secretary shall compute the routine costs per diem in a base year (determined by the Secretary) for each skilled nursing facility, and shall update the per diem rate on the basis of a market basket and other factors as the Secretary determines appropriate.

''(3) The per diem rate applicable to a skilled nursing facility may not exceed the following limits:

''(A) With respect to skilled nursing facilities located in rural areas, the limit shall be equal to 112 percent of the mean per diem routine costs in a base year (determined by the Secretary) for freestanding skilled nursing facilities located in rural areas within the same region, as updated by the same percentage determined under paragraph (2).

''(B) With respect to skilled nursing facilities located in urban areas, the limit shall be equal to 112 percent of the mean per diem routine costs in a base year (determined by the Secretary) for freestanding skilled nursing facilities located in urban areas within the same region, updated by the same percentage determined under paragraph (2).

''(C) With respect a skilled nursing facility that does not have a base year (determined by the Secretary under subparagraph (A) or (B)), the limit for such facility for cost reporting periods (or portions of cost reporting periods) beginning prior to October 1, 1998, shall be equal to 100 percent of the mean costs of freestanding skilled nursing facilities located in rural or urban areas (as applicable).

For purposes of this paragraph, the terms 'urban', 'rural', and 'region' have the meaning given such terms in section 1886(d)(2)(D).

''(4)(A) Subject to subparagraph (B), the Secretary may not make adjustments or exceptions to the limits determined under paragraph (3).

''(B) For periods prior to October 1, 1998, a facility's payment for routine costs shall be the greater of—

''(i) the facility's limit as of the date of the enactment of the Medicare Improvement and Solvency Protection Act of 1995; or

''(ii) the regional limit determined under this paragraph (3) (including any exception amounts that were in effect in the base year), updated in accordance with paragraph (2).

''(C) The Secretary shall not provide for new provider exemptions under this subsection under section 413.30(e)(2) of title 42 of the Code of Federal Regulations and shall not include such exemption amounts determined in the base year for purposes of subparagraph (B)(ii).

''(1) In the case of a skilled nursing facility which received an adjustment to the facility's limit in the base year (determined by the Secretary under paragraph (3)), the facility shall receive an adjustment to the limit determined under paragraph (3) for a fiscal year if the magnitude and scope of the case mix or circumstances resulting in the base year adjustment are at least as great for such fiscal year.

''(g)(1) In the case of a hospital-based skilled nursing facility receiving payments under this title as of the date of enactment of this subsection, the amount of payment to the facility based on application of subsections (e) and (f) may not be less than the per diem rate applicable to the facility for routine costs on the date of enactment of this subsection.

''(2) In the case of a skilled nursing facility receiving payment under subsection (d) as of the date of enactment of this subsection, such facility may elect, in lieu of payment otherwise determined under this section for routine service costs, to receive payments under this section in an amount equal to a rate equal to 100 percent of the mean routine service costs of free standing skilled nursing facilities by rural or urban area, as applicable.

''(h) The Secretary shall, for cost reporting periods beginning on or after October 1, 1996, and before the prospective payment system is established under subsection (i), the Secretary shall not provide for payment for ancillary costs of extended care services in accordance with section 1861(v) in excess of the amount that would be paid under the fee schedules applicable to such services under sections 1834 and 1848.

''(i)(1) Notwithstanding any other provision of this title, the Secretary shall, for cost reporting periods beginning on or after October 1, 1998, provide for payment for all costs of extended care services (including routine service costs, ancillary costs, and capital-related costs) in accordance with a prospective payment system established by the Secretary.

''(2)(A) Prior to implementing the prospective system described in paragraph (1) in a budget-neutral fashion, the Secretary shall reduce by 5 percent the per diem rates for routine costs, and the cost limits for ancillary services and capital for skilled nursing facilities as such rates and costs are in effect on September 30, 1998.

''(B) Subject to the reduction under subparagraph (B), the Secretary shall establish the prospective payment system described in paragraph (1) such that aggregate payments under such system for a fiscal year shall not exceed the payments that would have otherwise been made for such fiscal year.

''(j) Each skilled nursing facility shall be required to include uniform coding (including HCPCS codes, if applicable) on the facility's cost reports''.

SEC. 7182. MAINTAINING SAVINGS RESULTING FROM TEMPORARY FREEZE ON PAYMENT INCREASES FOR SKILLED NURSING FACILITIES.

(a) BASING UPDATES TO PER DIEM COST LIMITS ON LIMITS FOR FISCAL YEAR 1993.—

(1) IN GENERAL.—The last sentence of section 1888(a) (42 U.S.C. 1395yy(a)) is amended by adding at the end the following: ''(except that such updates may not take into account any changes in the routine service costs of skilled nursing facilities occurring during cost reporting periods which began during fiscal year 1994 or fiscal year 1995).''.

(2) NO EXCEPTIONS PERMITTED BASED ON AMENDMENT.—The Secretary of Health and Human Services shall not consider the amendment made by paragraph (1) in making any adjustments pursuant to section 1888(c) of the Social Security Act.

(b) PAYMENTS DETERMINED ON PROSPECTIVE BASIS.—Any change made by the Secretary of Health and Human Services in the amount of any prospective payment paid to a skilled nursing facility under section 1888(d) of the Social Security Act for cost reporting periods beginning on or after October 1, 1995, may not take into account any changes in the costs of services occurring during cost reporting periods which began during fiscal year 1994 or fiscal year 1995.

SEC. 7183. CONSOLIDATED BILLING.

(a) REQUIREMENT OF ARRANGEMENTS.—Section 1862(a) (42 U.S.C. 1395y(a)) is amended—

(1) by striking ''or'' at the end of paragraph (14);

(2) by striking the period at the end of paragraph (15) and inserting the following:

''(16) which are other than physicians' services, services described by clauses (i) or (ii) of section 1861(s)(2)(K), certified nurse-midwife services, qualified psychologist services, or services of a certified registered nurse anesthetist, and which are furnished to an individual who is a resident of a skilled nursing facility by an entity other than the skilled nursing facility, unless the services are furnished under arrangements (as defined in section 1861(w)(1)) with the entity made by the skilled nursing facility.''.

(b) AGREEMENTS WITH PROVIDERS OF SERVICES.—Section 1866(a)(1)(H) (42 U.S.c. 1395cc(a)(1)(H)) is amended—

(1) by redesignating clauses (i) and (ii), as subclauses (I) and (II), respectively;

(2) by inserting ''(i)'' after ''(H)''; and

(3) by adding at the end the following new clause:

''(ii) in the case of skilled nursing facilities which provide services for which payment may be made under this title, to have all items and services (other than physicians services, and other than services described by sections 1861(s)(2)(K) (i) or (ii), certified nurse-midwife services, qualified psychologist services, or services of a certified registered nurse anesthetist—

''(I) that are furnished to an individual who is a resident of the skilled nursing facility, and

''(II) for which the individual is entitled to have payment made under this title, furnished by the skilled nursing facility or otherwise under arrangements (as defined in section 1861(w)(1)) made by the skilled nursing facility,''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to services furnished on or after October 1, 1996.

Subchapter B—Provisions Relating to Part B

SEC. 7184. PHYSICIAN UPDATE FOR 1996.

(a) SPECIAL RULE FOR 1996.—Section 1848(d)(3) is amended by adding at the end the following new subparagraph:

''(C) SPECIAL RULE FOR 1996.—In determining the update under subparagraphs (A) and (B) for 1996, the Secretary shall use the same percentage increase for all categories of service, determined in a budget-neutral manner, weighting the percentage increase for each of the 3 categories of service by the category's respective share of expenditures. The update determined in the previous sentence shall be reduced by 0.8 percentage points for all physicians' services, except for primary care services (as defined in section 1842(i)(4)''.

SEC. 7185. PRACTICE EXPENSE RELATIVE VALUE UNITS.

(a) EXTENSION TO 1997.—Section 1848(c)(2)(E) is amended—

(1) by striking ''and'' at the end of clause (i)(II),

(2) by striking the period at the end of clause (i)(III) and inserting '', and'', and

(3) by adding at the end the following new subclause:

''(IV) 1997, by an additional 25 percent of such excess.''

(b) CHANGE IN FLOOR ON REDUCTIONS AND SERVICES COVERED.—Clauses (ii) and (iii)(II) of section 1848(c)(2)(E) are amended by inserting ''(or 115 percent in the case of 1997)'' after ''128 percent''.

SEC. 7186. CORRECTION OF MVPS UPWARD BIAS.

(a) IN GENERAL.—Section 1848(f)(2)(A)(iv) (42 U.S.C. 1395w–4(f)(2)(A)(iv)) is amended by striking ''including changes in law and regulations affecting the percentage increase described in clause (i)'' and inserting ''excluding anticipated responses to such changes''.

(b) REPEAL OF RESTRICTION ON MAXIMUM REDUCTION.—Section 1848(d)(3)(B)(ii) (42 U.S.C. 1395w–4(d)(3)(B)(ii)) is amended—

(1) in the heading by inserting ''IN CERTAIN YEARS'' AFTER ''ADJUSTMENT'';

(2) in the matter preceding subclause (I), by striking ''for a year'';

(3) in subclause (II), by striking ''and''; and

(4) in subclause (III), by striking ''any succeeding year'' and inserting ''1995, 1996, and 1997''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to performance standard rates of increase determined for fiscal year 1996 and succeeding fiscal years.

SEC. 7187. LIMITATIONS ON PAYMENT FOR PHYSICIANS' SERVICES FURNISHED BY HIGH-COST HOSPITAL MEDICAL STAFFS.

(a) IN GENERAL.—

(1) LIMITATIONS DESCRIBED.—Part B of title XVIII, is amended by inserting after section 1848 the following new section:

''LIMITATIONS ON PAYMENT FOR PHYSICIANS' SERVICES FURNISHED BY HIGH-COST HOSPITAL MEDICAL STAFFS

''SEC. 1849. (a) SERVICES SUBJECT TO REDUCTION.—

''(1) DETERMINATION OF HOSPITAL-SPECIFIC PER ADMISSION RELATIVE VALUE.—Not later than October 1 of each year (beginning with 1997), the Secretary shall determine for each hospital—

''(A) the hospital-specific per admission relative value under subsection (b)(2) for the following year; and

''(B) whether such hospital-specific relative value is projected to exceed the allowable average per admission relative value applicable to the hospital for the following year under subsection (b)(1).

''(2) REDUCTION FOR SERVICES AT HOSPITALS EXCEEDING ALLOWABLE AVERAGE PER ADMISSION RELATIVE VALUE.—If the Secretary determines (under paragraph (1)) that a medical staff's hospital-specific per admission relative value for a year (beginning with 1998) is projected to exceed the allowable average per admission relative value applicable to the medical staff for the year, the Secretary shall reduce (in accordance with subsection

(c)) the amount of payment otherwise determined under this part for each physician's service furnished during the year to an inpatient of the hospital by an individual who is a member of the hospital's medical staff.

''(3) TIMING OF DETERMINATION; NOTICE TO HOSPITALS AND CARRIERS.—Not later than October 1 of each year (beginning with 1997), the Secretary shall notify the medical executive committee of each hospital (as set forth in the Standards of the Joint Commission on the Accreditation of Health Organizations) of the determinations made with respect to the medical staff under paragraph (1).

''(b) DETERMINATION OF ALLOWABLE AVERAGE PER ADMISSION RELATIVE VALUE AND HOSPITAL-SPECIFIC PER ADMISSION RELATIVE VALUES.—

''(1) ALLOWABLE AVERAGE PER ADMISSION RELATIVE VALUE.—

''(A) URBAN HOSPITALS.—In the case of a hospital located in an urban area, the allowable average per admission relative value established under this subsection for a year is equal to 125 percent (or 120 percent for years after 1999) of the median of 1996 hospital-specific per admission relative values determined under paragraph (2) for all hospital medical staffs.

''(B) RURAL HOSPITALS.—In the case of a hospital located in a rural area, the allowable average per admission relative value established under this subsection for 1998 and each succeeding year, is equal to 140 percent of the median of the 1996 hospital-specific per admission relative values determined under paragraph (2) for all hospital medical staffs.

''(2) HOSPITAL-SPECIFIC PER ADMISSION RELATIVE VALUE.—

''(A) IN GENERAL.—The hospital-specific per admission relative value projected for a hospital (other than a teaching hospital) for a calendar year, shall be equal to the average per admission relative value (as determined under section 1848(c)(2)) for physicians' services furnished to inpatients of the hospital by the hospital's medical staff (excluding interns and residents) during the second calendar year preceding such calendar year, adjusted for variations in case-mix and disproportionate share status among hospitals (as determined by the Secretary under subparagraph (C)).

''(B) SPECIAL RULE FOR TEACHING HOSPITALS.—The hospital-specific relative value projected for a teaching hospital in a calendar year shall be equal to the sum of—

''(i) the average per admission relative value (as determined under section 1848(c)(2)) for physicians' services furnished to inpatients of the hospital by the hospital's medical staff (excluding interns and residents) during the second year preceding such calendar year; and

''(ii) the equivalent per admission relative value (as determined under section 1848(c)(2)) for physicians' services furnished to inpatients of the hospital by interns and residents of the hospital during the second year preceding such calendar year, adjusted for variations in case-mix, disproportionate share status, and teaching status among hospitals (as determined by the Secretary under subparagraph (C)). The Secretary shall determine such equivalent relative value unit per admission for interns and residents based on the best available data for teaching hospitals and may make such adjustment in the aggregate.

''(C) ADJUSTMENT FOR TEACHING AND DISPROPORTIONATE SHARE HOSPITALS.—The Secretary shall adjust the allowable per admission relative values otherwise determined under this paragraph to take into account the needs of teaching hospitals and hospitals receiving additional payments under subparagraphs (F) and (G) of section 1886(d)(5). The adjustment for teaching status or disproportionate share shall not be less than zero.

''(c) AMOUNT OF REDUCTION.—The amount of payment otherwise made under this part for a physician's service that is subject to a reduction under subsection (a) during a year shall be reduced 15 percent, in the case of a service furnished by a member of the medical staff of the hospital for which the Secretary determines under subsection (a)(1) that the hospital medical staff's projected relative value per admission exceeds the allowable average per admission relative value.

''(d) RECONCILIATION OF REDUCTIONS BASED ON HOSPITAL-SPECIFIC RELATIVE VALUE PER ADMISSION WITH ACTUAL RELATIVE VALUES.—

''(1) DETERMINATION OF ACTUAL AVERAGE PER ADMISSION RELATIVE VALUE.—Not later than October 1 of each year (beginning with 1999), the Secretary shall determine the actual average per admission relative value (as determined pursuant to section 1848(c)(2)) for the physicians' services furnished by members of a hospital's medical staff to inpatients of the hospital during the previous year, on the basis of claims for payment for such services that are submitted to the Secretary not later than 90 days after the last day of such previous year. The actual average per admission shall be adjusted by the appropriate case-mix, disproportionate share factor, and teaching factor for the hospital medical staff (as determined by the Secretary under subsection (b)(2)(C)). Notwithstanding any other provision of this title, no payment may be made under this part for any physician's service furnished by a member of a hospital's medical staff to an inpatient of the hospital during a year unless the hospital submits a claim to the Secretary for payment for such service not later than 90 days after the last day of the year.

''(2) RECONCILIATION WITH REDUCTIONS TAKEN.—In the case of a hospital for which the payment amounts for physicians' services furnished by members of the hospital's medical staff to inpatients of the hospital were reduced under this section for a year—

''(A) if the actual average per admission relative value for such hospital's medical staff during the year (as determined by the Secretary under paragraph (1)) did not exceed the allowable average per admission relative value applicable to the hospital's medical staff under subsection (b)(1) for the year, the Secretary shall reimburse the fiduciary agent for the medical staff by the amount by which payments for such services were reduced for the year under subsection (c), including interest at an appropriate rate determined by the Secretary;

''(B) if the actual average per admission relative value for such hospital's medical staff during the year is less than 15 percentage points above the allowable average per admission relative value applicable to the hospital's medical staff under subsection (b)(1) for the year, the Secretary shall reimburse the fiduciary agent for the medical staff, as a percent of the total allowed charges for physicians' services performed in such hospital (prior to the withhold), the difference between 15 percentage points and the actual number of percentage points that the staff exceeds the limit allowable average per admission relative value, including interest at an appropriate rate determined by the Secretary; and

''(C) if the actual average per admission relative value for such hospital's medical staff during the year exceeded the allowable average per admission relative value applicable to the hospital's medical staff by 15 percentage points or more, none of the withhold is paid to the fiduciary agent for the medical staff.

''(3) MEDICAL EXECUTIVE COMMITTEE OF A HOSPITAL.—Each medical executive committee of a hospital whose medical staff is projected to exceed the allowable relative value per admission for a year, shall have one year from the date of notification that such medical staff is projected to exceed the allowable relative value per admission to designate a fiduciary agent for the medical staff to receive and disburse any appropriate withhold amount made by the carrier.

''(4) ALTERNATIVE REIMBURSEMENT TO MEMBERS OF STAFF.—At the request of a fiduciary agent for the medical staff, if the fiduciary agent for the medical staff is owed the reimbursement described in paragraph (2)(B) for excess reductions in payments during a year, the Secretary shall make such reimbursement to the members of the hospital's medical staff, on a pro-rata basis according to the proportion of physicians' services furnished to inpatients of the hospital during the year that were furnished by each member of the medical staff.

''(e) DEFINITIONS.—In this section, the following definitions apply:

''(1) MEDICAL STAFF.—An individual furnishing a physician's service is considered to be on the medical staff of a hospital—

''(A) if (in accordance with requirements for hospitals established by the Joint Commission on Accreditation of Health Organizations)—

''(i) the individual is subject to bylaws, rules, and regulations established by the hospital to provide a framework for the self-governance of medical staff activities;

''(ii) subject to such bylaws, rules, and regulations, the individual has clinical privileges granted by the hospital's governing body; and

''(iii) under such clinical privileges, the individual may provide physicians' services independently within the scope of the individual's clinical privileges, or

''(B) if such physician provides at least one service to a medicare beneficiary in such hospital.

''(2) RURAL AREA; URBAN AREA.—The terms 'rural area' and 'urban area' have the meaning given such terms under section 1886(d)(2)(D).

''(3) TEACHING HOSPITAL.—The term 'teaching hospital' means a hospital which has a teaching program approved as specified in section 1861(b)(6).''.

(2) CONFORMING AMENDMENTS.—(A) Section 1833(a)(1)(N) (42 U.S.C. 1395l(a)(1)(N)) is amended by inserting ''(subject to reduction under section 1849)'' after ''1848(a)(1)''.

(B) Section 1848(a)(1)(B) (42 U.S.C. 1395w–4(a)(1)(B)) is amended by striking ''this subsection,'' and inserting ''this subsection and section 1849,''.

(b) REQUIRING PHYSICIANS TO IDENTIFY HOSPITAL AT WHICH SERVICE FURNISHED.—Section 1848(g)(4)(A)(i) (42 U.S.C. 1395w–4(g)(4)(A)(i)) is amended by striking ''beneficiary,'' and inserting ''beneficiary (and, in the case of a service furnished to an inpatient of a hospital, report the hospital identification number on such claim form),''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to services furnished on or after January 1, 1998.

SEC. 7188. ELIMINATION OF CERTAIN ANOMALIES IN PAYMENTS FOR SURGERY.

(a) GENERAL RULE.—

(1) Part B of title XVIII is amended by inserting after section 1846 the following section:

''ELIMINATION OF CERTAIN ANOMALIES IN PAYMENTS FOR SURGERY

''SEC. 1847. (a) IN GENERAL.—Payment under this part for surgical services (as defined by the Secretary under section 1848(j)(1)), when a separate payment is also

made for the services of a physician or physician assistant acting as an assistant at surgery, may not (except as provided by subsection (b)), when added to the separate payment made for the services of that other practitioner, exceed the amount that would be paid for the surgical services if a separate payment were not made for the services of that other practitioner.

''(b) ESTABLISHMENT OF EXCEPTIONS.—The Secretary may specify surgery procedures or situations to which subsection (a) shall not apply.''.

(2) Section 1848(g)(2)(D) is amended by inserting ''(or the lower amount determined under section 1847)'' after ''subsection (a)''.

(b) EFFECTIVE DATE.—The amendments made by subsection (a) apply to services furnished after calendar year 1995.

SEC. 7189. UPGRADED DURABLE MEDICAL EQUIPMENT.

Section 1834(a) (42 U.S.C. 1395m(a)) is amended by inserting after paragraph (15) the following new paragraph:

''(16) CERTAIN UPGRADED ITEMS.—

''(A) INDIVIDUAL'S RIGHT TO CHOOSE UPGRADED ITEM.—Notwithstanding any other provision of law, effective on the date on which the Secretary issues regulations under subparagraph (C), an individual may purchase or rent from a supplier an item of upgraded durable medical equipment for which payment would be made under this subsection if the item were a standard item.

''(B) PAYMENTS TO SUPPLIER.—In the case of the purchase or rental of an upgraded item under subparagraph (A)—

''(i) the supplier shall receive payment under this subsection with respect to such item as if such item were a standard item; and

''(ii) the individual purchasing or renting the item shall pay the supplier an amount equal to the difference between the supplier's charge and the amount under clause (i). In no event may the supplier's charge for an upgraded item exceed the applicable fee schedule amount (if any) for such item.

''(C) CONSUMER PROTECTION SAFEGUARDS.—The Secretary shall issue regulations providing for consumer protection standards with respect to the furnishing of upgraded equipment under subparagraph (A). Such regulations shall provide for—

''(i) determination of fair market prices with respect to an upgraded item;

''(ii) full disclosure of the availability and price of standard items and proof of receipt of such disclosure information by the beneficiary before the furnishing of the upgraded item;

''(iii) conditions of participation for suppliers in the simplified billing arrangement;

''(iv) sanctions of suppliers who are determined to engage in coercive or abusive practices, including exclusion; and

''(v) such other safeguards as the Secretary determines are necessary.''.

Subchapter C—Provisions Relating to Parts A and B

PART I—SECONDARY PAYOR

SEC. 7189A. EXTENSION AND EXPANSION OF EXISTING MEDICARE SECONDARY PAYOR REQUIREMENTS.

(a) DATA MATCH.—

(1) Section 1862(b)(5)(C) (42 U.S.C. 1395y(b)(5)(C)) is amended by striking clause (iii).

(2) Section 6103(l)(12) of the Internal Revenue Code of 1986 is amended by striking subparagraph (F).

(b) APPLICATION TO DISABLED INDIVIDUALS IN LARGE GROUP HEALTH PLANS.—Section 1862(b)(1)(B)(iii) (42 U.S.C. 1395y(b)(1)(B)(iii)) is amended by striking ''and before October 1, 1998''.

(c) EXPANSION OF PERIOD OF APPLICATION TO INDIVIDUALS WITH END-STAGE RENAL DISEASE.—Section 1862(b)(1)(C) (42 U.S.C. 1395y(b)(1)(C)) is amended—

(1) in the first sentence, by striking ''12-month'' each place it appears and inserting ''30-month'', and

(2) by striking the second sentence.

PART II—HOME HEALTH AGENCIES

SEC. 7189B. INTERIM PAYMENTS FOR HOME HEALTH SERVICES.

(a) REDUCTIONS IN COST LIMITS.—Section 1861(v)(1)(L)(i) (42 U.S.C. 1395x(v)(1)(L)(i)) is amended—

(1) by inserting ''and before October 1, 1996,'' after ''July 1, 1987'' in subclause (III),

(2) by striking the period at the end of the matter following subclause (III), and inserting '', and'', and

(3) by adding at the end the following new subclause:

''(IV) October 1, 1996, 105 percent of the median of the labor-related and nonlabor per visit costs for freestanding home health agencies.''.

(b) DELAY IN UPDATES.—Section 1861(v)(1)(L)(iii) (42 U.S.C. 1395x(v)(1)(L)(iii)) is amended by striking ''July 1, 1996'' and inserting ''October 1, 1996''.

(c) ADDITIONS TO COST LIMITS.—Section 1861(v)(1)(L) (42 U.S.C. 1395x(v)(1)(L)) is amended by adding at the end the following new clauses:

''(iv) For services furnished by home health agencies for cost reporting periods beginning on or after October 1, 1996, the Secretary shall provide for an interim system of limits. Payment shall be the lower of—

''(I) costs determined under the preceding provisions of this subparagraph, or

''(II) an agency-specific per beneficiary annual limit calculated from the agency's 12-month cost reporting period ending on or after January 1, 1994 and on or before December 31, 1994 based on reasonable costs (including nonroutine medical supplies), updated by the home health market basket index. The per beneficiary limitation shall be multiplied by the agency's unduplicated census count of medicare patients for the year subject to the limitation. The limitation shall represent total medicare reasonable costs divided by the unduplicated census count of medicare patients.

''(v) For services furnished by home health agencies for cost reporting periods beginning on or after October 1, 1996, the following rules shall apply:

''(I) For new providers and those providers without a 12-month cost reporting period ending in calendar year 1994, the per beneficiary limit shall be equal to the mean of these limits (or the Secretary's best estimates thereof) applied to home health agencies as determined by the Secretary. Home health agencies that have altered their corporate structure or name may not be considered new providers for payment purposes.

''(II) For beneficiaries who use services furnished by more than one home health agency, the per beneficiary limitations shall be prorated among agencies.

''(vi) Home health agencies whose cost or utilization experience is below 125 percent of the mean national or census region aggregate per beneficiary cost or utilization experience for 1994, or best estimates thereof, and whose year-end reasonable costs are below the agency-specific per beneficiary limit, shall receive payment equal to 50 percent of the difference between the agency's reasonable costs and its limit for fiscal years 1996, 1997, 1998, and 1999. Such payments may not exceed 5 percent of an agency's aggregate medicare reasonable cost in a year.

''(vii) Effective January 1, 1997, or as soon as feasible, the Secretary shall modify the agency-specific per beneficiary annual limit described in clause (iv) to provide for regional or national variations in utilization. For purposes of determining payment under clause (iv), the limit shall be calculated through a blend of 75 percent of the agency-specific cost or utilization experience in 1994 with 25 percent of the national or census region cost or utilization experience in 1994, or the Secretary's best estimates thereof.''.

(d) USE OF INTERIM FINAL REGULATIONS.—The Secretary shall implement the payment limits described in section 1861(v)(1)(L)(iv) of the Social Security Act by publishing in the Federal Register a notice of interim final payment limits by August 1, 1996 and allowing for a period of public comments thereon. Payments subject to these limits will be effective for cost reporting periods beginning on or after October 1, 1996, without the necessity for consideration of comments received, but the Secretary shall, by Federal Register notice, affirm or modify the limits after considering those comments.

(e) STUDIES.—The Secretary shall expand research on a prospective payment system for home health agencies that shall tie prospective payments to an episode of care, including an intensive effort to develop a reliable case mix adjuster that explains a significant amount of the variances in costs. The Secretary shall develop such a system for implementation in fiscal year 2000.

(f) SUBMISSION OF DATA FOR CASE-MIX SYSTEM.—Effective for cost reporting periods beginning on or after October 1, 1998, the Secretary shall require all home health agencies to submit such additional information as the Secretary may deem necessary for the development of a reliable case-mix adjuster.

SEC. 7189C. PROSPECTIVE PAYMENTS.

Title XVIII is amended by adding at the end the following new section:

''PROSPECTIVE PAYMENT FOR HOME HEALTH SERVICES

''SEC. 1893. (a) Notwithstanding section 1861(v), the Secretary shall, for cost reporting periods beginning on or after fiscal year 2000, provide for payments for home health services in accordance with a prospective payment system, which pays home health agencies on a per episode basis, established by the Secretary.

''(b) Such a system shall include the following:

''(1) All services covered and paid on a reasonable cost basis under the medicare home health benefit as of the date of the enactment of the Medicare Improvement and Solvency Protection Act of 1995, including medical supplies, shall be subject to the per episode amount. In defining an episode of care, the Secretary shall consider an appropriate length of time for an episode, the use of services, and the number of visits provided within an episode, potential changes in the mix of services provided within an episode and their cost, and a general system design that will provide for continued access to quality services. The per episode amount shall be based on the most current audited cost report data available to the Secretary.

''(2) The Secretary shall employ an appropriate case mix adjuster that explains a significant amount of the variation in cost.

''(3) The episode payment amount shall be adjusted annually by the home health market basket index. The labor portion of the episode amount shall be adjusted for geographic differences in labor-related costs based on the most current hospital wage index.

''(4) The Secretary may designate a payment provision for outliers, recognizing the need to adjust payments due to unusual variations in the type or amount of medically necessary care.

''(5) A home health agency shall be responsible for coordinating all care for a beneficiary. If a beneficiary elects to transfer to,

or receive services from, another home health agency within an episode period, the episode payment shall be prorated between home health agencies.''.

''(c) Prior to implementing the prospective system described in subsections (a) and (b) in a budget-neutral fashion, the Secretary shall first reduce, by 15 percent, the cost limits, per beneficiary limits, and actual costs, described in section 1861(v)(1)(L)(iv), as such limits are in effect on September 30, 1999.''.

SEC. 7189D. MAINTAINING SAVINGS RESULTING FROM TEMPORARY FREEZE ON PAYMENT INCREASES.

(a) BASING UPDATES TO PER VISIT COST LIMITS ON LIMITS FOR FISCAL YEAR 1993.—Section 1861(v)(1)(L)(iii) (42 U.S.C. 1395x(v)(1)(L)(iii)) is amended by adding at the end the following sentence: ''In establishing limits under this subparagraph, the Secretary may not take into account any changes in the costs of the provision of services furnished by home health agencies with respect to cost reporting periods which began on or after July 1, 1994, and before July 1, 1996.''.

(b) NO EXCEPTIONS PERMITTED BASED ON AMENDMENT.—The Secretary of Health and Human Services shall not consider the amendment made by subsection (a) in making any exemptions and exceptions pursuant to section 1861(v)(1)(L)(ii) of the Social Security Act.

SEC. 7189E. ELIMINATION OF PERIODIC INTERIM PAYMENTS FOR HOME HEALTH AGENCIES.

(a) IN GENERAL.—Section 1815(e)(2) (42 U.S.C. 1395g(e)(2)) is amended—

(1) by inserting ''and'' at the end of subparagraph (C);

(2) by striking subparagraph (D); and

(3) by redesignating subparagraph (E) as subparagraph (D).

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall apply to payments made on or after October 1, 1999.

SEC. 7189F. EFFECTIVE DATE.

Except as otherwise specifically provided, the amendments made by this subtitle shall apply to items and services provided on or after October 1, 1995.

Amend the table of contents for title VII accordingly.

Mr. CRAIG addressed the Chair.

The PRESIDING OFFICER. The Senator from Idaho.

(The remarks of Mr. CRAIG pertaining to the introduction of S. 1374 are located in today's RECORD under ''Statements on Introduced Bills and Joint Resolutions.'')

Mr. MCCAIN addressed the Chair.

The PRESIDING OFFICER. The Senator from Arizona.

CAMPAIGN FINANCE REFORM

Mr. MCCAIN. Mr. President, today, two of our colleagues on the other side of the aisle, Senators DODD and KERREY, held a press conference endorsing legislation that Senator FEINGOLD and I and Senator THOMPSON and others introduced some time ago. This follows on the heels of an announcement in the other body by Congresswoman SMITH and Congressman MARKEY of Massachusetts and Congressman SHAYS of support for this legislation as well, including announcement by the Speaker of the House that hearings would begin on the issue of campaign finance reform.

Mr. President, I welcome all of these initiatives and support. I believe that the issue of campaign finance reform is one that is very important to the American people and becomes more important almost on a daily basis.

I wish to emphasize, after having been through this issue for a number of years, that if the issue is not bipartisan, then there will be no resolution to the campaign finance reform issue. And I worry sometimes that this legislation may tilt to one side or the other. That is why the Senator from Wisconsin and I have tried to maintain a balance as far as cosponsors are concerned.

If there is one lesson about reform in this body, and reform in the way we do business not only inside the Congress but in the way we conduct our campaigns, it is that any reform must be done on a bipartisan basis. I urge my colleagues who have similar ideas—I understand there are at least about 40 or 50 other campaign reform proposals now floating around—they engage it on a bipartisan basis, in which I and my friend from Wisconsin would be glad to join them.

Mr. President, I yield the floor.

MEASURE PLACED ON CALENDAR—S. 1372

The PRESIDING OFFICER. Pursuant to rule XIV of the Standing Rules of the Senate, the clerk will read S. 1372 for a second time.

The assistant legislative clerk read as follows.

A bill (S. 1372) to amend the Social Security Act to increase the earnings limit, and for other purposes.

The PRESIDING OFFICER. Is there objection to further proceeding?

Mr. LOTT. Mr. President, I object.

The PRESIDING OFFICER. Objection is heard. The bill will be placed on the Legislative Calendar.

CAMPAIGN FINANCE REFORM

Mr. FEINGOLD. Mr. President, I would like to strongly associate myself with the remarks of the Senator from Arizona with regard to the recent news on our efforts on campaign finance reform.

Last week, we were extremely pleased to see a bipartisan group in the House essentially agree to introduce the kind of legislation that the Senator from Arizona and I have proposed.

Today, we are also pleased by the announcement of the support by the chairman of the Democratic National Committee and the chairman of the Democratic Senatorial Campaign Committee.

We are not so excited about the fact that these people happen to be leaders in the Democratic Party—that is good—but the more important thing is that it is another sign of the importance and the value of the bipartisan nature of this proposal.

The House proposal last week was bipartisan. Adding these two Senators to this group makes it another significant step in bringing both parties together with regard to this issue. I have been very pleased with the quick response from various Senators on signing on to this bill. Week by week, we have added new people.

I also want to note the editorial endorsements that the Senator from Arizona alluded to. The Feingold-McCain–Thompson bill has been endorsed by the New York Times, the Washington Post, Los Angeles Times, Dallas Morning News, Milwaukee Journal, St. Louis Post-Dispatch, Kansas City Star, Houston Chronicle, Nashville Tennessean, the Boston Globe, and many others. Of course, this was added to last week in addition by the endorsement of Ross Perot, who has indicated a lot of support on this issue.

Today, the addition of the support of Senator BOB KERREY of Nebraska and Senator DODD of Connecticut helps us move in that direction.

It takes about 100 steps to pass this bill. It is a complicated, very controversial bill that has been a knotty problem for the Congress for many years, but I think we have taken about 25 or 35 of those steps already. These endorsements are very important today.

Senator DODD's response at the news conference to the question of, ''Why do you think this bill has a chance of actually passing?'' was right on target. The fact that this bill has Republican and Democrat cosponsors and represents the first truly bipartisan bill, the first truly bipartisan bill in nearly 10 years, automatically makes this effort different, dramatically different than past efforts.

Senator BOB KERREY of Nebraska also made an excellent point about nobody understanding the need for reform better than those of us who are charged with the responsibility of raising these awful amounts of money. So this is progress.

I want to emphasize what the Senator from Arizona did. It is only progress in the context of a continued bipartisan effort. If either party thinks they can gain political advantage by turning this into a partisan issue, all they will succeed in doing is killing this effort.

This effort can win. There is every sign that it will win and that the President would be willing to sign it. With that caveat, with that effort to make sure that this is a continuation of the effort of bipartisanship, I welcome their support, and I look forward to further support from Members on both sides of the aisle.

I thank the Senator from Arizona and the Chair, and I yield the floor.

The PRESIDING OFFICER. Who seeks recognition?

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. LUGAR. Mr. President, I ask unanimous consent that the quorum call be dispensed with.

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

The Senator from Indiana.

Mr. LUGAR. I would like to proceed in morning business, Mr. President.

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

(The remarks of Mr. LUGAR pertaining to the introduction of S. 1377 are located in today's RECORD under ''Statements on Introduced Bills and Joint Resolutions.'')

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

The PRESIDING OFFICER (Mr. GRAMS). The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

ORDER FOR MEASURE TO BE PLACED ON CALENDAR—H.R. 2492

Mr. LUGAR. Mr. President, I ask unanimous consent that H.R. 2492, the legislative branch appropriations bill, be placed on the calendar when received from the House.

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

MEASURE INDEFINITELY POSTPONED—SENATE RESOLUTION 168

Mr. LUGAR. Mr. President, I ask unanimous consent that calendar No. 183, Senate Resolution 168, be indefinitely postponed.

NATIONAL AMERICAN INDIAN HERITAGE MONTH

Mr. LUGAR. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of Senate Resolution 191, submitted earlier today by Senator MCCAIN.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

A resolution (S. Res. 191) designating the month of November 1995 as ''National American Indian Heritage Month,'' and for other purposes.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the resolution?

There being no objection, the Senate proceeded to consider the resolution.

Mr. MCCAIN. Mr. President, on behalf of myself and the following 51 Senators, I am pleased to submit today a Senate resolution to designate the month of November, 1995 as American Indian Heritage Month: BAUCUS, BENNETT, BINGAMAN, BRADLEY, BREAUX, BROWN, BRYAN, BURNS, CAMPBELL, CHAFEE, COCHRAN, COHEN, CONRAD, CRAIG, D'AMATO, DASCHLE, DODD, DOMENICI, DORGAN, EXON, FAIRCLOTH, FEINGOLD, FEINSTEIN, GORTON, GRAHAM, HATCH, INHOFE, INOUYE, JEFFORDS, KASSEBAUM, KEMPTHORNE, KENNEDY, J. KERRY, LAUTENBERG, LEVIN, LIEBERMAN, MIKULSKI, MOSELEY-BRAUN, MURRAY, NICKLES, PELL, PRESSLER, REID, SARBANES, SIMON, SIMPSON, SPECTER, STEVENS, THOMAS, THURMOND, and WELLSTONE.

Since 1982, the Congress has honored American Indians by designating a special day or week to pay tribute to the many outstanding contributions that American Indian tribes have made to our Nation. In the past 5 years, the Senate and the House have jointly designated the month of November as a time to celebrate the unique culture and heritage of American Indian people.

Mr. President, there are 557 federally recognized Indian tribal governments in this country, each with their own distinct language, culture, and traditions. All of us as Americans reap the benefits from many of these tribes' contributions, customs, and teachings.

Many of the principles of democracy that are reflected in the U.S. Constitution were drawn from the governmental traditions of various American Indian tribes, particularly the fundamental principles of freedom of speech and separation of powers in government. Environmentalists embrace the spiritual and practical teachings of Indian people because of their deep-rooted beliefs and reverence for the natural world.

Many of our words in the English language derive from native languages, including those that denote rivers, cities and, counties nationwide. The beautiful art, crafts, and jewelry of American Indian tribes are a distinctive feature of our American heritage.

A wide range of modern medicines and remedies derive from traditional American Indian healing practices that use natural herbs and plants. Indian people have lent important findings to the fields of agriculture, anthropology, astronomy, and other sciences.

In proportion to their share of the overall population, more American Indians have dedicated their lives to the military defense of our country than have any other group of Americans.

The special designation of November as American Indian Heritage Month is equally important as an educational tool for America's children. American Indians and many others utilize this time to share their special cultural heritage with the larger world. Schools, educational institutions, and teachers take advantage of this opportunity to include educational activities and events in their curriculum and school activities that celebrate the many contributions and achievements of American Indians. Federal agencies, various organizations, and private businesses plan activities geared toward educating the public and their employees about American Indian history and culture.

Mr. President, around the Thanksgiving holiday that occurs each November, Americans typically remember a special time in our history when the American Indians and English settlers celebrated and gave thanks for the bounty of their harvests and the promise of new kinships. I think the month of November is, therefore, an appropriate time for America to commemorate and recognize the first Americans.

Therefore, I ask you to join me in this special tribute to the American Indian people of this country. They deserve special recognition for their significant contributions to our great Nation.

Mr. President, I urge immediate adoption of the resolution.

Mr. LUGAR. Mr. President, I ask unanimous consent that the resolution be agreed to; that the preamble be agreed to; that the motion to reconsider be laid upon the table; and that any statements relating to the resolution appear at the appropriate place in the RECORD.

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

So the resolution (S. Res. 191) was agreed to.

The preamble was agreed to.

The resolution, with its preamble, is as follows:

S. RES. 191

Whereas American Indians were the original inhabitants of the land that now constitutes the United States of America;

Whereas American Indian governments developed the fundamental principles of freedom of speech and separation of powers in government, and these principles form the foundation of the United States Government today;

Whereas American Indian societies have exhibited a respect for the finiteness of natural resources through deep respect for the earth, and these values continue to be widely held today;

Whereas American Indian people have served with valor in all wars from the Revolutionary War to the conflict in the Persian Gulf, often in a percentage well above the percentage of American Indians in the population of the United States as a whole;

Whereas American Indians have made distinct and important contributions to America and the rest of the world in many fields, including agriculture, medicine, music, language, and art;

Whereas American Indians deserve to be recognized for their individual contributions to American society as artists, sculptors, musicians, authors, poets, artisans, scientists, and scholars;

Whereas a resolution and proclamation as requested in this resolution will encourage self-esteem, pride, and self-awareness in American Indians of all ages; and

Whereas November is traditionally the month when American Indians have harvested their crops and is generally a time of celebration and giving thanks: Now, therefore, be it

Resolved, That the Senate designates November 1995 as ''National American Indian Heritage Month'' and requests that the President issue a proclamation calling on Federal, State, and local governments, interested groups and organizations, and the people of the United States to observe the month with appropriate programs, ceremonies, and activities.

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

ORDERS FOR THURSDAY, NOVEMBER 2, 1995

Mr. LUGAR. Mr. President, I ask unanimous consent that when the Senate completes its business today, it stand in adjournment until the hour of 9:30 a.m. on Thursday, November 2; that following the prayer, the Journal of proceedings be deemed approved to date, no resolutions come over under the rule, the call of the calendar be dispensed with, the morning hour be deemed to have expired, the time for the two leaders be reserved for their use later in the day, and there then be a period for the transaction of morning business until 12 noon, with Senators permitted to speak up to 5 minutes each, with the following exceptions: Senator MURKOWSKI is designated for 20 minutes; Senator BINGAMAN for 20 minutes; Senator HATCH for 15 minutes; Senator DASCHLE, or his designee, for 30 minutes; Senator THOMAS for 30 minutes; Senator MCCONNELL for 10 minutes and Senator ROCKEFELLER for 10 minutes.

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

PROGRAM

Mr. LUGAR. Mr. President, for the information of all Senators, at approximately 12 noon on Thursday, it will be the intention of the majority leader to turn to consideration of S. 1372, regarding the Social Security earnings limit. Also, the majority leader has indicated the Senate may consider the legislative branch appropriations bill during Thursday's session of the Senate.

ADJOURNMENT UNTIL 9:30 A.M. TOMORROW

Mr. LUGAR. Mr. President, if there be no further business to come before the Senate, I now ask unanimous consent that the Senate stand in adjournment under the previous order.

There being no objection, the Senate, at 6:06 p.m., adjourned until Thursday, November 2, 1995, at 9:30 a.m.